

ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Government Code Sections 25008, 36514.5, 53232, 53232.1, 53232.2, 53232.3, 53232.4, 53234, 53235, 53235.1, and 53235.2; Harbors and Navigation Code Sections 6060 and 7047; Health and Safety Code Sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103; Military and Veterans Code Section 1197; Public Resources Code Sections 5536, 5536.5, 5784.15, and 9303; Public Utilities Code Sections 11908, 11908.1, 11908.2, 16002, and 22407; and Water Code Sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5

As Added or Amended by Statutes 2005, Chapter 700

Local Agency Ethics (AB 1234)

07-TC-04

City of Newport Beach Claimant and Union Sanitary District, Co-Claimant

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Assembly, floor analysis of AB 1234, as amended April 5, 2005

Commission, Dismissal Letter, dated October 18, 2007

Institute for Local Government, email to Assembly Local Government Committee, dated October 23, 2006

Office of the State Controller, *Special Districts Annual Report*, December 13, 2011, relevant pages from Tables 1 and 7

Senate Local Government Committee, analysis of AB 1234 as amended June, 1, 2005

Union Sanitary District, Sewer Service Charge Ordinance 31.34 (Collection of Charges on the Tax Roll), Section 5(a)

Union Sanitary District Web Site: UnionSanitary.com/sewerService.htm, accessed May 10, 2012.

1. TEST CLAIM TITLE

~~Ethics Training and Compensation for
Members of Local Agency Legislative Bodies~~

2. CLAIMANT INFORMATION

City of Newport Beach

Name of Local Agency or School District

Glen Everroad

Claimant Contact

Revenue Manager

Title

3300 Newport Blvd., P.O. Box 1768

Street Address

Newport Beach, CA 92658-8915

City, State, Zip

(949) 644-3141

Telephone Number

(949) 723-3544

Fax Number

GEverroad@city.newport-beach.ca.us

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Allan P. Burdick

Claimant Representative Name

Vice President

Title

MAXIMUS

Organization

4320 Auburn Blvd., Suite 2000

Street Address

Sacramento, CA 95841

City, State, Zip

(916) 485-8102 x 113

Telephone Number

(916) 485-0111

Fax Number

allanburdick@maximus.com

E-Mail Address

<i>For CSM Use Only</i>	
Filing Date:	RECEIVED
	OCT 23 2007
	COMMISSION ON STATE MANDATES
Test Claim #:	07-TC-01

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Government Code sections 25008, 36514.5; Government Code articles 2.3, 2.4; Harbors and Navigation Code sections 6060, 7047; Health and Safety Code sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536, 5536.5, 5784.15, 9303; Public Utilities Code sections 11908, 11908.1, 11908.2, 16002, 22407; and Water Code sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5,

Statutes of 2005, chapter 700 [AB 1234]

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages 1 to 9.

6. Declarations: pages 10 to 11.

7. Documentation: pages 12 to 28.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

City of Newport Beach

Print or Type Name of Authorized Local Agency
or School District Official

Revenue Manager

Print or Type Title



Signature of Authorized Local Agency or
School District Official

25 July 7

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

SECTION 5: WRITTEN NARRATIVE

INTRODUCTION

Overview

In 2005, Assembly Bill 1234 (Chapter 700, Statutes of 2005) was passed and set forth new requirements for ethics training and reimbursement of expenses for members of local agency legislative bodies. The bill made several changes in the Government Code and throughout various other codes that related to specific local agency boards and commissions. The primary impact on local agencies is seen in the addition of articles 2.3 and 2.4.

Article 2.3

This article sets forth the requirements for compensation of members of local agency legislative bodies.

Article 2.3 currently reads:

53232. For the purposes of this article, the following terms have the following meanings:

- (a) "Governing body" means the board of supervisors in the case of a county or a city and county, the city council or board of trustees in the case of a city, and the board of directors or other governing body in the case of a special district.
- (b) "Legislative body" has the same meaning as specified in Section 54952.
- (c) "Local agency" means a city, county, city and county, charter city, charter county, charter city and county, or special district.
- (d) "Meeting" has the same meaning as specified in subdivision (a) of Section 54952.2.

53232.1. (a) When compensation is otherwise authorized by statute, a local agency may pay compensation to members of a legislative body for attendance at the following occurrences:

- (1) A meeting of the legislative body.
- (2) A meeting of an advisory body.
- (3) A conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with Section 53234).

Ethics Training and Compensation for Members of Local Agency Legislative Bodies
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(b) A local agency may pay compensation for attendance at occurrences not specified in subdivision (a) only if the governing body has adopted, in a public meeting, a written policy specifying other types of occasions that constitute the performance of official duties for which a member of the legislative body may receive payment.

(c) This section shall not apply to any local agency that pays compensation in the form of a salary to members of a legislative body, including, but not limited to, those local agencies whose legislative bodies' compensation is subject to Section 36516 or 36516.1, subparagraph (B) or (C) of paragraph (2) of subdivision (a) of Section 21166 or Section 22840 of the Water Code, Section 11908.1 of the Public Utilities Code, Section 6060 of the Harbors and Navigation Code, or subdivision (b) of Section 1 or Section 5 of Article XI of the California Constitution.

53232.2. (a) When reimbursement is otherwise authorized by statute, a local agency may reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities described in Article 2.4 (commencing with Section 53234).

(b) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then the governing body shall adopt a written policy, in a public meeting, specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses.

(c) The policy described in subdivision (b) may also specify the reasonable reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses. If it does not, the local agency shall use the Internal Revenue Service rates for reimbursement of travel, meals, lodging, and other actual and necessary expenses as established in Publication 463, or any successor publication.

(d) If the lodging is in connection with a conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with Section 53234), lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the member of a legislative body at the time of booking. If the group rate is not available, the member of a legislative body shall use comparable lodging that is consistent with the requirements of subdivisions (c) and (e).

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(e) Members of the legislative body shall use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.

(f) All expenses that do not fall within the adopted travel reimbursement policy or the Internal Revenue Service reimbursable rates as provided in subdivision (c), shall be approved by the governing body, in a public meeting before the expense is incurred, except as provided in subdivision (d).

(g) This section shall not supersede any other laws establishing reimbursement rates for local agencies.

53232.3. (a) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms to be filed by the members of the legislative body for reimbursement for actual and necessary expenses incurred on behalf of the local agency in the performance of official duties. Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel.

(b) Expense reports shall document that expenses meet the existing policy, adopted pursuant to Section 53232.2, for expenditure of public resources.

(c) Members of a legislative body shall submit expense reports within a reasonable time after incurring the expense, as determined by the legislative body, and the reports shall be accompanied by the receipts documenting each expense.

(d) Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

(e) All documents related to reimbursable agency expenditures are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

53232.4. Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies may include, but are not limited to, the following:

(a) The loss of reimbursement privileges.

(b) Restitution to the local agency.

(c) Civil penalties for misuse of public resources pursuant to Section 8314.

(d) Prosecution for misuse of public resources, pursuant to Section 424 of the Penal Code.

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Section 53232.1 requires that local agency legislative bodies, who are authorized to compensate their members, provide compensation for attendance of meetings and training. Section 53232.2 also requires reimbursement of expenses and the adoption of a policy upon which such reimbursement is to be made. And, section 53232.3 requires that a local agency legislative bodies provide expense report forms for the reimbursement of expenses.

Article 2.4

This article addresses ethics training requirements for members of local agency legislative bodies.

Article 2.4 currently reads:

53234. For the purposes of this article, the following terms have the following meanings:

(a) "Legislative body" has the same meaning as specified in Section 54952.

(b) "Local agency" means a city, county, city and county, charter city, charter county, charter city and county, or special district.

(c) "Local agency official" means the following:

(1) Any member of a local agency legislative body or any elected local agency official who receives any type of compensation, salary, or stipend or reimbursement for actual and necessary expenses incurred in the performance of official duties.

(2) Any employee designated by a local agency legislative body to receive the training specified under this article.

(d) "Ethics laws" include, but are not limited to, the following:

(1) Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.

(2) Laws relating to claiming prerequisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.

(3) Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.

(4) Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.

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53235. (a) If a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties, then all local agency officials shall receive training in ethics pursuant to this article.

(b) Each local agency official shall receive at least two hours of training in general ethics principles and ethics laws relevant to his or her public service every two years.

(c) If any entity develops curricula to satisfy the requirements of this section, then the Fair Political Practices Commission and the Attorney General shall be consulted regarding the sufficiency and accuracy of any proposed course content. When reviewing any proposed course content the Fair Political Practices Commission and the Attorney General shall not preclude an entity from also including local ethics policies in the curricula.

(d) A local agency or an association of local agencies may offer one or more training courses, or sets of self-study materials with tests, to meet the requirements of this section. These courses may be taken at home, in-person, or online.

(e) All providers of training courses to meet the requirements of this article shall provide participants with proof of participation to meet the requirements of Section 53235.2.

(f) A local agency shall provide information on training available to meet the requirements of this article to its local officials at least once annually.

53235.1. (a) Each local agency official in local agency service as of January 1, 2006, except for officials whose term of office ends before January 1, 2007, shall receive the training required by subdivision (a) of Section 53235 before January 1, 2007. Thereafter, each local agency official shall receive the training required by subdivision (a) of Section 53235 at least once every two years.

(b) Each local agency official who commences service with a local agency on or after January 1, 2006, shall receive the training required by subdivision (a) of Section 53235 no later than one year from the first day of service with the local agency. Thereafter, each local agency official shall receive the training required by subdivision (a) of Section 53235 at least once every two years.

(c) A local agency official who serves more than one local agency shall satisfy the requirements of this article once every two years without regard to the number of local agencies with which he or she serves.

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53235.2. (a) A local agency that requires its local agency officials to complete the ethical training prescribed by this article shall maintain records indicating both of the following:

(1) The dates that local officials satisfied the requirements of this article.

(2) The entity that provided the training.

(b) Notwithstanding any other provision of law, a local agency shall maintain these records for at least five years after local officials receive the training. These records are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

Section 53235 sets forth the requirement that local agency officials receive two hours of ethics training every two years. This section also requires the local agency provide information on available training at least once a year. Section 53235.1 sets forth the phase-in for the compliance with the training. And, section 53235.2 requires that the local agency maintain records regarding compliance with the training requirements.

Other Statutory Sections

The bill also made changes in the Government, Harbors and Navigation, Health and Safety, Military and Veterans, Public Resources, Public Utilities, and Water Codes to ensure that the reimbursement of costs statutes were altered to include reference to the above stated Government Code sections 53232.2 and 53232.3.

Application of Mandate Law

The mandate created by these statutes clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the “unique to government” and the “carry out a state policy” tests. Their application to this test claim is discussed below.

The mandate is unique to local government: The section of the law claimed involves new requirements for the compensation, reimbursement of expenses, and ethics training for members of legislative bodies. Pursuant to Government Code sections 53232 and 53234, only local government and special districts must comply with these requirements. Thus, this requirement is unique to government.

The mandate carries out a state policy: From the legislation, it is clear that the Legislature wishes to ensure that compensation and reimbursement for members of legislative bodies are limited in scope to only those costs which have been pre-approved and which are the most modest available. Moreover, the Legislature

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wishes these members to receive on-going training in ethics. These are both state policies addressed by the bill.

Finally, there are seven disclaimers specified in Government Code section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in that section. Test claimant asserts that none of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
6. The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

A. MANDATE SUMMARY

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As explained above, the new activities in sections 53232.2 and 53232.3 are the drafting and adoption of new written policies addressing reimbursement of expenses, the drafting and provision of expense report forms, storage and maintenance of completed forms for five years. .

As explained above, the new activities in sections 53235 and 53235.1 are first-time ethics training for members of legislative bodies and maintenance training once every two years which includes the costs of the training as well as any attendant costs for meals, lodging and transportation. The new activities in section 53235.2 are the maintaining of records regarding the attendance of members of legislative bodies at ethics training sessions.

B. MODIFIED ACTIVITIES

Since the legislation added new sections, there are no clearly modified activities. Some activities, however, may have been previously stated in other code sections. Specifically, the requirements of Section 53232.1 — that local agency legislative bodies who are authorized to compensate its members provide compensation for attendance of meetings and training — may already part of such codes. The new portion may only be a clarification that the training required by Article 2.4 be included specifically in the compensation.

C. ACTUAL COSTS

The costs incurred by the City of Newport Beach as a result of the statutes upon which this test claim is based are \$5,000 to date. The City did not incur costs until November 2006.

These costs are all reimbursable costs as such costs are “costs mandated by the State” under Article XIII B, section 6 of the California Constitution, and Government Code §17500 *et seq.* Section 17514 of the Government Code defines “costs mandated by the state”, and specifies the following three requirements:

1. There are “increased costs which a local agency is required to incur after July 1, 1980.”
2. The costs are incurred “as a result of any statute enacted on or after January 1, 1975 or any executive order implementing any statute enacted on or after January 1, 1975.”
3. The costs are the result of “a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

D. COST ESTIMATES

Test Claimant notes that the cost of discharging this program is dependant upon a number of factors, including but not limited to, the number of members of legislative bodies who require training, the number of members who already received training through participation in another legislative body, the manner and mode in which the training is obtained. Therefore, Test Claimant's estimate of \$1,000 per year is the best projection currently available and may not reflect actual costs claimed.

E. STATEWIDE COST ESTIMATES

As noted above, Test Claimant and others similarly situated have incurred costs ranging from \$300 to \$20,468 to comply with the new requirements. Based on these numbers and that all agencies will be eligible for full reimbursement of all costs, Test Claimant estimates the costs statewide to be \$3 million for the first year of compliance. This amount does not account for factors that may cause a reduction in costs such as the single member of various boards who need only be trained once thus obligating costs upon a single agency¹ or the inability for small jurisdictions to meet the minimum filing amount.

Test Claimant believes that this program, when found to be a reimbursable state mandate is a good candidate for a per-capita or other such reasonable reimbursement methodology² and requests same to be considered as part of the adoption of parameters and guidelines.

F. FUNDING SOURCES

Test claimant is unaware of any funding sources for these new activities.

G. PRIOR MANDATE DETERMINATIONS

Test claimant is unaware of any prior mandate determinations that bear upon the issues presented within.

CONCLUSION

The enactment of Chapter 700, Statutes of 2005 imposed a new state mandated program and cost on the City of Newport Beach. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state-mandated program.

¹ Pursuant to Government Code section 53235.1, subd. (c).

² Pursuant to Government Code section 17557.

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Declaration of Juliana F. Gmur

I, Juliana F. Gmur, state as follows:

1. I am an attorney licensed by the State of California to practice law and have practiced for 5 years before the Commission on State Mandates. I have personal knowledge of the facts stated herein and if called upon to testify, I could do so competently.

2. In the later months of 2006, in preparation of a test claim, I made inquiry of several governmental entities regarding their costs of implementing AB 1234 the ethics training bill. The following represents a summary of the information I have obtained via e-mailed responses.

3. City of Newport Beach reported \$5000 for the initial training costs and estimates \$1000 per year on-going costs.

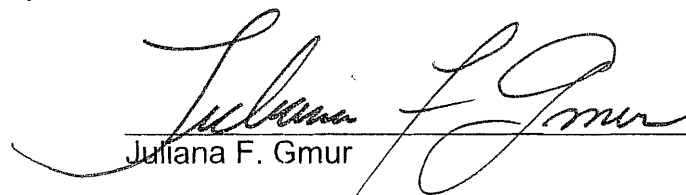
4. Humboldt County reported \$300 for training materials.

5. Yolo County reported direct costs and staff time at \$2420 plus an additional \$1000 for the fiscal year.

6. Tuolumne County projected total costs for training, preparation time and materials at \$17,200.

7. San Bernardino County reported costs of \$20,468 and estimated on-going costs at \$6400 per year.

I declare under penalty of perjury that the foregoing is true and correct as based upon my personal knowledge, information or belief, and that this declaration is executed this 24th day of July, 2007, at Sacramento, California.


Juliana F. Gmur

Declaration of Robin Clauson

I, Robin Clauson, state as follows:

1. I have been the City Attorney of the City of Newport Beach since 2004. I have personal knowledge of the facts stated herein and if called upon to testify, I could do so competently.

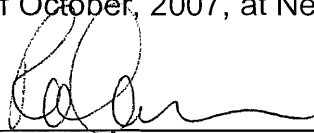
2. In satisfying the statutes which are the subject of this test claim, my office purchased materials from the League of California Cities that I used to prepare a written policy. I spent six (6) hours in the research and preparation of a written policy and in the development of a training presentation, and two (2) hours providing training to members of the City Council in general ethics principles and ethics laws relevant to his or her public service. Under my direction, the Assistant City Attorney, Aaron Harp, spent three (3) hours preparing for, and four (4) hours providing training to members of the Planning Commission and other city commissions in general ethics principles and ethics laws relevant to his or her public service.

Under my direction, the Administrative Assistant to the City Attorney maintains records for at least five years afterwards reflecting the dates that City Council Members and Planning Commissioners satisfied the requirements of this mandate.

3. Costs incurred by the City of Newport Beach in satisfying this mandate included the purchase of the League of California Cities materials for \$195 and staff time for me, the Assistant City Attorney and the Administrative Assistant to the City Attorney. The total costs, including time and materials are approximately \$4,000 for the initial training costs. I estimate approximately \$1,000 per year on-going costs.

4. The City began incurring costs in November, 2006.

I declare under penalty of perjury that the foregoing is true and correct as based upon my personal knowledge, information or belief, and that this declaration is executed this 17 day of October, 2007, at Newport Beach, California.



Robin Clauson
City Attorney
City of Newport Beach

Ethics Training and Compensation for Members of Local Agency Legislative Bodies
City of Newport Beach
Section 7: Documentation

Assembly Bill No. 1234

CHAPTER 700

An act to amend Sections 25008 and 36514.5 of, and to add Article 2.3 (commencing with Section 53232) and Article 2.4 (commencing with Section 53234) to Chapter 2 of Part 1 of Division 2 of Title 5 of, the Government Code, to amend Sections 6060 and 7047 of the Harbors and Navigation Code, to amend Sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103 of the Health and Safety Code, to amend Section 1197 of the Military and Veterans Code, to amend Sections 5536, 5536.5, 5784.15, and 9303 of the Public Resources Code, to amend Sections 11908, 11908.1, 11908.2, 16002, and 22407 of the Public Utilities Code, and to amend Sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, and 74208 of, and to add Section 20201.5 to, the Water Code, relating to local agencies.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1234, Salinas. Local agencies: compensation and ethics.

Existing law provides for the establishment and operations of cities, counties, cities and counties, districts, and other local government agencies, the composition of their governing bodies, and the payment of governing body members for attending meetings and performing other duties, and prescribes conflicts of interest.

This bill would require a local agency that provides reimbursement for expenses to members of its legislative body to adopt a written policy on the duties for which legislative body members may receive compensation, other than meetings of the legislative body or an advisory body or attendance at a conference or organized educational activity. The bill would require such a governing body to adopt a written policy concerning what occurrences qualify a member to receive reimbursement of expenses for travel, meals, and lodging and would impose related requirements, including the filing of expense reports, which would be public records.

This bill would also require that if a local agency provides any type of compensation, salary, or stipend to, or reimburses the expenses of, a member of the legislative body, all local agency officials, except a member whose term of office ends before January 1, 2007, in local agency service as of January 1, 2006, or thereafter receive training in ethics, as specified. This bill would provide that if any entity develops criteria for the ethics training, then the Fair Political Practices Commission and the Attorney General shall be consulted regarding any proposed course content. This bill would specify, with respect to certain special districts, how a director's

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~~Section 7: Documentation~~ - 2 -

activities on a specific day are determined to be compensable and would make related changes.

The people of the State of California do enact as follows:

SECTION 1. Section 25008 of the Government Code is amended to read:

25008. Members shall be allowed their actual expenses in going to, attendance upon, and returning from state association meetings and their actual and necessary traveling expenses when traveling outside their counties on official business. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3.

SEC. 2. Section 36514.5 of the Government Code is amended to read:

36514.5. City council members may be reimbursed for actual and necessary expenses incurred in the performance of official duties. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3.

SEC. 3. Article 2.3 (commencing with Section 53232) is added to Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 2.3. Compensation

53232. For the purposes of this article, the following terms have the following meanings:

(a) "Governing body" means the board of supervisors in the case of a county or a city and county, the city council or board of trustees in the case of a city, and the board of directors or other governing body in the case of a special district.

(b) "Legislative body" has the same meaning as specified in Section 54952.

(c) "Local agency" means a city, county, city and county, charter city, charter county, charter city and county, or special district.

(d) "Meeting" has the same meaning as specified in subdivision (a) of Section 54952.2.

53232.1. (a) When compensation is otherwise authorized by statute, a local agency may pay compensation to members of a legislative body for attendance at the following occurrences:

(1) A meeting of the legislative body.

(2) A meeting of an advisory body.

(3) A conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with Section 53234).

(b) A local agency may pay compensation for attendance at occurrences not specified in subdivision (a) only if the governing body has adopted, in

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a public meeting, a written policy specifying other types of occasions that constitute the performance of official duties for which a member of the legislative body may receive payment.

(c) This section shall not apply to any local agency that pays compensation in the form of a salary to members of a legislative body, including, but not limited to, those local agencies whose legislative bodies' compensation is subject to Section 36516 or 36516.1, subparagraph (B) or (C) of paragraph (2) of subdivision (a) of Section 21166 or Section 22840 of the Water Code, Section 11908.1 of the Public Utilities Code, Section 6060 of the Harbors and Navigation Code, or subdivision (b) of Section 1 or Section 5 of Article XI of the California Constitution.

53232.2. (a) When reimbursement is otherwise authorized by statute, a local agency may reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities described in Article 2.4 (commencing with Section 53234).

(b) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then the governing body shall adopt a written policy, in a public meeting, specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses.

(c) The policy described in subdivision (b) may also specify the reasonable reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses. If it does not, the local agency shall use the Internal Revenue Service rates for reimbursement of travel, meals, lodging, and other actual and necessary expenses as established in Publication 463, or any successor publication.

(d) If the lodging is in connection with a conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with Section 53234), lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the member of a legislative body at the time of booking. If the group rate is not available, the member of a legislative body shall use comparable lodging that is consistent with the requirements of subdivisions (c) and (e).

(e) Members of the legislative body shall use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.

(f) All expenses that do not fall within the adopted travel reimbursement policy or the Internal Revenue Service reimbursable rates as provided in subdivision (c), shall be approved by the governing body, in a public meeting before the expense is incurred, except as provided in subdivision (d).

(g) This section shall not supersede any other laws establishing reimbursement rates for local agencies.

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53232.3. (a) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms to be filed by the members of the legislative body for reimbursement for actual and necessary expenses incurred on behalf of the local agency in the performance of official duties. Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel.

(b) Expense reports shall document that expenses meet the existing policy, adopted pursuant to Section 53232.2, for expenditure of public resources.

(c) Members of a legislative body shall submit expense reports within a reasonable time after incurring the expense, as determined by the legislative body, and the reports shall be accompanied by the receipts documenting each expense.

(d) Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

(e) All documents related to reimbursable agency expenditures are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

53232.4. Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies may include, but are not limited to, the following:

(a) The loss of reimbursement privileges.

(b) Restitution to the local agency.

(c) Civil penalties for misuse of public resources pursuant to Section 8314.

(d) Prosecution for misuse of public resources, pursuant to Section 424 of the Penal Code.

SEC. 4. Article 2.4 (commencing with Section 53234) is added to Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 2.4. Ethics Training

53234. For the purposes of this article, the following terms have the following meanings:

(a) "Legislative body" has the same meaning as specified in Section 54952.

(b) "Local agency" means a city, county, city and county, charter city, charter county, charter city and county, or special district.

(c) "Local agency official" means the following:

(1) Any member of a local agency legislative body or any elected local agency official who receives any type of compensation, salary, or stipend

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or reimbursement for actual and necessary expenses incurred in the performance of official duties.

(2) Any employee designated by a local agency legislative body to receive the training specified under this article.

(d) "Ethics laws" include, but are not limited to, the following:

(1) Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.

(2) Laws relating to claiming prerequisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.

(3) Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.

(4) Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.

53235. (a) If a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties, then all local agency officials shall receive training in ethics pursuant to this article.

(b) Each local agency official shall receive at least two hours of training in general ethics principles and ethics laws relevant to his or her public service every two years.

(c) If any entity develops curricula to satisfy the requirements of this section, then the Fair Political Practices Commission and the Attorney General shall be consulted regarding the sufficiency and accuracy of any proposed course content. When reviewing any proposed course content the Fair Political Practices Commission and the Attorney General shall not preclude an entity from also including local ethics policies in the curricula.

(d) A local agency or an association of local agencies may offer one or more training courses, or sets of self-study materials with tests, to meet the requirements of this section. These courses may be taken at home, in-person, or online.

(e) All providers of training courses to meet the requirements of this article shall provide participants with proof of participation to meet the requirements of Section 53235.2.

(f) A local agency shall provide information on training available to meet the requirements of this article to its local officials at least once annually.

53235.1. (a) Each local agency official in local agency service as of January 1, 2006, except for officials whose term of office ends before January 1, 2007, shall receive the training required by subdivision (a) of

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Section 53235 before January 1, 2007. Thereafter, each local agency official shall receive the training required by subdivision (a) of Section 53235 at least once every two years.

(b) Each local agency official who commences service with a local agency on or after January 1, 2006, shall receive the training required by subdivision (a) of Section 53235 no later than one year from the first day of service with the local agency. Thereafter, each local agency official shall receive the training required by subdivision (a) of Section 53235 at least once every two years.

(c) A local agency official who serves more than one local agency shall satisfy the requirements of this article once every two years without regard to the number of local agencies with which he or she serves.

53235.2. (a) A local agency that requires its local agency officials to complete the ethical training prescribed by this article shall maintain records indicating both of the following:

(1) The dates that local officials satisfied the requirements of this article.

(2) The entity that provided the training.

(b) Notwithstanding any other provision of law, a local agency shall maintain these records for at least five years after local officials receive the training. These records are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

SEC. 6. Section 6060 of the Harbors and Navigation Code is amended to read:

6060. The commissioners shall serve without salary until the yearly gross income of the district, exclusive of taxes levied by the district, exceeds twenty thousand dollars (\$20,000) per year, when the board may, by ordinance, fix their salaries, which shall not exceed the sum of six hundred dollars (\$600) per month each.

In addition to any salary received pursuant to this section, the commissioners shall be allowed any actual and necessary expenses incurred in the performance of their duties. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 7. Section 7047 of the Harbors and Navigation Code is amended to read:

7047. Each director shall receive a sum as may be fixed by the board, not exceeding fifty dollars (\$50) for each meeting of the board attended by him or her, for not exceeding four meetings in any calendar month. A director may also receive traveling and other expenses incurred by him or her when performing duties for the district other than attending board meetings. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement

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for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 8. Section 2030 of the Health and Safety Code is amended to read:

2030. (a) The members of the board of trustees shall serve without compensation.

(b) The members of the board of trustees may receive their actual and necessary traveling and incidental expenses incurred while on official business. In lieu of paying for actual expenses, the board of trustees may by resolution provide for the allowance and payment to each trustee a sum not to exceed one hundred dollars (\$100) per month for expenses incurred while on official business. A trustee may waive the payments permitted by this subdivision.

(c) Notwithstanding subdivision (a), the secretary of the board of trustees may receive compensation in an amount determined by the board of trustees.

(d) Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 9. Section 2851 of the Health and Safety Code is amended to read:

2851. The members of the district board shall hold office at the pleasure of the board of supervisors. They shall serve without compensation, but shall be allowed their necessary traveling and other expenses incurred in performance of their official duties. In lieu of expenses, the district board may, by resolution, provide for the allowance and payment to each member of the board of a sum not exceeding one hundred dollars (\$100) as expenses incurred in attending each business meeting of the board. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 10. Section 4733 of the Health and Safety Code is amended to read:

4733. (a) The district board may fix the amount of compensation per meeting to be paid each member of the board for services for each meeting attended by the member. Subject to subdivision (b), the compensation shall not exceed one hundred dollars (\$100) for each meeting of the district board attended by the member or for each day's service rendered as a member by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incident thereto.

(b) The district board, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the compensation received by the district board members above the amount of one hundred dollars (\$100) per day.

(c) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

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(d) Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 11. Section 4733.5 of the Health and Safety Code is amended to read:

4733.5. Where two or more county sanitation districts have joined in the purchase, ownership, use, construction, maintenance, or operation of a sewerage system, or sewage disposal or treatment plant, or refuse transfer or disposal system, or both, either within or without the districts, or have so joined for any combination of these purposes, as provided in Section 4742, and the districts hold their meetings jointly, and one or more of the directors serve as a director on more than one of these districts meeting jointly, the districts may, by joint resolution approved by each district, limit the compensation of a director to compensation equal to not more than fifty dollars (\$50) for each jointly held meeting attended by him or her, not to exceed one hundred dollars (\$100) in any one month for attendance at jointly held meetings. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 12. Section 6489 of the Health and Safety Code is amended to read:

6489. (a) Subject to subdivision (b), each of the members of the board shall receive compensation in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incident thereto.

(b) The district board, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the compensation received by board members above the amount of one hundred dollars (\$100) per day.

(c) The secretary of the sanitary board shall receive compensation to be set by the sanitary district board, which compensation shall be in lieu of any other compensation to which he or she may be entitled by reason of attendance at the meeting or meetings of the sanitary board.

(d) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 13. Section 9031 of the Health and Safety Code is amended to read:

9031. (a) The board of trustees may provide, by ordinance or resolution, that each of its members may receive compensation in an amount not to exceed one hundred dollars (\$100) for attending each

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meeting of the board. A member of the board of trustees shall not receive compensation for more than four meetings of the board in a month.

(b) The board of trustees, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the amount of compensation received for attending meetings of the board.

(c) In addition, members of the board of trustees may receive their actual and necessary traveling and incidental expenses incurred while on official business other than a meeting of the board.

(d) A member of the board of trustees may waive any or all of the payments permitted by this section.

(e) For the purposes of this section, a meeting of the board of trustees includes, but is not limited to, regular meetings, special meetings, closed sessions, emergency meetings, board field trips, district public hearings, or meetings of a committee of the board.

(f) For purposes of this section, the determination of whether a trustee's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

(g) Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 14. Section 13857 of the Health and Safety Code is amended to read:

13857. (a) Subject to subdivision (b), each member of the district board may receive compensation in an amount set by the district board not to exceed one hundred dollars (\$100) for attending each meeting of the district board. The number of meetings for which a member of the board of directors may receive compensation shall not exceed four meetings in any calendar month.

(b) The district board, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the compensation received by the district board members above the amount prescribed by subdivision (a).

(c) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 15. Section 13866 of the Health and Safety Code is amended to read:

13866. A district may authorize its directors and employees to attend professional or vocational meetings and pay their actual and necessary traveling and incidental expenses while on official business. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 16. Section 32103 of the Health and Safety Code is amended to read:

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32103. The board of directors shall serve without compensation except that the board of directors, by a resolution adopted by a majority vote of the members of the board, may authorize the payment of not to exceed one hundred dollars (\$100) per meeting not to exceed five meetings a month as compensation to each member of the board of directors.

Each member of the board of directors shall be allowed his or her actual necessary traveling and incidental expenses incurred in the performance of official business of the district as approved by the board. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 17. Section 1197 of the Military and Veterans Code is amended to read:

1197. The board shall consist of five members who shall be registered electors residing within the district or proposed district at the time of their election and shall be elected by the qualified electors of the district. A majority of the seats on the board shall be designated for veterans, as defined in Section 940. Any board seat that is so designated, but is not currently filled by a qualifying individual, shall be filled by a qualified individual at the next election at which that seat is to be filled. Members shall serve without compensation, but shall be entitled to actual and necessary expenses incurred in the performance of duties. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 18. Section 5536 of the Public Resources Code is amended to read:

5536. (a) The board shall establish rules for its proceedings.

(b) The board may provide, by ordinance or resolution, that each of its members may receive an amount not to exceed one hundred dollars (\$100) per day for each attendance at a meeting of the board. For purposes of this section, a meeting of the board includes, but is not limited to, closed sessions of the board, board field trips, district public hearings, or meetings of a committee of the board. The maximum compensation allowable to a board member on any given day shall be one hundred dollars (\$100). Board members shall not receive any other compensation for meetings, and no board member shall receive more than five hundred dollars (\$500) compensation under this section in any one calendar month, except that board members of the East Bay Regional Park District may receive compensation for not more than 10 days in any one calendar month. A board member may elect to waive the per diem. In addition, the board may provide, by ordinance or resolution, that each of its members not otherwise eligible for an employer-paid or partially employer-paid group medical or group dental plan, or both, may participate in any of those plans available to permanent employees of the district on the same terms available to those district employees or on terms and conditions as

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the board may determine. A board member who elects to participate in any plan may also elect to have the premium for the plan charged against his or her per diem and may further elect to waive the balance of the per diem.

(c) All vacancies on the board shall be filled in accordance with the requirements of Section 1780 of the Government Code, except that, in the case of vacancies caused by the creation of new wards or subdistricts, the directors shall, prior to the vacancies being filled, determine by lot, for the purpose of fixing the terms of the first directors to be elected to the wards or subdistricts, which ward or subdistrict shall have a four-year term and which ward or subdistrict shall have a two-year term. The persons who fill the vacancies caused by the establishment of new wards or subdistricts shall hold office until the next general election and until their successors are elected and qualified for the terms previously determined by lot.

(d) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 19. Section 5536.5 of the Public Resources Code is amended to read:

5536.5. Members of the board of directors may be allowed actual necessary traveling and incidental expenses incurred in the performance of official business of the district as approved by the district board. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 20. Section 5784.15 of the Public Resources Code is amended to read:

5784.15. (a) The board of directors may provide, by ordinance or resolution, that each of its members may receive compensation in an amount not to exceed one hundred dollars (\$100) for attending each meeting of the board. The board of directors, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the amount of compensation received for attending meetings of the board.

(b) The maximum compensation in any calendar month shall be five hundred dollars (\$500).

(c) In addition, members of the board of directors may receive their actual and necessary traveling and incidental expenses incurred while on official business.

(d) A member of the board of directors may waive the compensation.

(e) For the purposes of this section, a meeting of the board of directors includes, but is not limited to, regular meetings, special meetings, closed sessions, emergency meetings, board field trips, district public hearings, or meetings of a committee of the board.

(f) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

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(g) Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 21. Section 9303 of the Public Resources Code is amended to read:

9303. The directors shall receive no compensation for their services as such, but each shall be allowed reasonable and necessary expenses incurred in attendance at meetings of the directors or when otherwise engaged in the work of the district at the direction of the board of directors. The directors shall fix the amount allowed for necessary expenses, but no director shall be appointed to any position for which he or she would receive compensation as a salaried officer or employee of the district. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 22. Section 11908 of the Public Utilities Code is amended to read:

11908. The board shall establish rules for its proceedings and may provide, by ordinance or resolution, that each member shall receive for each attendance at the meetings of the board, or for each day's service rendered as a director by request of the board, the sum of one hundred dollars (\$100). No director shall receive any other compensation, nor receive pay for more than six days in any one calendar month. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 23. Section 11908.1 of the Public Utilities Code is amended to read:

11908.1. (a) Notwithstanding Section 11908, a district with a board having seven directors may provide, by resolution or ordinance, that each director shall receive compensation in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at public meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of six days in any calendar month, or, in lieu of that compensation, a salary of not to exceed six hundred dollars (\$600) per month subject to annual adjustments pursuant to subdivision (b), together with any expenses incurred in the performance of his or her duties required or authorized by the board. No resolution or ordinance establishing compensation pursuant to this subdivision shall provide for any automatic increase in that compensation.

(b) Any district which adopts salaries for directors pursuant to subdivision (a) may increase those salaries by not more than 5 percent for each calendar year following the operative date of the last adjustment, commencing with the calendar year following adoption of the salary or increase.

(c) Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 24. Section 11908.2 of the Public Utilities Code is amended to read:

11908.2. Notwithstanding Section 11908, the board of a district which has owned and operated an electric distribution system for at least eight years and has a population of 250,000 or more may provide, by ordinance or resolution, that each director shall receive compensation in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at public meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of 10 days in any calendar month, together with any expenses incurred in the performance of his or her duties required or authorized by the board. The board may, by resolution or ordinance, increase the compensation per day by not more than 5 percent for each calendar year following the operative date of the last adjustment, commencing with the 1988 calendar year. No resolution or ordinance establishing compensation pursuant to this subdivision shall provide for any automatic increase in that compensation. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 25. Section 16002 of the Public Utilities Code is amended to read:

16002. Each member of the board shall receive the compensation that the board by ordinance provides, not exceeding four thousand eight hundred dollars (\$4,800) a year. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 26. Section 22407 of the Public Utilities Code is amended to read:

22407. Each member of the board of directors shall receive compensation in an amount not to exceed one hundred dollars (\$100) for each attendance at the meeting of the board held within the district, which amount shall be fixed from time to time by the board. No director, however, shall receive pay for more than four meetings in any calendar month.

Each director shall be allowed, with the approval of the board, all traveling and other expenses necessarily incurred by the member in the performance of the member's duties. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

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SEC. 27. Section 20201 of the Water Code is amended to read:

20201. Notwithstanding any other provision of law, the governing board of any water district may, by ordinance adopted pursuant to this chapter, provide compensation to members of the governing board, unless any compensation is prohibited by its principal act, in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board, or for each day's service rendered as a member of the board by request of the board, and may, by ordinance adopted pursuant to this chapter, in accordance with Section 20202, increase the compensation received by members of the governing board above the amount of one hundred dollars (\$100) per day.

It is the intent of the Legislature that any future increase in compensation received by members of the governing board of a water district be authorized by an ordinance adopted pursuant to this chapter and not by an act of the Legislature.

For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 28. Section 20201.5 is added to the Water Code, to read:

20201.5. Reimbursement for expenses of members of a governing board of a water district is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 29. Section 21166 of the Water Code is amended to read:

21166. Notwithstanding any other provision of law, a director, for sitting on the board or acting under its orders, shall receive both of the following:

(a) (1) Except as specified in paragraphs (2) and (3), compensation not to exceed one hundred dollars (\$100) per day, not exceeding six days in any calendar month.

(2) In districts that produce or distribute electric power, one of the following methods of compensation:

(A) Compensation not to exceed one hundred dollars (\$100) per day.

(B) A monthly salary of not to exceed six hundred dollars (\$600) per month.

(C) Annual compensation not to exceed fifteen thousand dollars (\$15,000). Any annual compensation pursuant to this subparagraph shall be fixed by the adoption of an ordinance pursuant to Sections 20203 to 20207, inclusive.

(3) Districts containing 500,000 acres or more are governed by Section 22840.

(b) Actual and necessary expenses when acting under the orders of the board.

For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these

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expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 30. Section 30507 of the Water Code is amended to read:

30507. Each director shall receive compensation in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board, or for each day's service rendered as a director by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incurred in the performance of his or her duties required or authorized by the board. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 31. Section 30507.1 of the Water Code is amended to read:

30507.1. Each director of the Contra Costa Water District shall receive compensation in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board and for each day's service rendered as a director by request of the board, not exceeding a total of 10 days in any calendar month, together with any expenses incurred in the performance of duties required or authorized by the board. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 32. Section 34741 of the Water Code is amended to read:

34741. Until their compensation is fixed by the adoption of bylaws, the officers shall receive the following compensation for their services:

(a) The secretary, tax collector, treasurer, and assessor, such sums as shall be fixed by the board.

(b) Each director shall receive compensation in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incurred in the performance of his or her duties required or authorized by the board. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 33. Section 40355 of the Water Code is amended to read:

40355. (a) A director, when sitting on the board or acting under its orders, shall receive not exceeding:

Ethics Training and Compensation for Members of Local Agency Legislative Bodies

City of Newport Beach

~~Section 7: Documentation 16—~~

(1) One hundred dollars (\$100) per day, not exceeding six days in any calendar month.

(2) Ten cents (\$0.10) per mile for each mile traveled from his place of residence to the office of the board.

(3) Actual and necessary expenses while engaged in official business under the order of the board.

(b) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

(c) Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 34. Section 50605 of the Water Code is amended to read:

50605. (a) Each member of the board shall receive such compensation for services actually and necessarily performed as the board determines to be just and reasonable, and shall be reimbursed for expenses necessarily incurred in the performance of his duties as trustee.

(b) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 35. Section 55305 of the Water Code is amended to read:

55305. (a) The board of directors may fix the compensation of its members for their services as directors not to exceed ten dollars (\$10) for each meeting attended, not exceeding two meetings in any calendar month. If allowed by the board, a director shall also receive for performing duties for the district other than attending board meetings the following:

(1) An amount not to exceed one hundred dollars (\$100) for each day performing such duties.

(2) Traveling and other expenses incurred by him or her in performing his duties.

(b) For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 36. Section 56031 of the Water Code is amended to read:

56031. The district board shall have power to fix the amount of compensation per meeting to be paid each member of the board for his or her services for each meeting attended by him or her; provided, that the compensation shall not exceed ten dollars (\$10) for each meeting of the district board attended by him or her, together with expenses necessarily incurred by him or her in traveling between his or her place of residence and the place of meeting. However, no member shall receive

Ethics Training and Compensation for Members of Local Agency Legislative Bodies
City of Newport Beach

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Ch. 700

compensation for attending more than three meetings of the board during any calendar month. This compensation shall be in addition to any other fees or compensation allowed by law for the other official positions specified in Section 56030 that are occupied by members of the district board. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 37. Section 60143 of the Water Code is amended to read:

60143. Each director shall receive compensation in an amount not exceeding one hundred dollars (\$100) for each day's attendance at meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incurred in the performance of his or her duties required or authorized by the board. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 38. Section 70078 of the Water Code is amended to read:

70078. Each member of the board shall receive compensation for services actually and necessarily performed, as the board determines to be just and reasonable, and shall be reimbursed for expenses necessarily incurred in the performance of his or her duties as director. The salaries of all officers and employees of the district shall be fixed and determined by the directors. The board of directors shall fix the compensation that the election officers shall receive for district elections. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 39. Section 71255 of the Water Code is amended to read:

71255. Each director shall receive compensation in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incurred in the performance of his or her duties required or authorized by the board. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

Ethics Training and Compensation for Members of Local Agency Legislative Bodies
City of Newport Beach

~~Section 7: Documentation~~ 18 —

SEC. 40. Section 74208 of the Water Code is amended to read:

74208. Each director shall receive compensation in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board or for each day's service rendered as a director by request of the board, not exceeding a total of six days in any calendar month, together with any expenses incurred in the performance of his or her duties required or authorized by the board. For purposes of this section, the determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3 of the Government Code.

SEC. 41. The Legislature finds and declares that transparency in the activities of local governments is a matter of statewide concern and not merely a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to charter cities, charter counties, and charter cities and counties.

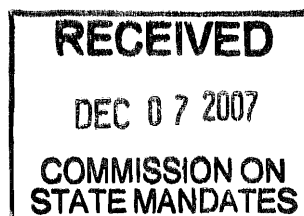
O



ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

December 4, 2007

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms. Higashi:

As requested in your letter of November 1, 2007, the Department of Finance (Finance) has reviewed the test claim submitted by the City of Newport Beach (claimant) asking the Commission to determine whether specified costs incurred under Chapter 700, Statutes of 2005, are reimbursable state mandated costs under "Claim No. CSM-07-TC-01: Ethics Training and Compensation for Members of Local Agency Legislative Bodies." Commencing with Section 53232 of Article 2.3, of the test claim statute, the claimant has identified the following new duties, which it asserts are reimbursable state mandates for local agencies who are authorized to compensate their members:

- Providing compensation for attendance to meetings (*Section 53232.1*).
- Reimbursing expenses and adopting a written policy manual on compensation (*Section 53232.2*).
- Developing expense forms to document reimbursements (*Section 53232.3*).
- Requiring two hours of ethics training to local members every two years (*Sections 53235 and 53235.1*).
- Disseminating information on available training at least once a year (*Section 53235*).
- Maintaining training records, inclusive of training date and training provider/entity, for five years (*Section 53235.2*).

As the result of our review, Finance finds that portions of the test claim are not reimbursable state mandates because the local agencies' decision to compensate and/or reimburse their members is optional. Specific issues are detailed below within the sections of the test claim statute plead by the claimant.

- Subdivisions (a) and (b) of Section 53232.1 provide for optional activities that are not state mandates due to the section's permissive language. The language of subdivision (a) is "When compensation is otherwise authorized by statute, a local agency may pay compensation to members of a legislative body..."; and subdivision (b) is "A local agency may pay compensation for attendance at occurrences not specified in subdivision (a)." The activities are required only if the local agency compensates its local governing members. Further, as noted in subdivision (c), Section 53232.1 does not apply to local agencies that elect to pay compensation in the form of a salary. Pursuant to Article 11,

Section 1 and Section 5, of the California Constitution, the local agencies shall prescribe by ordinance the compensation of its members, but the ordinance must be subject to referendum. Therefore, this section does not impose a state mandate on local agencies within the meaning of Article XIII B, Section 6 of the California Constitution because the local agency has discretion to compensate its local governing members.

- Subdivision (a) of Section 53232.2 provides for optional activity that is not a state mandate because the language is permissive. The language of the subdivision is "*When reimbursement is otherwise authorized by statute, a local agency may reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities described in Article 2.4 (commencing with Section 53234).*" A local agency, therefore, has discretion to reimburse its members.
- The following statutes authorize reimbursement to local members and may exempt the test claim statutes as reimbursable state mandates due to local agencies' discretionary authority.
 1. Section 25008 of the Government Code requires the counties to reimburse their local governing members. "*Members shall be allowed their actual expenses in going to, attendance upon, and returning from state association meetings and their actual and necessary traveling expenses when traveling outside their counties on official business.*" The new activities of the test claim statute may be reimbursable for counties.
 2. Section 36514.5 of the Government Code provides discretionary language for cities to reimburse their governing members. "*City council members may be reimbursed for actual and necessary expenses incurred in the performance of official duties.*" The activities of this section are optional and are not reimbursable. The new activity of the test claim statute references Sections 53232.2 and 53232.3; the activities of these sections are optional and not reimbursable due to the permissive language and the cities' discretionary authority.
- Subdivision (b) of Section 53232.2 is not a reimbursable mandate because it follows from subdivision (a), which authorizes local agencies to reimburse members of a legislative body. The new activity to adopt written policy under subdivision (b) is not reimbursable since subdivision (a) is permissive. It is a downstream activity that is a consequence of the underlying discretionary act of local agencies to reimburse their governing members.
- Subdivision (a) of Section 53232.3 is not a reimbursable mandate because it is an optional activity. The language of the subdivision is "*If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms...*" The new activity to provide an expense report is only required if the local agency has

chosen to reimburse its governing members. Pursuant to Section 36514.5 of the Government Code, the cities have discretion to reimburse members. Further, subdivisions (b) through (e) are not reimbursable state mandates since they are required as a result of subdivision (a), which may be an optional activity as a consequence of the underlying discretionary decision of the cities to reimburse their members.

- Subdivision (a) of Section 53235 requires that “*if a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member..., then all local agency officials shall receive training in ethics...*” This activity is discretionary pursuant to the permissive language of the test claim statute and local agencies’ Constitutional authority to compensate. Pursuant to Article 11, Section 1 and Section 5, of the California Constitution, the local agencies shall prescribe by ordinance the compensation of its members, but the ordinance must be subject to referendum. Further, subdivisions (b) through (f) are not reimbursable mandates since they are required as a result of subdivision (a), which may be an optional activity as a consequence of the underlying decision to compensate and/or reimburse members.
- Section 53235.1 is not a reimbursable mandate since the requirement to provide ethics training in subdivision (a) of Section 53235 is optional. This section establishes the effective dates for local members to begin their bi-annual ethics training schedule. This activity is a consequence of the local agency’s discretionary authority to compensate or reimburse its members.

Further, Finance notes that the courts have held that the increased costs associated with the downstream activities of an underlying discretionary action are not reimbursable. In *Department of Finance v. Commission on State Mandates*, 30 Cal. App. 4th 727, 745, (2003), the court affirmed that where participation in the underlying program is voluntary, the resulting new attached requirements do not constitute a reimbursable state mandate.

As required by the Commission’s regulations, a “Proof of Service” has been enclosed indicating that the parties included on the mailing list which accompanied your November 1, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact, Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,



Diana L. Ducay
Program Budget Manager

Enclosure

Attachment A

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-07-TC-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

Quemba 4/2007
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Ethics Training and Compensation for Members of Local Agency
Legislative Bodies
Test Claim Number: CSM-07-TC-01

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On December 5, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-08
Ms. Ginny Brummels
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Allan Burdick
MAXIMUS
4320 Auburn Boulevard, Suite 2000
SacramentoCA95841

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

A-15
Carla Castañeda
Department of Finance
915 L Street, Suite 12th Floor
Sacramento, CA 95814

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P.O. Box 1768
Newport Beach,CA 92659

A-15
Donna Ferebee
Department of Finance
915 L Street, 12th Floor
Sacramento, CA 95814

A-15
Susan Geanacou
Department of Finance
915 L Street, 12th Floor
Sacramento CA 95814

Ms. Juliana Gmur
MAXIMUS
2380 Houston Avenue
Clovis, CA 93611

Ms. Beth Hunter
Centration, Inc.
8570 Utica Ave. Suite 100
Rancho Cucamonga, CA 91730

Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. David O'Hara
Attorney at Law
39300 Civic Center Drive, Suite 110
Fremont, CA 94538

Mr. David Wellhouse
David Wellhouse & Associates Inc.
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 5, 2007 at Sacramento, California.


Kelly Montelongo

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csmInfo@csm.ca.gov



August 27, 2008

Mr. David M. O'Hara
39300 Civic Center Drive, Suite 110
Fremont, CA 94538

Mr. Allan P. Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

And Affected State Agencies and Interested Parties (see enclosed mailing list)

Re: **Addition of Co-Claimant**

Ethics Training and Compensation for Members of Local Agency

Legislative Bodies, 07-TC-04

City of Newport Beach, Claimant and Union Sanitary District, Co-Claimant

Dear Mr. O'Hara and Mr. Burdick:

On August 19, 2008, the claimant notified the Commission on State Mandates that the Union Sanitary District is being added as a co-claimant to this test claim. MAXIMUS will act as the claimant and co-claimant's sole representative for this matter. Enclosed are the co-claimant's mailing information and authorizations.

Please contact Heidi Palchik at (916) 323-8218 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Patton".

NANCY PATTON
Assistant Executive Director

Enclosures

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1. TEST CLAIM TITLE

Ethics Training and Compensation for
Members of Local Agency Legislative Bodies

2. CLAIMANT INFORMATION

Union Sanitary District, co-claimant
Name of Local Agency or School District
David M. O'Hara
Claimant Contact
Legal Counsel
Title
39300 Civic Center Drive, Suite 110
Street Address
Fremont, CA 94538
City, State, Zip
(510) 793-9800
Telephone Number
(510) 797-8434
Fax Number
ohdave40@hotmail.com
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Allan Burdick
Claimant Representative Name
Vice President
Title
MAXIMUS
Organization
4320 Auburn Blvd., Suite 2000
Street Address
Sacramento, CA 95841
City, State, Zip
(916) 485-8102 x 113
Telephone Number
(916) 485-0111
Fax Number
allanburdick@maximus.com
E-Mail Address

For CSM Use Only

Filing Date: **RECEIVED**

AUG 18 2003

COMMISSION ON STATE MANDATES

Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Government Code sections 53234 through 53235.2, statutes of 2005, chapter 700 [AB 1234]

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:
5. Written Narrative: pages _____ to _____.
6. Declarations: pages _____ to _____.
7. Documentation: pages _____ to _____.

8. CLAIM CERTIFICATION

Read, sign, and date this section and insert at the end of the test claim submission. *

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

RICHARD B. CURRIE

Print or Type Name of Authorized Local Agency or School District Official

GENERAL MANAGER

Print or Type Title

Richard B. Currie

Signature of Authorized Local Agency or School District Official

8/12/08

Date

* If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.

UNION SANITARY DISTRICT
5072 BENSON ROAD
PO BOX 5050
UNION CITY, CA. 94587-8550

510-477-7500
FAX 477-7501
rich_currie@unionsanitary.com

PROOF OF SERVICE BY MAIL

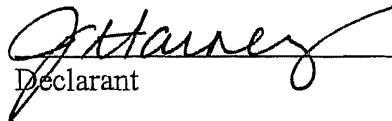
I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On August 18, 2008, I served:

by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United States mail at Clovis, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 18th day of August, 2008, at Sacramento, California.


Declarant

Ms. Carla Castaneda
Department of Finance
915 L Street, 11th Floor
Sacramento, CA 95814

Ms. Susan Geanacou, Esq.
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

Ms. Donna Ferebee
Department of Finance
915 L Street, 11th Floor
Sacramento, CA 95814

Ms. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
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Los Angeles, CA 90012

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street, #294
Folsom, CA 95630

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
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Mr. J. Bradley Burgess
Public Resource Management Group
895 La Sierra Drive
Sacramento, CA 95864

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92659

Mr. David M. O'Hara
Attorney at Law
39300 Civic Center Drive, Suite 110
Fremont, CA 94538

Commission on State Mandates

Original List Date:

Mailing Information: Other

Last Updated:

List Print Date: 08/27/2008

Mailing List

Claim Number: 07-TC-04

Issue: Ethics Training and Compensation for Members of Local Agency Legislative Bodies

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Sacramento, CA 95841

Claimant Representative

Tel: (916) 485-8102

Fax: (916) 485-0111

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City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Claimant

Tel: (949) 644-3127

Fax: (949) 644-3339

Ms. Juliana F. Gmur
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Fax: (916) 485-0111

Ms. Donna Ferebee
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915 L Street, 11th Floor
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Tel: (916) 445-3274

Fax: (916) 323-9584

Mr. David M. O'Hara
Attorney at Law
39300 Civic Center Drive, Suite 110
Fremont, CA 94538

Claimant

Tel: (510) 793-9800

Fax: (510) 797-8434

Hearing Date: May 24, 2012
J:\MANDATES\2007\TC\07-TC-04 (Ethics Training)\TC\dsa.docx

ITEM __
TEST CLAIM
DRAFT STAFF ANALYSIS

Government Code Sections 25008, 36514.5, 53232, 53232.1, 53232.2, 53232.3, 53232.4, 53234, 53235, 53235.1, and 53235.2; Harbors and Navigation Code Sections 6060 and 7047; Health and Safety Code Sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103; Military and Veterans Code Section 1197; Public Resources Code Sections 5536, 5536.5, 5784.15, and 9303; Public Utilities Code Sections 11908, 11908.1, 11908.2, 16002, and 22407; and Water Code Sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5

As Added or Amended by Statutes 2005, Chapter 700
07-TC-04¹

*Ethics Training and Compensation for
Members of Local Agency Legislative Bodies*

City of Newport Beach Claimant and Union Sanitary District, Co-Claimant

EXECUTIVE SUMMARY

Overview

This test claim addresses activities of local agencies related to transparency and ethics training for members of the legislative bodies of local agencies. Specifically, this test claim addresses the policymaking, reporting, recordkeeping, ethics training and notice requirements imposed on local agencies if they provide any type of compensation, salary, or stipend to a member of a legislative body, or provide reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.

Procedural History

Claimant, City of Newport Beach submitted this test claim to the Commission on October 23, 2007. Based on the filing date of October 23, 2007, the potential period of reimbursement for this test claim begins on July 1, 2007.

Co-claimant, Union Sanitary District, filed a similar test claim (07-TC-01) on some of the same statutes (Gov. Code §§ 53234 and 53235.2; Stats. 2005, Ch. 700 (AB 1234) with the Commission on September 17, 2007. That test claim was dismissed on October 18, 2007 pursuant to the Commission’s regulations (Cal. Code Regs, tit. 2, § 1183, subd. (i)) because the Commission does not have jurisdiction to hear claims brought by Union Sanitary District since the district is not eligible to receive reimbursement under article XIII B, section 6 of the

¹ Note that this test claim filed by the City of Newport Beach was originally given the number 07-TC-01 and went out for comment as such. However, because there was already a test claim with that number filed by Union Sanitary District, this test claim was renumbered 07-TC-04.

California Constitution.² More specifically, the test claim was dismissed because reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution, and only when the costs in question can be recovered solely from “proceeds of taxes,” or tax revenues.³ Since Union Sanitary District is not funded by proceeds of taxes, it is exempt from article XIII B’s spending limit. Thus, Union Sanitary District is not a local agency eligible to claim reimbursement under article XIII B, section 6 of the California Constitution. The dismissal letter sent to Union Sanitary District provided information on how to appeal the decision to dismiss the test claim,⁴ and an appeal was filed.

On August 19, 2008 Claimant, City of Newport Beach notified the Commission that it was adding Union Sanitary District to this test claim as co-claimant for Government Code sections 53234-53235. When Union Sanitary District was added as co-claimant to this test claim, its appeal of the notice of dismissal of 07-TC-01 was dropped and it was agreed that the Commission would address the issues relating to special districts in this test claim.

Positions of the Parties and Interested Parties

Claimants Position

Claimants allege that the test claim statute imposes a state-mandated new program on local agencies. Specifically, claimants allege the following activities are mandated by the test claim statute:

- Providing compensation for attendance to meetings;⁵
- Reimbursing expenses and adopting a written policy manual on compensation;⁶
- Developing expense forms to document reimbursements;⁷
- Requiring two hours of ethics training to local members every two years;⁸
- Disseminating information on available training at least once a year;⁹
- Maintaining training records, inclusive of training date and training provider/entity, for five years.¹⁰

² See Dismissal Letter dated October 18, 2007.

³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, p. 486-487.

⁴ *Id.*, p. 3.

⁵ Government Code section 53232.7.

⁶ Government Code section 53232.2.

⁷ Government Code section 53232.3.

⁸ Government Code sections 53235 and 53235.7.

⁹ Government Code section 53235.

¹⁰ Government Code section 53235.2.

Claimants allege further, that the required activities are new and subject to reimbursement under article XIII B, section 6 of the California Constitution.

Department of Finance’s Position

Department of Finance (DOF) argues that portions of the test claim are not reimbursable state mandates because the local agency’s decision to compensate and/or reimburse their members is optional. However, DOF agrees that the test claim statute may impose a new program on counties for some of the activities claimed.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.¹¹

Claims

The following chart provides a brief summary of the claims and issues raised by the claimants, and staff’s recommendation.

Subject	Description	Issues	Staff Recommendation
Authorization to provide compensation, reimbursement of expenses, or both: Government Code sections 25008 and 36514.5; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103; Military and	These code sections generally authorize local agencies to provide compensation, reimbursement of expenses, or both to the members of their legislative bodies. The amendments to these sections provide that the authority granted is subject to the substantive requirements of the Government Code sections added by the test claim statute.	Claimants allege these code sections, as amended by Statutes 2005, Chapter 700, impose a reimbursable new program.	<i>Denied:</i> Staff finds that these code sections, as amended by the test claim statute do not impose any requirements on local agencies. Rather they cross reference the Government Code sections added by the test claim statute which do impose requirements.

¹¹ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

<p>Veterans Code section 1197; Public Resources Code sections 5536, 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908, 11908.1, 11908.2, 16002, and 22407; and Water Code sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5 as amended by Statutes 2005, Chapter 700</p>			
<p>Definitions: Government Code sections 53232 and 53234</p>	<p>These sections define terms.</p>	<p>Claimants allege this code section as added by Statutes 2005, Chapter 700, imposes a reimbursable new program.</p>	<p><i>Denied:</i> The plain language of these sections does not require the performance of any activities.</p>
<p>Compensation: Government Code section 53232.1</p>	<p>This section authorizes compensation for members of legislative bodies, when already authorized by statute, for 1) a meeting of the legislative body, 2) a meeting of an advisory body, 3) a conference or educational activity including ethics training required by article 2.4. It also requires that if the local agency provides compensation for any other occurrences, it must</p>	<p>Claimants allege this code section as added by Statutes 2005, Chapter 700, imposes a reimbursable new program.</p>	<p><i>Denied:</i> Staff finds that local agencies are not required by state law to provide compensation to the members of their legislative bodies and thus the requirements triggered by the provision of such compensation are the downstream activities of the agency's discretionary decision and are not reimbursable.</p>

	adopt a written policy specifying they types of other occasions for which the members may receive payment (this section does not apply to agencies that provide compensation in the form of a salary).		
Reimbursement of Expenses, Reimbursement Rates and Requirement for a Written Policy: Government Code section 53232.2	This section authorizes reimbursement of expenses incurred in performance of official duties when already authorized by statute. It also requires that if the local agency provides reimbursement it must: 1) adopt a written policy, 2) use the group rate for lodging reimbursement if the group rate is available at time of booking, 3) requires the members to book the group rate for lodging and transportation reimbursement, if available, and 4) for expenses that do not fall within the adopted travel reimbursement policy or IRS reimbursable rates, they must be approved by the governing body in a public meeting, before the expense is incurred.	Claimants allege this code section as added by Statutes 2005, Chapter 700, imposes a reimbursable new program.	<i>Partially approved:</i> Staff finds that this code section imposes a state-mandated program only on general law counties and some eligible special districts, ¹² because those agencies are required by state law to reimburse the actual and necessary expenses of the members of their legislative bodies. Staff finds that because the remaining local agencies are not required by state law to provide reimbursement of expenses, the requirements of the test claim statute related to reimbursement are triggered by the agency's discretionary decision to do so and are not reimbursable.
Expense Reporting Requirements: Government Code section 53232.3	This section requires local agencies that reimburse the expenses of the members of its legislative body to	Claimants allege this code section as added by Statutes	<i>Partially approved:</i> Staff finds that this code section imposes a state-mandated program to provide expense report forms on general law

¹² Note that most special districts are not eligible claimants for mandates purposes since they are not subject to the tax and spend restrictions of the California Constitution.

	provide expense report forms to be filed by the members. It also specifies that such reports are subject to disclosure under the Public Records Act and must: 1) document that the expenses meet the existing policy and, 2) be submitted, accompanied by receipts documenting the expense, to the legislative body within a reasonable time after incurring the expense.	2005, Chapter 700, imposes a reimbursable new program.	counties and some eligible special districts because those agencies are required by state law to reimburse the actual and necessary expenses of the members of their legislative bodies. Staff finds that for all other local agencies, the requirements of the test claim statute related to reimbursement are triggered by the agency's discretionary decision provide reimbursement and thus, are not reimbursable.
Penalties for Misuse of Public Resources or Falsifying Expense Reports: Government Code section 53232.4	This section provides penalties that may be imposed on members who misuse public resources or falsify expense report.	Claimants allege this code section as added by Statutes 2005, Chapter 700, imposes a reimbursable new program.	<i>Denied:</i> The plain language of this section does not require the performance of any activities.
Ethics Training for Officials of Local Agencies That Provide Compensation, Salary, Stipend, or Expense Reimbursement to Members of a Legislative Body: Government Code section 53235	This section specifies the ethics training requirements for members of the legislative bodies of those local agencies that provide compensation, salary, stipend, or expense reimbursement to the members of their legislative body.	Claimants allege this code section as added by Statutes 2005, Chapter 700, imposes a reimbursable new program.	<i>Partially Approved:</i> The plain language of subdivisions (a) – (e) of this section do not require local agencies to perform any activities. However, for general law counties and those eligible special districts that are required to provide reimbursement of expenses to the members of their legislative bodies, subdivision (f) imposes a state-mandated new program to provide information on available training to their local officials at least once annually. For the remaining local agencies, this

			requirement is imposed as a result of the agency's underlying discretionary decision to provide compensation, salary, stipend or reimbursement of expenses to the members of their legislative bodies and thus is not reimbursable.
Training Timetable and Frequency: Government Code section 53235.1	This section specifies the frequency and timing of ethics training for local agency officials that are required to receive such training.	Claimants allege this code section as added by Statutes 2005, Chapter 700, imposes a reimbursable new program.	<i>Denied:</i> The plain language of this section does not require local agencies to perform any activities and thus does not impose a state-mandated local program.
Training Records and Contents; Period to Maintain: Government Code section 53235.2	This section requires local agencies that require their members to complete ethics training in compliance with the test claim statute to maintain records for at least five years indicating the dates the requirements were satisfied and the entity that provided the training.	Claimants allege this code section as added by Statutes 2005, Chapter 700, imposes a reimbursable new program.	<i>Partially Approved:</i> For general law counties and eligible special districts that are required to provide reimbursement of expenses to the members of their legislative bodies, this section imposes a state-mandated program to maintain a record containing the dates the requirements were met and the entity that provided the training for at least five years. For the remaining local agencies, this requirement is imposed as a result of the agency's underlying discretionary decision to provide compensation, salary, stipend or reimbursement of expenses to the members of their legislative bodies and thus is not reimbursable.

Analysis

Most local agencies are not required by law to provide any type of compensation, salary, stipend or reimbursement to the members of their legislative bodies, but some are required to provide reimbursement. Some of requirements of the test claim statute are triggered by the provision of compensation, salary or stipend, some by the reimbursement of expenses, and some by the provision of compensation, salary, stipend, or reimbursement of expenses.

Staff finds that the test claim statute imposes a state-mandated program only on those local agencies which are:

1. Subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution; and
2. Required by law to provide compensation, salary, stipend or reimbursement to the members of their legislative bodies.

Staff finds that the test claim statute does not impose a state-mandated program on the remaining local agencies because either:

1. They are not eligible claimants because they are not subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution; or
2. The requirements of the test claim statute are imposed on them as a result of their discretionary decision to provide compensation, salary, stipend, or reimbursement and thus, under the analysis in *Kern*,¹³ are not mandated by the state.

Conclusion and Staff Recommendation

Staff finds that Government Code sections 53232.2(b), 53233.3(a), 53235(a), and 53235.2(a) impose a reimbursable state-mandated new program within the meaning of article XIII B, section 6 of the California Constitution on general law counties and those eligible special districts that are required by their enabling act to provide reimbursement of expenses to perform the following activities only:

- Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;¹⁴
- Provide expense report forms;¹⁵
- Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;¹⁶
- Maintain training records, inclusive of training date and training provider, for five years.¹⁷

¹³ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. App. 4th 727, p. 745 (*Kern*).

¹⁴ Government Code section 53232.2(b).

¹⁵ Government Code section 53232.3(a).

¹⁶ Government Code section 53235(a).

¹⁷ Government Code section 53235.2(a).

Staff further finds that all other code sections pled and costs claimed do not constitute a state-mandated new program or higher level of service within the meaning of article XIII B, section 6 and, thus, are not eligible for reimbursement.

Staff recommends the Commission adopt this staff analysis and partially approve this test claim.

STAFF ANALYSIS

Claimant

City of Newport Beach

Co-claimant

Union Sanitary District

Chronology

- 10/23/2007 Claimant, City of Newport Beach, filed the test claim (07-TC-4) with the Commission¹⁸
- 11/01/2007 Commission staff issued a completeness review letter for the test claim and requested comments from state agencies
- 12/04/2007 Department of Finance (DOF) filed comments on the test claim
- 06/13/2008 Claimant, City of Newport Beach, filed a request to add co-claimant, Union Sanitary District to the test claim

I. Introduction

This test claim addresses the policy making, reporting, record keeping, ethics training and notice requirements imposed on those local agencies that provide any type of compensation, salary, or stipend to a member of a legislative body, or that provide reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.

Responding to reports by the State Auditor's Office, dozens of newspaper articles, and public requests regarding inappropriate uses of local tax dollars, Assemblymember Salinas introduced AB 1234 "to require local agencies to act with more transparency when they deal with issues such as compensation and travel reimbursements."¹⁹ According to the Assembly analysis:

The incidents that occurred in the Sacramento Suburban Water District, Otay Water District, City of Elk Grove (although they were not charged), and many others have caused a flurry of questions on how local officials are using public resources and on the ability of local officials to follow the ethical guidelines set forth in statute. Cities, counties, and special districts have all seen an increase in the misuse of public resources and the consistent failure to follow conflict of interest laws from their own public officials. As a result of these and other instances, the reputations of many local governments that have done nothing wrong have been damaged due to the actions of few "bad actors."²⁰

¹⁸ Based on the filing date of October 23, 2007, the potential period of reimbursement for this test claim begins on July 1, 2006.

¹⁹ Assembly Committee on Local Government, floor analysis of AB 1234, as amended April 5, 2005, p.5.

²⁰ *Ibid.*

The Legislature also believed that this statute would not impose a state-mandated local program because compensation and reimbursement are at the discretion of local agencies. As the Senate Local Government Committee Analysis stated:

Legislative Counsel agrees that the bill doesn't create a new state-mandated local program. The requirements for compensation, expense reimbursement procedures, and ethics training apply only to those local agencies that compensate their governing bodies. If a city reimburses its councilmembers' expenses, then the city must follow the rules set by AB 1234. But because there's no requirement to reimburse expenses, the bill is not a mandate. No compensation, no requirements, no mandate.²¹

AB 1234 was supported by numerous cities, counties and special districts, while another bill during the same legislative session, SB 393 (which would have imposed auditing, whistleblower and other additional requirements on local agencies and was not enacted) was opposed by those same local agencies.

A. Provisions of AB 1234

Government Code sections 53232 and following impose the requirements on local agencies for which the claimants seek reimbursement pursuant to article XIII B, section 6 of the California Constitution.

The remaining code sections pled in the claim generally grant authority to local agencies to provide compensation or reimbursement for expenses to the members of their legislative bodies and are not new.²² However, as amended by Statutes 2005, Chapter 700, these sections specify that if compensation, salary, stipend or reimbursement of expenses is provided to a member of the legislative body of a local agency: “. . .the determination of whether a [member of the legislative body’s] activities on any specific day are compensable shall be made pursuant to [Government Code] Article 2.3 (commencing with section 53232)”²³ and “reimbursement for these expenses is subject to [Government Code] sections 53232.2 and 53232.3.”²⁴

²¹ Senate Local Government Committee, analysis of AB 1234 as amended June, 1, 2005, p. 7.

²² See Government Code sections 25008 and 36514.5; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536, 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908, 11908.1, 11908.2, 16002, and 22407; and Water Code sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.

²³ Government Code 36514.5, Harbors and Navigation Code section 7047; Health and Safety Code sections 4733, 4733.5, 6489, 9031, 13857 and 32103; Public Resources Code sections 5536 and 5784.15; Public Utilities Code sections 11908, 11908.2, 16002 and 22407; and Water Code sections 20201, 21166, 30507, 34741, 40355, 55305, 56031, 60143, 70078, 71255 and 74208, as added or amended by Statutes 2005, Chapter 700.

²⁴ Government Code sections 25008; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 6489, 9031, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908.1, 11908.2 and 22407; and Water Code sections 21166, 30507,

The provisions of the test claim code sections are summarized below.

1. Compensation

When compensation is otherwise authorized by statute, a local agency *may* pay compensation to members of a legislative body for attendance at the following occurrences:

- A meeting of the legislative body;
- A meeting of an advisory body;
- A conference or organized educational activity conducted in compliance with subdivision (c) of section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with section 53234).²⁵

Payment of compensation for attendance at occurrences other than those listed above is authorized only if the governing body has adopted, in a public meeting, a written policy specifying the types of occasions that constitute the performance of official duties for which a member of the legislative body may receive payment.²⁶ The requirement to adopt a policy does not apply to any local agency that pays compensation in the form of a salary to the members of its legislative body.²⁷

2. Reimbursement for Actual and Necessary Expenses

Government Code section 53232.2 provides that when reimbursement is otherwise authorized by statute, a local agency *may* reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities described in Article 2.4 of the Government Code (commencing with section 53234).²⁸ If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then the governing body must adhere to the following requirements:

- a) Adopt a written policy, in a public meeting, specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses. This policy may also specify the reasonable reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses or it shall use the Internal Revenue Service rates for reimbursement of travel, meals, lodging, and other actual and necessary expenses as established in Publication 463, or any successor publication.

30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5 as added or amended by Statutes 2005, Chapter 700 .

²⁵ Government Code section 53232.1(a), emphasis added.

²⁶ Government Code section 53232.1.

²⁷ Government Code section 53232.1(c).

²⁸ Government Code section 53232.2(a), emphasis added. Note that section 53232.2 (g) provides that this section shall not supersede any other laws establishing reimbursement rates for local agencies.

- b) If the lodging is in connection with a conference or organized educational activity including the ethics training required by Article 2.4, lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, if lodging at the group rate is available to the member of a legislative body at the time of booking. If the group rate is not available, the member shall use comparable lodging that is consistent with the requirements of Government Code sections 53232.2(c) and (e).
- c) Members of the legislative body shall use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.
- d) All expenses that do not fall within the adopted travel reimbursement policy or the Internal Revenue Service reimbursable rates shall be approved by the governing body, in a public meeting before the expense is incurred, except as provided in subdivision (d).²⁹

3. Expense Reporting Requirements

If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms to be filed by the members of the legislative body.³⁰ Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel.³¹ Expense reports are public records subject to disclosure under the California Public Records Act³² and they must meet the following requirements:

- a) Document that expenses meet the existing policy, adopted pursuant to section 53232.2, for expenditure of public resources;³³
- b) Be submitted by the member of the legislative body within a reasonable time after incurring the expense, as determined by the legislative body, and be accompanied by the receipts documenting each expense.³⁴

Members of a legislative body are required to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.³⁵

4. Penalties for Misuse of Public Resources or Falsifying Expense Reports

Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting polices may include, but are not limited to, the following:

- a) The loss of reimbursement privileges.
- b) Restitution to the local agency.

²⁹ Government Code section 53232.2.

³⁰ Government Code section 53232.3(a).

³¹ *Ibid.*

³² Government Code section 53232.3(e).

³³ Government Code section 53232.3(b).

³⁴ Government Code section 53232.3(c).

³⁵ Government Code section 53232.3(d).

- c) Civil penalties for misuse of public resources pursuant to section 8314.
- d) Prosecution for misuse of public resources, pursuant to section 424 of the Penal Code.³⁶

5. Ethics Training

If a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties, then all of that local agencies' local agency officials shall receive training in ethics.³⁷ A "local agency official" means the following.

- a) Any member of a local agency legislative body or any elected local agency official who receives any type of compensation, salary, or stipend or reimbursement for actual and necessary expenses incurred in the performance of official duties; and
- b) Any employee designated by a local agency legislative body to receive the training specified under this article.³⁸

Local agency officials in local agency service as of January 1, 2006, except for officials whose term of office ended before January 1, 2007, were required to receive their initial ethics training before January 1, 2007.³⁹ Each local agency official who commences service with a local agency on or after January 1, 2006, is required to receive their initial ethics training no later than one year from the first day of service with the local agency.⁴⁰ After their initial ethics training, each local agency official is required to receive at least two hours of training in general ethics principles and ethics laws relevant to his or her public service at least once every two years.⁴¹ A local agency official who serves more than one local agency is required to receive ethics training once every two years without regard to the number of local agencies with which he or she serves.⁴²

If any entity develops curricula to satisfy the requirements of this section, then the Fair Political Practices Commission and the Attorney General shall be consulted regarding the sufficiency and accuracy of any proposed course content. When reviewing any proposed course content the Fair Political Practices Commission and the Attorney General shall not preclude an entity from also including local ethics policies in the curricula.⁴³ A local agency or an association of local agencies may offer one or more training courses or sets of self-study materials with tests, to meet the requirements of this section. These courses may be taken at home, in-person, or online.⁴⁴

³⁶ Government Code section 53232.4.

³⁷ Government Code section 53235(a).

³⁸ Government Code section 53234(c).

³⁹ Government Code section 53235.1(a).

⁴⁰ Government Code section 53235.1(b).

⁴¹ Government Code sections 53235(b) and 53235.1(a) and (b).

⁴² Government Code section 53235.1(c).

⁴³ Government Code section 53235(c).

⁴⁴ Government Code section 53235(d).

Providers of training courses are required to provide participants with proof of participation to meet the requirements of section 53235.2.⁴⁵ Local agencies are required to provide information on available ethics training to their local officials at least once annually.⁴⁶

6. Record Keeping Requirements

A local agency that requires its local agency officials to complete the ethical training prescribed by the test-claim statute is required to maintain records for at least five years after local officials receive the training. These records are public records subject to disclosure under the California Public Records Act.⁴⁷ The records must indicate both of the following:

- The dates that local officials satisfied the requirements of this article.
- The entity that provided the training.

7. Linking the Provision of Compensation, Salary, Stipend or Reimbursement of Expenses to the Requirements of the Test Claim Statute

AB 1234 amended the enabling acts of many local agencies with regard to their grants of authority to provide compensation, salary, stipend to state the following: “The determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.”⁴⁸ Article 2.3 generally specifies: the types of occurrences that are compensable if a local agency does not adopt a compensation policy; the requirements for a compensation policy if the district adopts one; the types of occurrences that are reimbursable if a district does not adopt a reimbursement policy; the requirements for a reimbursement policy if the district adopts one; the requirement to provide reimbursement forms, if reimbursement is provided; and, the penalties that may apply in the case of misuse of public resources or falsifying expense reports.

AB 1234 also amended the enabling acts of several local agencies with regard to their grants of authority to provide reimbursement to specify the following: “Reimbursement for these expenses is subject to sections 53232.2 and 53232.3 of the Government Code.”⁴⁹ Government

⁴⁵ Government Code section 53235(e).

⁴⁶ Government Code section 53235(f).

⁴⁷ Government Code section 53235.2(a).

⁴⁸ See Government Code 36514.5, Harbors and Navigation Code section 7047; Health and Safety Code sections 4733, 4733.5, 6489, 9031, 13857 and 32103; Public Resources Code sections 5536 and 5784.15; Public Utilities Code sections 11908, 11908.2, 16002 and 22407; and Water Code sections 20201, 21166, 30507, 34741, 40355, 55305, 56031, 60143, 70078, 71255 and 74208, as added or amended by Statutes 2005, Chapter 700.

⁴⁹ See Government Code sections 25008; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 6489, 9031, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908.1, 11908.2 and 22407; and Water Code sections 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5 as added or amended by Statutes 2005, Chapter 700 .

Code sections 53232.2 and 53232.3 are contained in Article 2.3 generally provide for the types of occurrences that are reimbursable if a district does not adopt a reimbursement policy; the requirements for a reimbursement policy if the district adopts one; the requirement to provide reimbursement forms, if reimbursement is provided to the members of the agency's legislative body.

B. Local Agencies Affected by Test Claim Statute

The requirements listed above are imposed on those local agencies that provide any type of compensation, salary, or stipend to a member of a legislative body, or that provide reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties. For purposes of the test claim statute, a "local agency" means a "city, county, city and county, charter city, charter county, charter city and county, or special district."⁵⁰

1. Counties

The legal provisions for the government of California counties are contained in the California Constitution and the California Government Code.⁵¹ A county is the largest political subdivision of the state having corporate powers.⁵² California has 58 counties.

a. General Law Counties versus Charter Counties

The California Constitution recognizes two types of counties: general law counties and charter counties. General law counties adhere to state law as to the number and duties of county elected officials. Charter counties, on the other hand, have a limited degree of "home rule" authority that may provide for the election, compensation, terms, removal, and salary of the governing board; for the election or appointment (except the sheriff, district attorney, and assessor who must be elected), compensation, terms, and removal of all county officers; for the powers and duties of all officers; and for consolidation and segregation of county offices.⁵³ There are currently 44 general law counties and 14 charter counties. They are as follows:

General Law Counties: Alpine, Amador, Calaveras, Colusa, Contra Costa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, San Benito, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Trinity, Tulare, Tuolumne, Ventura, Yolo, and, Yuba

Charter Counties: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and, Tehama.

b. Compensation and Reimbursement of Expenses for Members of a County Board of Supervisors

⁵⁰ Government Code section 53232.

⁵¹ California Constitution art XI, section 1(a) and Government Code section 23000 *et seq.*.

⁵² See California Constitution art XI, section 1(a). See also Government Code section 23002 ("The several existing counties of the State and such other counties as are hereafter organized are legal subdivisions of the State").

⁵³ California Constitution, article XI, section 4.

Article 11, section 1(b) of the California Constitution provides that the governing body of each general law county, “shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum.” Article 11, section 4(b) of the California Constitution requires that charter counties provide in their charters for “the compensation, terms, and removal of members of the governing body.” If a county charter has provided for the Legislature to prescribe the salary of the governing body, such compensation is now required to “be prescribed by the governing body by ordinance.”⁵⁴ Therefore, counties have the discretion to determine what salaries, if any, to provide their supervisors and must do so in their charters or by ordinance.

Additionally, the Government Code provides that members of general law county boards of supervisors “shall be allowed their actual expenses in going to, attendance upon, and returning from state association meetings and their actual and necessary traveling expenses when traveling outside their counties on official business.”⁵⁵ Charter counties, on the other hand, have authority to determine reimbursement of expenses for the members of their governing bodies without regard to state statutes.⁵⁶ Therefore, general law counties are required to reimburse the actual and necessary expenses of their supervisors, while charter counties have discretion to determine whether or not to do so.

2. Cities

The legal provisions for the government of California cities are contained in the California Constitution and the California Government Code.⁵⁷ As of July 1, 2011 there were 482 cities in California: 120 charter cities and 362 general law cities.

a. Charter Cities versus General Law Cities

The California Constitution gives cities the power to become charter cities.⁵⁸ The benefit of becoming a charter city is that charter cities have supreme authority over “municipal affairs.”⁵⁹ In other words, a charter city’s law concerning a municipal affair will trump a state law governing the same topic.⁶⁰ A city charter, in effect a city’s constitution, need not set out every municipal affair the city would like to govern. With few exceptions, so long as the charter contains a declaration that the city intends to avail itself of the full power provided by the California Constitution, any city ordinance that regulates a municipal affair will govern over a

⁵⁴ California Constitution, article 11, section 4(b).

⁵⁵ Government Code section 25008.

⁵⁶ California Constitution, article XI, section 1(b).

⁵⁷ California Constitution, article XI and Government Code sections 34000 *et seq.*

⁵⁸ California Constitution, article XI, section 3(a).

⁵⁹ California Constitution, article XI, section 5(a).

⁶⁰ *Johnson v. Bradley* (1992) 4 Cal. 4th 389, p. 399.

general law of the state.⁶¹ Cities that have not adopted a charter are general law cities. General law cities are bound by the state’s general law, even with respect to municipal affairs.

b. Compensation and Reimbursement of Expenses for Members of the City Council⁶²

The salary of council members of general law cities is controlled by Government Code section 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary or may decrease the salary approved by the city council.⁶³ City council members in general law cities “may be reimbursed for actual and necessary expenses incurred in the performance of official duties.”⁶⁴ However, general law cities are not required to provide reimbursement; the ultimate decision is made by the council itself.⁶⁵ Any amounts paid by a city to reimburse a council member for actual and necessary expenses pursuant to section 36514.5 shall not be included for purposes of determining salary.⁶⁶

The California Constitution grants plenary authority to charter cities to provide for compensation and reimbursement of expenses of officers and employees.⁶⁷ In the absence of express provisions in the charter, the courts presume that members are not entitled to compensation.⁶⁸ Therefore whether and how much compensation and reimbursement is provided to the members of their legislative bodies is at the city’s discretion.

3. Special Districts

A special district is “an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries and in areas outside district boundaries when authorized by the [local agency formation] commission pursuant to [Government Code] section 56133.”⁶⁹ Special districts include county service areas, but exclude the state, counties, cities, school districts, community college districts, assessment districts, special assessment districts, improvement districts, Mello-Roos community facilities districts, permanent road divisions, air pollution control districts, air quality maintenance

⁶¹ One exception to this rule, for example, is that a charter city is bound by the Public Contract Code unless the city’s charter expressly exempts the city from the Code’s provisions or a city ordinance conflicts with a provision in the Code. (Cal. Pub. Cont. Code § 1100.7.)

⁶² Note that “Elected officials not subject to civil service laws, e.g., elected mayors, council members, and sheriffs” are exempt from the federal Fair Labor Standards Act. (29 CFR § 553.11(c).)

⁶³ Government Code section 36516(b).

⁶⁴ Government Code section 36514.5.

⁶⁵ 65 Ops.Cal.Atty.Gen. 523 (1982).

⁶⁶ Government Code section 36516(e).

⁶⁷ California Constitution article XI, section 5(b).

⁶⁸ *Woods v. Potter*, 8 Cal.App. 41, p. 43.

⁶⁹ Government Code section 56036(a).

districts, and, zones of special districts.⁷⁰ There are between roughly 3,294 and 4,776 special districts in California, depending upon whose definition is applied.⁷¹ Approximately 610 of those special districts are subject to the appropriations limit set forth in article XIII B, section 4 of the California Constitution,⁷² and are thus eligible claimants for purposes of mandate reimbursement under article XIII B, section 6 of the California Constitution. Those approximately 610 districts that are subject to the appropriations limit will be referred to as “eligible districts” in this analysis. Eligible claimant in this context means that the district is eligible to bring a mandates claim. However, it may or may not be eligible to claim reimbursement under any given program, depending on whether the Commission has found that program imposes a reimbursable state-mandated program on the district.

a) Principal Act versus Special Act Special Districts

Special districts operate either under a principal act or a special act. A principal act is a generic statute which applies to all special districts of that type. For example, the Community Services District Law governs all 325 community services districts. There are about 50 principal act statutes which local voters can use to create and govern special districts.⁷³ On the other hand, districts which are regional in nature, have unusual governing board requirements, provide unique services, or need special financing, result in special act districts. Examples of districts formed under special acts include the Embarcadero Municipal Improvement District (Santa Barbara County), the Humboldt Bay Harbor, Recreation, and Conservation District, and the Shasta-Tehama County Watermaster District. There are about 125 special act districts.⁷⁴ All principal acts are state laws in the California state codes, whereas most special acts are not codified. For a list of special acts, see Appendix A in the State Controller’s Special Districts Annual Report.⁷⁵

b) Enterprise Versus Non-enterprise Districts.

Just over a quarter of the special districts are enterprise districts. Enterprise districts deliver services that are run like business enterprises in that they charge their customers fees for services. For example, a hospital district generally charges room fees paid by patients, not the district’s other residents. Generally, enterprise districts are not subject to the tax and spend restrictions of article XIII of the California Constitution and so are not eligible to receive

⁷⁰ *Ibid.*

⁷¹ The Senate Local Government Committee asserts that there are approximately 3,294 while the State Controller asserts there are 4,776. (See Sen. Loc. Gov., *What’s So Special About Special Districts?* (Fourth Edition), October 2010, p. 4.) However, for the Commission’s purposes, we are only concerned with those, approximately 610, districts subject to the tax and spend restrictions of the California Constitution.

⁷² State Controller, *Special Districts Annual Report*, December 13, 2011, Table 1.

⁷³ Senate Local Government Committee, *What’s So Special About Special Districts?* (Fourth Edition), October 2010, p. 5.

⁷⁴ Senate Local Government Committee, *What’s So Special About Special Districts?* (Fourth Edition), October 2010, p. 5.

⁷⁵ State Controller, *Special Districts Annual Report*, December 13, 2011, Appendix A.

mandate reimbursement. Nearly all of the water, wastewater, and hospital districts are enterprise districts which charge rates or fees for their services and do not receive any “proceeds of taxes” or tax revenues. Reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from “proceeds of taxes,” or tax revenues.⁷⁶ Since enterprise districts are usually not funded by proceeds of taxes, they are generally exempt from article XIII B’s spending limit. However, there are a few enterprise districts which operate with mix of tax and fee revenues; Alpaugh Irrigation District and Canebrake County Water District, for example.⁷⁷ These districts are subject to the tax and spend limitations of articles XIII A and XIII B and are thus eligible claimants for mandates purposes.

Conversely, non-enterprise districts provide services which have been deemed by some to not easily lend themselves to fees.⁷⁸ It has been argued, for example, that fire protection services and mosquito abatement programs benefit the entire community, not just individual residents.⁷⁹ Non-enterprise districts rely overwhelmingly on property tax revenues and parcel taxes to pay their operational expenses and are thus subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution. Therefore, non-enterprise districts are generally eligible claimants for state-mandates. Services commonly provided by non-enterprise districts include cemetery, fire protection, library, and police services. Although non-enterprise districts rely primarily on non-fee revenue, certain services, such as a recreation and park district’s swimming pool or soccer programs, can generate some fee revenue. Therefore, depending upon the program at issue in a test claim, there may be an exception to the subvention requirement because the district has fee authority that is sufficient to pay the costs of the state-mandated new program.⁸⁰

c) Governing Boards

Special districts’ governing boards can vary with the size and type of the district. Most districts have five-member governing boards. Other governing boards vary from three to 11 or more members. Because of its special legislation, the Metropolitan Water District of Southern California has 37 board members.⁸¹

d) Compensation and Reimbursement of Expenses for Special District Board Members

The compensation and reimbursement of members of the legislative bodies of special districts is generally controlled by the district’s principal act or special act, also known as their enabling

⁷⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, p. 486-487.

⁷⁷ State Controller, *Special Districts Annual Report*, December 13, 2011.

⁷⁸ See Senate Local Government, *What’s So Special About Special Districts?* (Fourth Edition), October 2010, p. 6.

⁷⁹ *Ibid.*

⁸⁰ Government Code 17556(d).

⁸¹ Senate Local Government, *What’s So Special About Special Districts?* (Fourth Edition), October 2010, p. 7.

act.⁸² Most districts' enabling acts give them authority to provide a salary, stipend or other compensation and to authorize payment of expenses, but do not require the payment of salary, stipend, compensation or expenses. For example, a recreation and park district "*may* provide, by ordinance or resolution, that each of its members may receive compensation in an amount not to exceed one hundred dollars (\$100) for attending each meeting of the board."⁸³ In addition, members of the board of directors *may receive* their actual and necessary traveling and incidental expenses incurred while on official business.⁸⁴ Public Resources Code section 15 specifies that "'shall' is mandatory and 'may' is permissive." The plain language of these provisions authorizes, but does not require, the payment of compensation and reimbursement of actual and necessary traveling expenses of board members of recreation and park districts.

However, some special districts are required to provide reimbursement of expenses to the members of their legislative bodies. For example, members of the Harbor Districts "*shall* be allowed any actual and necessary expenses incurred in the performance of their duties."⁸⁵ The plain language of this section requires that the harbor district reimburse the members of their legislative bodies for "actual and necessary expenses incurred in the performance of their duties"⁸⁶

Finally, staff has not found any special districts that are statutorily required to provide compensation, salary or stipend to the members of their legislative bodies after reviewing dozens of special acts and principal acts. Nor have any of the parties or interested parties provided copies of any code sections imposing such a statutory requirement. Though there are many examples in statute of the word "shall" used in conjunction with a member's right to receive compensation, salary or stipend, the compensation the member "shall receive" is only that which the legislative body, by ordinance, provides. For example, section 16002 of the Public Utilities Code provides that "each member of the board *shall receive the compensation that the board by ordinance provides*, not exceeding four thousand eight hundred dollars (\$4,800) a year." Based on the plain language of the code sections pled, only if the board by ordinance provides shall each member receive the compensation. Thus, it is within the discretion of the board to provide for compensation by ordinance (or not) and to set the amount, not to exceed four thousand eight hundred dollars a year.

C. Procedural History

⁸² See, e.g. Harbors and Navigation Code section 6060 (harbor districts), Harbors and Navigation Code section 7047 (small craft harbor districts), Health and Safety Code section 2030 (mosquito abatement and vector control districts), Health and Safety Code section 2851 (pest abatement districts), Health and Safety Code section 4733 (county sanitation districts), Health and Safety Code section 6489 (sanitation districts).

⁸³ Public Resources Code section 5784.15(a).

⁸⁴ Public Resources Code section 5784.15(c), emphasis added.

⁸⁵ Harbors and Navigation Code section 6060.

⁸⁶ See also Harbors and Navigation Code section 16 ("shall" is mandatory and "may" is permissive).

Claimant, City of Newport Beach submitted this test claim to the Commission on October 23, 2007. Based on the filing date of October 23, 2007, the potential period of reimbursement for this test claim begins on July 1, 2006.⁸⁷

Co-claimant, Union Sanitary District, filed a similar test claim (07-TC-01) on some of the code sections added by the test claim statute with the Commission on September 17, 2007.⁸⁸ That test claim was dismissed on October 18, 2007 pursuant to the Commission's regulations (Cal. Code Regs, tit. 2, § 1183(i)) because the Commission does not have jurisdiction to hear claims brought by Union Sanitary District since that district is not eligible to receive reimbursement under article XIII B, section 6 of the California Constitution.⁸⁹ More specifically, the test claim was dismissed because reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from "proceeds of taxes," or tax revenues.⁹⁰ Since Union Sanitary District is not funded by proceeds of taxes, it is exempt from article XIII B's spending limit, staff found that it is not a local agency eligible to claim reimbursement under article XIII B, section 6 of the California Constitution. The dismissal letter sent to co-claimant, Union Sanitary District provided information on how to appeal the decision to dismiss the test claim.⁹¹ Co-claimant, Union Sanitary District, filed an appeal from the notice of dismissal of 07-TC-01 with the Commission. However, on August 19, 2008 Claimant, City of Newport Beach notified the Commission that it was adding Union Sanitary District to this test claim as co-claimant for Government Code sections 53234-53235. After Union Sanitary District was added as co-claimant to this claim the appeal from the notice of dismissal of 07-TC-01 was dropped. When Union Sanitary District was added as co-claimant to this test claim, its appeal of the notice of dismissal of 07-TC-01 was dropped and it was agreed that the Commission would address the issues relating to special districts in this test claim.

II. Positions of the Parties and Interested Parties

A. Claimants Position

Claimants allege that the test claim statute imposes a state-mandated new program on local agencies. Specifically, claimants allege the following activities are imposed on local agencies by the test claim statute:

- Providing compensation for attendance to meetings;⁹²
- Reimbursing expenses and adopting a written policy manual on compensation;⁹³
- Developing expense forms to document reimbursements;⁹⁴

⁸⁷ Government Code section 17557(e).

⁸⁸ Government Code sections 53234 and 53235.2 as added by Statutes 2005, chapter 700.

⁸⁹ See Dismissal Letter dated October 18, 2007.

⁹⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

⁹¹ *Id.*, p. 3.

⁹² Claimant, test claim p. 4, citing Government Code section 53232.1.

⁹³ *Ibid*, citing Government Code section 53232.2.

- Requiring two hours of ethics training to local members every two years;⁹⁵
- Disseminating information on available training at least once a year;⁹⁶
- Maintaining training records, inclusive of training date and training provider/entity, for five years.⁹⁷

Claimants allege further, that the required activities are new and subject to reimbursement under article XIII B, section 6 of the California Constitution.⁹⁸

B. Department of Finance's Position

DOF states that portions of the test claim are not reimbursable state mandates because the local agency's decision to compensate and/or reimburse their members is optional.⁹⁹ Specifically, DOF makes the following arguments:

- Government Code section 53232.1(a) and (b) do not impose state mandated requirements due to the section's permissive language. Subdivision (a) says that "[w]hen compensation is otherwise authorized by statute, a local agency may pay compensation to members of a legislative body..." and subdivision (b) provides that "[a] local agency may pay compensation for attendance at occurrences not specified in subdivision (a)." The activities are required only if the local agency chooses to compensate the members of its governing board. Further, section 53232.1 does not apply to local agencies that elect to pay compensation in the form of a salary.¹⁰⁰ Pursuant to Article XI, section 1 and section 5, of the California Constitution, the local agencies shall prescribe by ordinance the compensation of its members, but the ordinance must be subject to referendum. Therefore, this section does not impose a state mandate on local agencies within the meaning of article XIII B, section 6 of the California Constitution because the local agency has discretion to compensate its local governing members.¹⁰¹
- Section 53232.2 (a) is not a state mandate because the language is permissive. The language of the subdivision is: "When reimbursement is otherwise authorized by statute, a local agency may reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities described in Article 2.4 (commencing with section 53234)." A local agency, therefore, has discretion to reimburse its members.¹⁰²

⁹⁴ *Ibid*, citing Government Code section 53232.3.

⁹⁵ Claimant, test claim p. 6, citing Government Code sections 53235 and 53235.1.

⁹⁶ *Ibid*, citing Government Code section 53235.

⁹⁷ *Ibid*, citing Government Code section 53235.2.

⁹⁸ Claimant, test claim p. 9.

⁹⁹ DOF, comments on the test claim, p. 1.

¹⁰⁰ Government Code section 53232.1(c).

¹⁰¹ *Ibid*.

¹⁰² DOF, comments on the test claim, p. 2.

- The new activities of the test claim statute may be reimbursable for counties. Section 25008 of the Government Code requires the counties to reimburse their local governing members. "Members shall be allowed their actual expenses in going to, attendance upon, and returning from state association meetings and their actual and necessary traveling expenses when traveling outside their counties on official business." However, section 36514.5 of the Government Code provides discretionary language for cities to reimburse their governing members. "City council members may be reimbursed for actual and necessary expenses incurred in the performance of official duties."¹⁰³
- The activities of the following sections are optional and not reimbursable due to the permissive language and the cities' discretionary authority.
 - Subdivision (b) of section 53232.2 is not a reimbursable mandate because it follows from subdivision (a), which authorizes local agencies to reimburse members of a legislative body. The new activity to adopt written policy under subdivision (b) is not reimbursable since subdivision (a) is permissive. It is a downstream activity that is a consequence of the underlying discretionary act of local agencies to reimburse their governing members.
 - Subdivision (a) of section 53232.3 is not a reimbursable mandate because it is an optional activity. The language of the subdivision is "If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms..." The new activity to provide an expense report is only required if the local agency has chosen to reimburse its governing members. Pursuant to section 36514.5 of the Government Code, the cities have discretion to reimburse members. Further, subdivisions (b) through (e) are not reimbursable state mandates since they are required as a result of subdivision (a), which may be an optional activity as a consequence of the underlying discretionary decision of the cities to reimburse their members.
 - Section 53235(a) requires that "if a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member..., then all local agency officials shall receive training in ethics..." This activity is discretionary pursuant to the permissive language of the test claim statute and local agencies' Constitutional authority to compensate. Pursuant to article II, sections 1 and 5, of the California Constitution, the local agencies shall prescribe by ordinance the compensation of its members, but the ordinance must be subject to referendum. Further, subdivisions (b) through (f) are not reimbursable mandates since they are required as a result of subdivision (a), which may be an optional activity as a consequence of the underlying decision to compensate and/or reimburse members.
 - Section 53235.1 is not a reimbursable mandate since the requirement to provide ethics training in section 53235(a) is optional. This section establishes the effective dates for local members to begin their bi-annual ethics training schedule. This activity

¹⁰³ DOF, comments on the test claim, p. 2.

is a consequence of the local agency's discretionary authority to compensate or reimburse its members.¹⁰⁴

DOF also notes that the courts have held that the increased costs associated with the downstream activities of an underlying discretionary action are not reimbursable. In *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. App. 4th 727, 745 (*Kern*) the court affirmed that where participation in the underlying program is voluntary, the resulting new attached requirements do not constitute a reimbursable state mandate.¹⁰⁵

III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹⁰⁶ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁰⁷

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹⁰⁸
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹⁰⁹
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.¹¹⁰

¹⁰⁴ DOF, comments on the test claim, p.p. 2-3.

¹⁰⁵ DOF, comments on the test claim, p. 3.

¹⁰⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁰⁷ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹⁰⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹⁰⁹ *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

¹¹⁰ *San Diego Unified, supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹¹¹

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹¹² The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹¹³ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹¹⁴

Issue 1: Special districts that are not subject to the tax and spend restrictions of article XIII of the California Constitution are not eligible for reimbursement under article XIII B, section 6 of the California Constitution.

Reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from “proceeds of taxes,” or tax revenues.¹¹⁵

[A]rticle XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on “appropriations subject to limitation,” which consists primarily of the authorization to expend during a fiscal year the “proceeds of taxes.” (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to the proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute “proceeds of taxes.” (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.)

Section 9 of Article XIII B sets forth specific circumstances wherein the costs in question *are not* “appropriations subject to limitation,” and therefore subvention is not required. One such exclusion to the limitation is found in subdivision (c), which applies to special districts:

Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per \$100 of assessed value; *or the appropriations of any special district then existing or thereafter created by a*

¹¹¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹¹² *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code section 17551 and 17552.

¹¹³ *County of San Diego, supra*, 15 Cal.4th 68, 109.

¹¹⁴ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹¹⁵ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

vote of the people, which is totally funded by other than the proceeds of taxes. (Emphasis added.)

Thus, article XIII B, section 6 does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments.¹¹⁶ The courts have concluded that although article XIII B, section 6 does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of the provision demonstrates that it applies only to costs recovered solely from tax revenues.¹¹⁷ A local agency cannot accept the benefits of an exemption from article XIII B's spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.¹¹⁸

According to Union Sanitary District's website,¹¹⁹ the district receives revenue from four primary sources; "Sewer service charges, capacity fees, other minor operating revenues such as permits, inspections and outside work that we perform in cooperation with other municipalities, and interest earnings on reserve funds." Its revenue is not funded through "proceeds of taxes," or property taxes. Moreover, on December 13, 2011, the State Controller's Office issued its annual report for special districts for fiscal year 2009-2010. The State Controller's *Special Districts Annual Report* is admissible to prove this point because it is properly the subject of judicial notice under Evidence Code section 452(c), which permits courts to take judicial notice of public records of administrative agencies and by extension, California Code of Regulations, title 2, section 1187.5(c), which makes it admissible to support a finding in Commission proceedings.¹²⁰ The report shows, on page 293, that the revenues and expenditures of Union Sanitary District in fiscal year 2009-2010 were not subject to the appropriations limit of article XIII B of the California Constitution.¹²¹

Therefore, since Union Sanitary District is not funded by proceeds of taxes, it is exempt from article XIII B's spending limit. Thus, staff finds that co-claimant, Union Sanitary District, and the other special districts that are not subject to the tax and spend restrictions of article XIII of the California Constitution are not eligible for reimbursement under article XIII B, section 6 of the California Constitution.

However, there are between roughly 3,294 and 4,776 special districts in California, depending upon whose definition is applied.¹²² Staff finds that approximately 610 of those special districts

¹¹⁶ *County of Fresno, supra*, 53 Cal.3d at p. 487.

¹¹⁷ *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.

¹¹⁸ *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

¹¹⁹ <http://www.unionsanitary.com/financialinfo.htm> (See attached.)

¹²⁰ See also, California Code of Regulations, title 2, section 1187.5(c); *Pearson v. State Social Welfare Board* (1960) 54 Cal.2d 184, p. 210.

¹²¹ The State Controller's *Special Districts Annual Report*, dated December 13, 2011.

¹²² The Senate Local Government Committee asserts that there are approximately 329,000 while the State Controller asserts there are 4,776. (See Sen. Loc. Gov., *What's So Special About Special Districts?* (Fourth Edition), October 2010, p. 4.)

are subject to the appropriations limit set forth in article XIII B, section 4 of the California Constitution,¹²³ and thus eligible claimants for purposes of mandate reimbursement under article XIII B, section 6 of the California Constitution.

Issue 2: The Test Claim Statute Imposes a State-Mandated New Program or Higher Level of Service Within The Meaning of Article XIII B, Section 6 of the California Constitution on General Law Counties and Some Eligible Special Districts for Some of the Activities Claimed.

Claimants allege that the test claim statute imposes a state-mandated new program on local agencies. Specifically, claimants allege the following activities are mandated by the test claim statute:

- Providing compensation for attendance to meetings;¹²⁴
- Reimbursing expenses and adopting a written policy manual on compensation;¹²⁵
- Developing expense forms to document reimbursements;¹²⁶
- Requiring two hours of ethics training to local members every two years;¹²⁷
- Disseminating information on available training at least once a year;¹²⁸
- Maintaining training records, inclusive of training date and training provider/entity, for five years.¹²⁹

Staff finds that some of the activities pled are not required by the plain language of the statute. Staff also finds that local agencies are not required to provide compensation to the members of their legislative bodies. Thus, the requirements of the test claim statute that flow from providing compensation, salary or stipend to the members of the legislative body are triggered by the local agency's underlying discretionary decision to provide such compensation and are not reimbursable.

However, staff finds that the test claim statute does impose some requirements, which are triggered by the provision of reimbursement of expenses for members of a legislative body, only on general law counties and those eligible special districts that are required by their special act or principal act to provide reimbursement of expenses.

A. Some of the Code Sections Pled Do Not Require Local Agencies to Perform Any Activities and, thus, Do Not Impose a State-Mandated Program.

¹²³ See, State Controller, *Special Districts Annual Report*, December 13, 2011, Table 1.

¹²⁴ Claimant, test claim p. 4, citing Government Code section 53232.1.

¹²⁵ *Ibid*, citing Government Code section 53232.2.

¹²⁶ *Ibid*, citing Government Code section 53232.3.

¹²⁷ Claimant, test claim p. 6, citing Government Code sections 53235 and 53235.1.

¹²⁸ *Ibid*, citing Government Code section 53235.

¹²⁹ *Ibid*, citing Government Code section 53235.2.

The following code sections pled in the claim generally grant authority to local agencies to provide compensation or reimbursement for expenses to the members of their legislative bodies and are not new: Government Code sections 25008 and 36514.5; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536, 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908, 11908.1, 11908.2, 16002, and 22407; and Water Code sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5. However, as amended by Statutes 2005, Chapter 700, these sections specify that if compensation, salary, or stipend is provided to a member of the legislative body of a local agency: “. . .the determination of whether a [member of the legislative body’s] activities on any specific day are compensable shall be made pursuant to [Government Code] Article 2.3 (commencing with section 53232)”¹³⁰ and if reimbursement of expenses is provided: “reimbursement for these expenses is subject to [Government Code] sections 53232.2 and 53232.3.”¹³¹

Staff finds that the amendments to these code sections do not require the performance of activities. Rather, they cross reference to the substantive requirements of the test claim statute which are contained in Government Code articles 2.3 and 2.4. Therefore, staff finds that Government Code sections 25008 and 36514.5; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536, 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908, 11908.1, 11908.2, 16002, and 22407; and Water Code sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201, as amended by the test claim statute, do not mandate a new program or higher level of service.

Government Code sections 53232 and 53234 define terms and do not require the performance of any activities.

Government Code section 53232.1 authorizes compensation for certain specified occurrences. It also authorizes compensation for occurrences that are not specified in statute, “if the governing body has adopted, in a public meeting, a written policy specifying the other types of occasions that constitute the performance of official duties for which a member of the legislative body may receive payment.” Agencies that pay compensation in the form of salary are exempt from the

¹³⁰ See Government Code 36514.5, Harbors and Navigation Code section 7047; Health and Safety Code sections 4733, 4733.5, 6489, 9031, 13857 and 32103; Public Resources Code sections 5536 and 5784.15; Public Utilities Code sections 11908, 11908.2, 16002 and 22407; and Water Code sections 20201, 21166, 30507, 34741, 40355, 55305, 56031, 60143, 70078, 71255 and 74208, as added or amended by Statutes 2005, chapter 700.

¹³¹ See Government Code section 25008; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 6489, 9031, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908.1, 11908.2 and 22407; and Water Code sections 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5 as added or amended by Statutes 2005, chapter 700.

requirement to adopt a policy.¹³² Staff finds that the plain language of this section authorizes, but does not require local agencies to provide compensation for occurrences that are not specified. Because there is no requirement to provide compensation, staff finds that this section does not require local agencies to perform any activities.

Similarly, Government Code section 53232.4 provides that “[p]enalties for misuse of public resources or falsifying expense reports in violation of expense reporting polices may include, but are not limited to, the following: . . .” This section specifies penalties that may be imposed on individuals who misuse public resources or falsify expense reports. However, the plain language of this section does not require the performance of any activities.

Government Code section 53235.1 provides training timetable and frequency requirements imposed on local agency officials if the local agency provides compensation or reimbursement of expenses. The plain language of this section does not require local agencies to perform any activities. This section provides that if the local agency provides compensation or reimbursement of expenses then “*each local agency official* in local agency service as of . . . shall receive the training. . . .” Thus the training requirement is imposed on the local agency officials themselves, and not on the local agency. Note, however, that members of local legislative bodies have many options for meeting this requirement including the free online ethics training course developed by the Institute for Local Government and the Fair Political Practices Commission (FPPC), which can be found on the FPPC’s web site at <http://www.fppc.ca.gov/index.php?id=477>. This free training course has been online since October 2006.

Therefore, staff finds that the plain language of Government Code sections 25008, 36514.5, 53232, 53232.1, 53232.4, 53234 and 53235.1; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536, 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908, 11908.1, 11908.2, 16002, and 22407; and Water Code sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201 as added or amended by Statutes 2005, chapter 700 does not mandate a new program or higher level of service on local agencies.

B. The Activities Required by Government Code Sections 53232.2(b), 53323.3(a), 53235(a), and 53235.2(a) are State-Mandated for those Local Agencies That are Required by Statute to Provide Reimbursement for Expenses.

1. The Requirements of the Test Claim Statute are Only Triggered If a Local Agency Provides Any Type of Compensation, Salary, Stipend or Reimbursement of Actual and Necessary Expenses Incurred by a Member of a Legislative Body in the Performance of Official Duties.

Staff finds that the requirements of the test claim statute are triggered by the provision of some type of compensation or reimbursement by the local agency.

Government Code section 53232.2(b) provides: “*If a local agency reimburses* members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then the governing body shall adopt a written policy, in a public meeting specifying the types of

¹³² Government Code 53232.1(c).

occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses.” (Emphasis added.) Based on the plain language of this section, the requirement to adopt a written policy is triggered by providing reimbursement to the members of the legislative body.

Government Code section 53232.3(a) provides in pertinent part: “*If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms*” The remainder of the section specifies the contents, timing and disclosability of those reports. Based on the plain language of this section, the requirement to provide expense report forms is triggered by providing reimbursement to the members of the legislative body.

Government Code section 53235(a) provides: “*If a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties, then all local agency officials shall receive training in ethics pursuant to this article.*” Subdivisions (b)-(e) provide authority for a local agency or association to offer a course to meet the ethics training requirement and provide the consultation requirements, required duration and content of the course. Though the plain language of this section requires local agency officials to receive training, it authorizes, but does not require local agencies to provide training. However, 53235(f) requires that: “a local agency shall provide information on training courses to meet the requirements of this article to its local officials at least once annually.” Based on the plain language of this section, the requirement to provide information on training courses is triggered by providing compensation, salary, stipend, or reimbursement to the members of the legislative body.

Government Code section 53235.2(a) provides: “*A local agency that requires its local agency officials to complete the ethical training prescribed by this article shall maintain records...*” A local agency in effect “requires” the members of its legislative body to receive ethics training by providing compensation, salary, stipend, or reimbursement to the members of the legislative body.¹³³ Therefore, the activity of maintaining the records of such training is likewise triggered by providing compensation, salary, stipend, or reimbursement to the members of the legislative body.

Based on the plain language of the statute, staff finds that none of the requirements of the test claim statute are triggered unless a local agency:

- Provides any type of compensation, salary, or stipend to a member of a legislative body, or
 - Provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.
2. Local Agencies Are Not Required to Provide Compensation, Salary or Stipend to a Member of a Legislative Body.
- a. Counties are not required to provide compensation, salary, stipend to the members of their legislative bodies.

¹³³ See discussion under Government Code section 53235(a), above.

Article 11, section 1(b) of the California Constitution provides that the governing body of each general law county, “shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum.” Article 11, section 4(b) of the California Constitution requires that charter counties provide in their charters for “the compensation, terms, and removal of members of the governing body.” If a county charter has provided for the Legislature to prescribe the salary of the governing body, such compensation is now required to “be prescribed by the governing body by ordinance.”¹³⁴ Therefore, counties have the discretion to determine what salaries, if any, to provide their supervisors and must do so in their charters or by ordinance. Thus, staff finds that counties are not required to provide compensation, salary or stipend to the members of their legislative bodies.

- b. Cities are not required to provide compensation, salary, stipend to the members of their legislative bodies.

The salary of council members of general law cities is controlled by Government Code section 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary or may decrease the salary approved by the city council.¹³⁵

The California Constitution grants plenary authority to charter cities to provide for compensation and reimbursement of expenses of officers and employees.¹³⁶ In the absence of express provisions in the charter, the courts presume that members are not entitled to compensation.¹³⁷

Therefore whether and how much compensation is provided to the members of their legislative bodies is at the city’s discretion. Thus, staff finds that cities are not required to provide compensation, salary or stipend to the members of their legislative bodies.

- c. Special districts are not required to provide compensation, salary, stipend to the members of their legislative bodies.

Most special districts’ principal acts or special acts give them authority to provide a salary, stipend or other compensation and to set the level of that compensation by ordinance, though some prohibit compensation. However, upon review of dozens of principal acts and special acts, staff did not find one that removed from the local agency’s legislative body the discretion to determine whether, and in what amount (below certain specified caps), the agency would pay compensation, salary or stipend.

Section 1197 of the Military and Veterans Code, for example provides that members of memorial districts “*shall* serve without compensation. . .” (Emphasis added.) Section 14 of the Military and Veterans Code provides: “‘shall’ is mandatory and ‘may’ is permissive.” Staff finds that the plain language of this provision prohibits memorial districts and districts with similar language in their enabling statute from providing compensation.

¹³⁴ California Constitution, article XI, section 4(b).

¹³⁵ Government Code section 36516(b).

¹³⁶ California Constitution article XI, section 5(b).

¹³⁷ *Woods v. Potter* (1908) 8 Cal.App. 41, p. 43.

On the other hand, a recreation and park district “*may* provide, by ordinance or resolution, that each of its members *may* receive compensation in an amount not to exceed one hundred dollars (\$100) for attending each meeting of the board.”¹³⁸ Section 15 of the Public Resources Code provides “‘shall’ is mandatory and ‘may’ is permissive.” Staff finds that the plain language of this provision authorizes, but does not require, the payment of compensation to members of the legislative body of recreation and park districts. This language is typical of many principal acts.

However, some principal codes are worded a little differently. For example, section 16002 of the Public Utilities Code provides: “each member of the board *shall* receive the compensation that the board by ordinance provides, not exceeding four thousand eight hundred dollars (\$4,800) a year.” Though the plain language of this provision says “shall,” shall modifies the compensation which the board by ordinance provides. Thus, it is within the discretion of the board to provide for compensation by ordinance (or not) and to set the amount, not to exceed four thousand eight hundred dollars a year. Only if the board provides for the compensation by ordinance, is the member entitled to receive it. Therefore, staff finds that public utility districts are not required by state law to compensate their members.

Based on staff’s review of numerous principal acts and special acts, the above discussion, and the lack of any evidence in the record to the contrary, staff finds that special districts are not required by state law to provide compensation, salary or stipend to the members of their legislative bodies.

3. General Law Counties and Some Eligible Special Districts Are Required to Provide Reimbursement for Actual and Necessary Expenses to Members of Their Legislative Bodies and, thus are mandated by the state to comply with Government Code sections 53232.2(b) , 53323.3(a), 53235(a), and 53235.2(a).

- a. Cities are not required to provide reimbursement for expenses to the members of their legislative bodies.

City council members in general law cities “*may* be reimbursed for actual and necessary expenses incurred in the performance of official duties.”¹³⁹ Government Code section 14 provides that “‘shall’ is mandatory and ‘may’ is permissive.” General law cities are not required to provide reimbursement; the ultimate decision is made by the council itself.¹⁴⁰ The California Constitution grants plenary authority to charter cities to provide for reimbursement of expenses of officers and employees.¹⁴¹ Reimbursement for expenses is subject to sections 53232.2 and 53232.3.¹⁴² Thus, staff finds that both general law and charter cities have discretion regarding whether or not to pay such expenses.

- b. Charter counties are not required to provide reimbursement of expenses to the members of their legislative bodies, however, general law counties are required to provide reimbursement for actual and necessary traveling expenses incurred by

¹³⁸ Public Resources Code section 5784.15(a).

¹³⁹ Government Code section 36514.5.

¹⁴⁰ 65 Ops. Cal. Atty. Gen.523 (1982).

¹⁴¹ California Constitution article XI, section 5(b).

¹⁴² Government Code sections 25008 and 36514.5.

the members of their legislative bodies, in going to, attendance upon, and returning from state association meetings and when traveling outside their counties on official business.

The Government Code provides that members of general law county boards of supervisors “*shall* be allowed their actual expenses in going to, attendance upon, and returning from state association meetings and their actual and necessary traveling expenses when traveling outside their counties on official business.”¹⁴³ Charter counties, on the other hand, have plenary authority to determine reimbursement of expenses for the members of their governing bodies without regard to state statutes.¹⁴⁴ Therefore, staff finds that only general law counties are required to reimburse the actual and necessary traveling expenses of their supervisors in these circumstances while charter counties have discretion to determine whether or not to do so.

- c. Some special districts are required to provide reimbursement for actual and necessary expenses incurred by the members of their legislative bodies.

Most special districts’ principal acts provide authority for, but do not require, reimbursement of the expenses of members of the district’s legislative body. For example, members of the legislative body of a recreation and park district “...*may receive* their actual and necessary traveling and incidental expenses incurred while on official business.”¹⁴⁵ Staff finds that the plain language of this provision authorizes, but does not require, the reimbursement of actual and necessary traveling expenses of board members of recreation and park districts.

However, some special districts are required to provide reimbursement to the members of their legislative bodies. For example section 1197 of the Military and Veterans Code provides that members of memorial districts “. . . *shall* be entitled to actual and necessary expenses incurred in the performance of duties.” (Emphasis added.) Staff finds that the plain language of this provision requires memorial districts to provide reimbursement for the actual and necessary expenses of the members of its legislative body.

Therefore, staff finds that the test claim statute imposes the following requirements, which are triggered by the provision of reimbursement of expenses for members of a legislative body, only on general law counties and those eligible special districts that are required by their special act or principal act to provide reimbursement of expenses:

- Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;¹⁴⁶
- Provide expense report forms;¹⁴⁷
- Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;¹⁴⁸

¹⁴³ Government Code section 25008.

¹⁴⁴ California Constitution, article XI, section 1(b).

¹⁴⁵ Public Resources Code section 5784.15(c), emphasis added.

¹⁴⁶ Government Code section 53232.2(b).

¹⁴⁷ Government Code section 53232.3(a).

- Maintain training records, inclusive of training date and training provider, for five years.¹⁴⁹

Staff further finds that the test claim statute does not impose requirements on general law cities, charter cities, charter counties, charter cities and counties, or recreation and park districts and other similarly situated eligible special districts which are authorized, but not required by the state, to provide compensation, salary, or stipend to a member of a legislative body, or reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties. Rather, for these local agencies, the requirements of the test claim statute are triggered by the district’s discretionary decision to provide compensation, salary, stipend or reimbursement for actual and necessary expenses to a member of its legislative body.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term “state mandate” as it appears in article XIII B, section 6 of the California Constitution. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings.¹⁵⁰

When analyzing the term “state mandate,” the court reviewed the ballot materials for article XIII B, which provided that “a state mandate comprises something that a local government entity is required or forced to do.”¹⁵¹ The ballot summary by the Legislative Analyst further defined “state mandates” as “requirements imposed on local governments by legislation or executive orders.”¹⁵² The court also reviewed and affirmed the holding of *City of Merced*,¹⁵³ determining that, when analyzing state-mandate claims, the underlying program must be reviewed to determine if the claimant’s participation in the underlying program is voluntary or legally compelled.¹⁵⁴ The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirements related to

¹⁴⁸ Government Code section 53235(a).

¹⁴⁹ Government Code section 53235.2(a).

¹⁵⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

¹⁵¹ *Kern High School Dist.*, *supra*, at p. 737.

¹⁵² *Ibid.*

¹⁵³ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

¹⁵⁴ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

that program does not constitute a reimbursable state mandate.¹⁵⁵ (Emphasis in the original.)

Thus, the Supreme Court held as follows:

[W]e reject claimants’ assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant’s participation in the underlying program is voluntary or compelled.* [Emphasis added.]¹⁵⁶

Based on the plain language of the statutes creating the underlying education programs in *Kern*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws. Rather, the districts elected to participate in the school site council programs to receive funding associated with the programs.¹⁵⁷

Similarly here, with the exception of general law counties and some of the eligible special districts, local agencies are not legally compelled to provide compensation, salary, or stipend to a member of a legislative body, or reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties. However, if districts choose to provide such compensation or reimbursement then they must comply with the requirements of the test claim statute, discussed above. Under these circumstances, reimbursement is not required under article XIII B, section 6 of the California Constitution.

C. Government Code Sections 53232.2(b), 53233.3(a), 53235(a), and 53235.2(a) Impose a New Program on General Law Counties and Those Eligible Special Districts That are Required by Their Enabling Act to Provide Reimbursement of Expenses.

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹⁵⁸ To determine if the program is new or imposes a higher level of service, the test claim statute must be compared with the legal requirements in effect immediately before the enactment.¹⁵⁹ A “higher level of

¹⁵⁵ *Ibid.*

¹⁵⁶ *Id.* at p. 731.

¹⁵⁷ *Id.* at pp. 744-745.

¹⁵⁸ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*,

¹⁵⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁶⁰

With regard to claimants alleged activity of requiring reimbursement of expenses, the test claim statute does not require reimbursement. Rather, the test claim statute added requirements for those local agencies that provide reimbursement, whether or not they are required to do so. General law counties were required to reimburse the members of their legislative bodies under the law in effect immediately prior to the enactment of the test claim statute.¹⁶¹ With regard to those eligible special districts that are required to provide reimbursement to the members of their legislative bodies, the test claim statute did not add this requirement to their special acts or principal acts. They also were required reimburse the members of their legislative bodies under the law in effect immediately prior to the enactment of the test claim statute.¹⁶² Therefore staff finds that the requirement for general law counties and certain eligible special districts to reimburse the members of their legislative bodies is not new, and not eligible for reimbursement pursuant to article XIII B, section 6.

However, the required activities that were added by the test claim statute are new and were not required prior to the enactment of AB 1234. Moreover, these requirements apply only to local agencies and are thus unique to government. Finally, these activities provide an enhanced service to the public. Specifically, the requirements of the test claim statute provide accountability to tax, fee and rate payers by requiring “local agencies to act with more transparency when they deal with issues such as compensation and travel reimbursements.”¹⁶³ Therefore, staff finds that the test claim statute, by requiring the following activities, imposes a new program on general law counties and those eligible special districts that are required by their enabling act to provide reimbursement of expenses:

- Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;¹⁶⁴
- Provide expense report forms;¹⁶⁵
- Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;¹⁶⁶
- Maintain training records, inclusive of training date and training provider, for five years.¹⁶⁷

¹⁶⁰ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

¹⁶¹ See Government Code section 25008 as enacted by Statutes 1947, chapter 424.

¹⁶² See e.g. Harbors and Navigation Code section 6060 as amended by Statutes 1991, chapter 978.

¹⁶³ Assembly Committee on Local Government, floor analysis, as amended April 5, 2005, p.5.

¹⁶⁴ Government Code section 53232.2(b).

¹⁶⁵ Government Code section 53232.3(a).

¹⁶⁶ Government Code section 53235(a).

Issue 3: General Law Counties and Those Eligible Special Districts That are Required by Their Enabling Act to Provide Reimbursement of Expenses Incur Costs Mandated by the State Within the Meaning of Article XIII B, Section 6 and Government Code Section 17514?

The final issue is whether the state-mandated activities impose costs mandated by the state,¹⁶⁸ and whether any statutory exceptions listed in Government Code section 17556 apply to the test claim. Government Code section 17514 defines “costs mandated by the state” as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.” Government Code section 17564 requires reimbursement claims to exceed \$1,000 to be eligible for reimbursement.

Claimant states that it had costs of \$5,000 for all of the activities claimed, as of the filing date and estimates that it will have continuing costs of approximately \$1,000 per year.¹⁶⁹ Claimant also asserts that none of the exceptions to finding a reimbursable state-mandated program under Government Code section 17556 apply here.¹⁷⁰ Additionally, claimant states that other similarly situated local agencies have incurred costs ranging from \$300 to \$20,468 as of the time of filing.¹⁷¹ Claimant projects that annual state-wide costs for all local agencies would be \$3 million for the first year of compliance, not accounting for factors that may cause a reduction in costs, such as a single member serving on various boards but only needing to be trained once and obligating the costs of a single agency, or the inability for small jurisdictions to meet the minimum filing amount.¹⁷² However, given that staff finds that the test claim statute does not impose a state-mandated program on most local agencies and that the most costly activities claimed, the compensation and reimbursement of members of local agency legislative bodies, are not required by the test claim statute, these costs will likely be significantly lower than projected by claimant. Nonetheless, staff finds that the activities that are mandated by the statute are new and do result in increased costs for general law counties and some eligible special districts.

There has been no suggestion by any of the parties or interested parties, and staff has not found any evidence, that any exception to Government Code section 17556 applies to this test claim. Therefore, staff finds that none of the exceptions in Government Code section 17556 apply here.

Accordingly, staff finds that Government Code sections 53232.2(b), 53323.3(a), 53235(a), and 53235.2(a) impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

IV. CONCLUSION

Staff finds that Government Code sections 53232.2(b), 53323.3(a), 53235(a), and 53235.2(a) impose a reimbursable state-mandated new program within the meaning of article XIII B,

¹⁶⁷ Government Code section 53235.2(a).

¹⁶⁸ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

¹⁶⁹ Test Claim, p.p. 8 and 9.

¹⁷⁰ Test Claim, p. 7.

¹⁷¹ Test Claim, p. 9.

¹⁷² *Ibid.*

section 6 of the California Constitution on general law counties and those eligible special districts that are required by their enabling act to provide reimbursement of expenses to perform the following activities only:

- Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;¹⁷³
- Provide expense report forms;¹⁷⁴
- Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;¹⁷⁵
- Maintain training records, inclusive of training date and training provider, for five years.¹⁷⁶

Staff further finds that all other code sections pled and costs claimed do not constitute a state-mandated new program or higher level of service within the meaning of article XIII B, section 6 and, thus, are not eligible for reimbursement.

Recommendation

Staff recommends the Commission adopt this staff analysis and partially approve this test claim.

¹⁷³ Government Code section 53232.2(b).

¹⁷⁴ Government Code section 53232.3(a).

¹⁷⁵ Government Code section 53235(a).

¹⁷⁶ Government Code section 53235.2(a).



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April 6, 2012

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA. 95814

Dear Ms. Halsey:

**Draft Staff Analysis on the City of Newport Beach and Union Sanitary District Test Claim -
Local Agency Ethics (AB 1234) 07-TC-04**

The Department of Finance (Finance) has reviewed the draft staff analysis for the test claim on Local Agency Ethics submitted by the City of Newport Beach and Union Sanitary District (co-claimants). The test claim alleges that in 2005, Assembly Bill 1234 (Chapter 700, Statutes of 2005) was enacted and imposed new requirements for ethics training and reimbursing related expenses for members of local agency governing bodies resulting in increased costs to the aforementioned public agencies. Finance concurs with the draft staff analysis that recommends partial approval of the claimant's test claim.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an email address for the mailing list."

If you have any questions regarding this letter, please contact Randall Ward, Staff Finance Analyst at (916) 445-3274.

Sincerely,

Tom Dyer
Assistant Program Budget Manager

Enclosure A

DECLARATION OF CARLA SHELTON
DEPARTMENT OF FINANCE
CLAIM NO. CSM—07-TC-04

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

4-6-12

at Sacramento, CA



Carla Shelton

TEST CLAIM
COMMENTS ON DRAFT STAFF ANALYSIS

TO: Commission on State Mandates

FROM: Union Sanitary District, Co-claimant

RE: Local Agency Ethics (AB1234), 07-TC-04

Introduction: The Test Claim of Union Sanitary District does not involve any of the elements of the Newport Beach Test Claim. Statutes regarding sanitary districts are far different than those governing cities. As a result, many arguments made in the Draft Staff Analysis have virtually no application to sanitary districts.

Union Sanitary District is entitled to reimbursement of ethics training expenses since:

Compensation of elected board members is mandatory, hence these members of the legislative body are required, under AB1234, to obtain two hours of ethics training every two years. This legislation creates a new state mandated local program.

Union Sanitary District receives the vast majority of its operating income from tax collections, and is subject to tax and spend restrictions for sewer service charges , the overwhelming majority of total operating income.

Union Sanitary District sustained substantial expenses in developing the necessary materials for presenting ethics training for sanitary district board members throughout the state in 2006, to enable compliance with the new state mandated ethics training. Union Sanitary District is entitled to reimbursement from this commission for the development of these training materials which were not available from other sources in 2006.

Compensation of Board Members

Sanitary Districts are subject to the Sanitary District Act of 1923, Health and Safety Code Sections 6400 to 6924.

Sanitary District Board of Directors member compensation is governed by Health and Safety Code Section 6489, which provides in relevant part:

“ (a) Subject to subdivision (b), each of the members of the board shall receive compensation in an amount not to exceed one hundred dollars (\$100) per day for each (day’s service to the district)....

The use of the term “shall” relating to compensation in Health and Safety Code Section 6489, means the compensation of board members is mandatory. Accordingly, Union Sanitary District is an eligible special district under Government Code Section 5323.5(a), which requires all members of the legislative body to receive ethics training every two years, since the board members are required to be compensated for each day’s service to the district.

Income from tax revenues

As the Draft Staff Analysis points out in section B 3 b), on page 19, a local agency is entitled to reimbursement under article XIII B, section 6, when the agency is subject to XIII A and XIII B tax and spend limits; that is, if the income source is from tax revenues. Union Sanitary District is not an enterprise district which can be run like a business, it has strict limitations on income imposed as a result of Proposition 218, which established California Constitution Article XIII D, Section 6. Subsection (b) (1) thereof limits sewer service charges to the funds required to provide the service; and, subsection (2) (b) provides that the revenues derived from sewer service charges be used for no other purpose than the purpose for which the fee was imposed.

Union Sanitary District obtains income almost exclusively from sewer service charges and capacity fees. Capacity fees are required to be segregated and used only for capital improvements. Pursuant to Government Code Section 66013(a) the fee charged cannot exceed the cost of the facilities; and, 66013 further

requires all capacity fees to be deposited in a special fund, where all deposits and interest be used exclusively for capital facilities.

As can be seen in exhibit A, attached, for the fiscal year 2006-2007, when the ethics training costs were incurred and paid, Union Sanitary District received \$30,155,359.02 from real property tax revenues, representing the overwhelming majority of the \$30,951,916 total sewer service charges for that fiscal year.

The draft staff report confirms, on page 19, that those districts which rely overwhelmingly on tax revenue to pay operation expenses are subject to the tax and spend limitations of Article XIII A and XIII B of the California Constitution. Therefore, these are districts which are eligible claimants for state mandate reimbursement.

In addition, the Supreme Court decision in Bighorn-Desert View Water Agency vs. Verjil, et al. (2006) 39 Cal. 4th 205 found the assessments, fees and charges of agencies such as Union Sanitary District constitute taxes. At page 213.

Cost of Providing Ethics Training

Union Sanitary District's mandate reimbursement claim contains none of the elements of the Newport Beach test claim. The Union Sanitary District claim is limited to the cost of developing the curricula for the ethics training: preparing a text book (83 pages plus appendix), a work book, a PowerPoint presentation and certification of the training. The Union Sanitary District claim specifically excludes any claim for reimbursement of printing, room rental, audio visual equipment, compensation to the instructors or the stipend paid to the Union Sanitary District directors attending.

Developing curricula and providing the ethics training is specifically authorized by Government Code Section 53235. In 2006 there was no assistance available from any state government agency. The AB1234 statutes enumerated the numerous topics which had to be addressed. The Attorney General's office and the FPPC simply approved the course outline and provide no further assistance. It was obvious at the time that if Union Sanitary District did not step forward with the

required expertise and effort, the sanitary district directors would have to look to other sources for the training, which were scarce, indeed, at that time.

250 sanitary district elected officials received ethics training in August 2006 at a California Association of Sanitation Agencies Annual Conference in Monterey. There was no charge for the training. Since then, ethics training has been provided in August 2008 and August 2010, utilizing the materials developed by Union Sanitary District with only updating due to statutory changes being required.

USD was fortunate to have available for this effort an attorney who has a college and university teaching credential, possessed vast experience in public agency law and considerable experience in preparing teaching materials on technical subjects. The course manual, workbook and PowerPoint slides were intentionally not copyrighted to encourage others to share this authoritative material.

Over the ensuing years several organizations have taken advantage of these unprotected ethics training materials. There also have been a number of requests for the complete ethics training materials which have been fulfilled. Substantial benefits have been derived as a result of the production of this ethics training curricula and materials, making the \$32,000 cost for the substantial effort over two months in the summer of 2006 seem quite reasonable.

It is inexplicable that the reimbursement claimed by Union Sanitary is never addressed in the 38 pages of the Draft Staff Analysis.

The Union Sanitary District Test Claim does not appear on the Commission's web site. Perhaps it has been misplaced. By separate cover, the original test claim has been mailed to the Commission's office.

SUMMARY

Sanitary District directors, under the Sanitary District Act of 1923, are required to be compensated (H&S 6489). Hence, they must take ethics training.

Union Sanitary District receives approximately 98% of its operating income from real property tax revenues, and the balance from sewer services charges paid directly by users, all of which can be used only for operation of sewage treatment

facilities. Total sewer service charge receipts cannot exceed the cost of service under Proposition 218. Virtually all other income is from fees dedicated by law solely for capital facilities.

The test claim of Union Sanitary District is entirely for expenses of providing curricula and work product for course materials, without which many sanitary district directors would not have received effective ethics training required by the new program mandated by AB 1234.

David M. O'Hara, Legal Counsel

Union Sanitary District

975 Centennial Drive

Brentwood, CA 94513

(925) 516-2266

ohdave40@hotmail.com

COUNTY OF ALAMEDA
 OFFICE OF AUDITOR-CONTROLLER

PROPERTY TAX REMITTANCE ADVICE

REVISED

To: Union Sanitary District
 Attention: Maria Scott

Fax: (510) 477-7535

	Period	1% Tax	Bond / Debt	Sewer Service Fee	Total
PROPERTY TAXES:					
CURRENT SECURED	December Advance	15,126,773.75	-	-	15,126,773.75
UNITARY	Estimate	-	-	-	-
CURRENT UNSECURED	7/1 - 11/30/06	-	-	-	-
SUPPLEMENTAL ASSESSMENT	2006/07	-	-	-	-
PRIOR SECURED		562.53	-	-	562.53
PRIOR UNSECURED		-	-	-	-
AUCTION SALE	September 2006	-	-	-	-
DELINQUENT PENALTY	October 2006	-	-	-	-
INTEREST	October 2006	-	-	-	-
OTHER	July Purged Account	-	-	-	-
LESS DEDUCTIONS:					
REFUNDS OF PROPERTY TAX					
SECURED	0	-	-	-	-
CURRENT UNSECURED	August 2006	-	-	-	-
PRIOR SECURED	August 2006	-	-	-	-
REDEVELOPMENT	0	-	-	-	-
COMMISSION on Special Assesmts.	2006/07	(51,117.60)	-	-	(51,117.60)
ADMINISTRATIVE COST	0	-	-	-	-
OTHERS:					
SALES TAX IN LIEU	July 2006	-	-	-	-
AIRCRAFT TAX	October 2006	-	-	-	-
ANNUAL RACEHORSE TAX	0	-	-	-	-
CITY IN LIEU TAX	0	-	-	-	-
FEDERAL IN LIEU TAX		-	-	-	-
HIGHWAY PROPERTY RENTAL	0	-	-	-	-
HOMEOWNERS' EXEMPTIONS, STATE SUBVENTION	0	-	-	-	-
S. F. BAY NATIONAL WILD LIFE REFUGE	0	-	-	-	-
TIMBER YIELD TAX	0	-	-	-	-
VLF Swap	0	-	-	-	-
TOTAL		\$ 15,076,218.68	\$ -	\$ -	\$ 15,076,218.68

By: Ruth Anne Gordillo
 Date: 12/20/2006

Wire transfer date: 12/20/2006
 Warrant being mailed out on

FAX NO. DEC-21-2006 THU 02:10 PM

COUNTY OF ALAMEDA
 OFFICE OF AUDITOR-CONTROLLER
 PROPERTY TAX REMITTANCE ADVICE

To: Union Sanitary District
 Attention: Maria Scott

Fax: (510) 477-7535

	Period	1% Tax	Bond / Debt	Sewer Service Fee	Total
PROPERTY TAXES:					
CURRENT SECURED	April "Advance"	-	-	13,613,993.54	13,613,993.54
UNITARY	1st 50% of 1%	-	-	-	-
CURRENT UNSECURED		-	-	-	-
SUPPLEMENTAL ASSESSMENT	RDA	-	-	-	-
PRIOR SECURED		-	-	-	-
PRIOR UNSECURED		-	-	-	-
AUCTION SALE		-	-	-	-
DELINQUENT PENALTY		-	-	-	-
INTEREST		-	-	-	-
OTHER					
LESS DEDUCTIONS:					
REFUNDS OF PROPERTY TAX					
SECURED		-	-		-
CURRENT UNSECURED		-	-		-
PRIOR SECURED		-	-		-
REDEVELOPMENT	2nd Increment/Adj 1st	-	-		-
COMMISSION on Special Assesmts.	Special Assessment	-	-	(51,117.60)	(51,117.60)
ADMINISTRATIVE COST		-	-		-
OTHERS:					
SALES TAX IN LIEU	Sales Tax 2nd 50%	-	-		-
AIRCRAFT TAX		-	-		-
ANNUAL RACEHORSE TAX		-	-		-
CITY IN LIEU TAX		-	-		-
FEDERAL IN LIEU TAX		-	-		-
HIGHWAY PROPERTY RENTAL		-	-		-
HOMEOWNERS' EXEMPTIONS, STATE SUBVENTION		-	-		-
S. F. BAY NATIONAL WILD LIFE REFUGE		-	-		-
TIMBER YIELD TAX		-	-		-
VLF Swap	VLF 2nd 50%	-	-		-
TOTAL		\$ -	\$ -	\$ 13,562,875.94	\$ 13,562,875.94

By: Debora Torticill
 Date: 4/18/2007

Wire transfer date: 4/18/2007
 Warrant being mailed out on 4/18/2007

F. 01/01

FHA NO.

APR-17-2007 TUE 03:42 PM

COUNTY OF ALAMEDA
OFFICE OF AUDITOR-CONTROLLER
PROPERTY TAX REMITTANCE ADVICE

To: Union Sanitary District
 Attention: Maria Scott

Fax: (510) 477-7535

	Period	1% Tax	Bond / Debt	Sewer Service Fee	Total
PROPERTY TAXES:					
CURRENT SECURED	Actual to Feb. 07	-	-	-	-
UNITARY		-	-	-	-
CURRENT UNSECURED	Actual to Feb. 07	-	-	-	-
SUPPLEMENTAL ASSESSMENT	Actual to Feb. 07	-	-	-	-
PRIOR SECURED	Nov. 06-Feb. 07	-	-	7,923.12	7,923.12
PRIOR UNSECURED	Nov. 06-Feb. 07	-	-	-	-
AUCTION SALE		-	-	-	-
DELINQUENT PENALTY		-	-	-	-
INTEREST		-	-	-	-
OTHER		-	-	-	-
LESS DEDUCTIONS:					
REFUNDS OF PROPERTY TAX		-	-	-	-
SECURED	12/1/06-4/20/07	-	-	-	-
CURRENT UNSECURED		-	-	-	-
PRIOR SECURED		-	-	-	-
REDEVELOPMENT		-	-	-	-
COMMISSION on Special Assesmts.	Special Assessment	-	-	-	-
ADMINISTRATIVE COST		-	-	-	-
OTHERS:					
SALES TAX IN LIEU		-	-	-	-
AIRCRAFT TAX		-	-	-	-
ANNUAL RACEHORSE TAX		-	-	-	-
CITY IN LIEU TAX		-	-	-	-
FEDERAL IN LIEU TAX		-	-	-	-
HIGHWAY PROPERTY RENTAL		-	-	-	-
HOMEOWNERS' EXEMPTIONS, STATE SUBVENTION		-	-	-	-
S. F. BAY NATIONAL WILD LIFE REFUGE		-	-	-	-
TIMBER YIELD TAX		-	-	-	-
VLF Swap		-	-	-	-
TOTAL		\$ -	\$ -	\$ 7,923.12	\$ 7,923.12

By: Debora Torticill
 Date: 5/3/2007

Wire transfer date: 5/4/2007
 Warrant being mailed out on 5/4/2007

P. 01/01
 FAX NO.
 MAY-03-2007 THU 04:30 PM

COUNTY OF ALAMEDA
 OFFICE OF AUDITOR-CONTROLLER

PROPERTY TAX REMITTANCE ADVICE

To: Union Sanitary District
 Attention: Maria Scott

Fax (510) 477-7535

	Period	1% Tax	Bond / Debt	Sewer Service Fee	Total
PROPERTY TAXES:					
CURRENT SECURED	Actual to May 07	-	-	-	-
UNITARY	2nd Apportionment	-	-	-	-
CURRENT UNSECURED	Mar. 07-May 07	-	-	-	-
SUPPLEMENTAL ASSESSMENT		-	-	497.14	497.14
PRIOR SECURED	Mar. 07-May 07	-	-	-	-
PRIOR UNSECURED	Mar. 07-May 07	-	-	-	-
AUCTION SALE		-	-	-	-
DELINQUENT PENALTY		-	-	-	-
INTEREST	06-07	-	-	-	-
OTHER		-	-	-	-
LESS DEDUCTIONS:					
REFUNDS OF PROPERTY TAX		-	-	-	-
SECURED	06-07	-	-	-	-
CURRENT UNSECURED	06-07	-	-	-	-
PRIOR SECURED	06-07	-	-	-	-
REDEVELOPMENT		-	-	-	-
COMMISSION on Special Assesmts.		-	-	-	-
ADMINISTRATIVE COST	SB2557	-	-	-	-
OTHERS:					
SALES TAX IN LIEU		-	-	-	-
AIRCRAFT TAX		-	-	-	-
ANNUAL RACEHORSE TAX		-	-	-	-
CITY IN LIEU TAX		-	-	-	-
FEDERAL IN LIEU TAX		-	-	-	-
HIGHWAY PROPERTY RENTAL		-	-	-	-
HOMEOWNERS' EXEMPTIONS, STATE SUBVENTION	100%	-	-	-	-
S. F. BAY NATIONAL WILD LIFE REFUGE		-	-	-	-
TIMBER YIELD TAX		-	-	-	-
VLF Swap		-	-	-	-
TOTAL		\$ -	\$ -	\$ 497.14	\$ 497.14

By: Debora Torticill
 Date: 6/28/2007

Wire transfer date: 6/28/2007

P. 01/01
 FAX NO.
 JUN-28-2007 THU 12:05 PM

COUNTY OF ALAMEDA
 OFFICE OF AUDITOR-CONTROLLER

PROPERTY TAX REMITTANCE ADVICE

To: Union Sanitary District
 Attention: Maria Scott

Fax (510) 477-7535

	Period	1% Tax	Bond / Debt	Sewer Service Fee	Total
PROPERTY TAXES:					
CURRENT SECURED	Teeter Settlement	-	-	1,507,844.14	1,507,844.14
UNITARY	Teeter Settlement	-	-	-	-
CURRENT UNSECURED	none	-	-	-	-
SUPPLEMENTAL ASSESSMENT	Teeter Settlement	-	-	-	-
PRIOR SECURED	none	-	-	-	-
PRIOR UNSECURED	none	-	-	-	-
UNITARY	none	-	-	-	-
DELINQUENT PENALTY	none	-	-	-	-
INTEREST	none	-	-	-	-
OTHER					
LESS DEDUCTIONS:					
REFUNDS OF PROPERTY TAX					
SECURED	none	-	-	-	-
CURRENT UNSECURED	none	-	-	-	-
PRIOR SECURED	none	-	-	-	-
REDEVELOPMENT	none	-	-	-	-
COMMISSION on Special Assesmts.		-	-	-	-
ADMINISTRATIVE COST		-	-	-	-
OTHERS:					
SALES TAX IN LIEU	none	-	-	-	-
AIRCRAFT TAX	none	-	-	-	-
ANNUAL RACEHORSE TAX	none	-	-	-	-
CITY IN LIEU TAX	none	-	-	-	-
FEDERAL IN LIEU TAX	none	-	-	-	-
HIGHWAY PROPERTY RENTAL	none	-	-	-	-
HOMEOWNERS' EXEMPTIONS, STATE SUBVENTION	none	-	-	-	-
S. F. BAY NATIONAL WILD LIFE REFUGE	none	-	-	-	-
TIMBER YIELD TAX	none	-	-	-	-
VLF Swap	none	-	-	-	-
TOTAL		\$ -	\$ -	\$ 1,507,844.14	\$ 1,507,844.14

By: Debra Tortioli
 Date: 9/20/2007

Wire transfer date: 9/22/2007 *fy07*

NO. 1824 P. 1/1
 ALAMEDA CO AUDITOR-CONTROLLER
 SEP. 20. 2007 2:00PM

UNION SANITARY DISTRICT
 Statements of Revenues, Expenses and Changes in Net Assets
 For the Years Ended
 June 30, 2007 and 2006

	<u>2007</u>	<u>2006</u>
OPERATING REVENUES:		
Sewer service charges	\$ 30,951,916	\$ 29,257,270
Other operating revenues	<u>1,099,925</u>	<u>1,118,247</u>
Total operating revenues	<u>32,051,841</u>	<u>30,375,517</u>
OPERATING EXPENSES:		
Sewage treatment	11,250,875	11,688,666
Sewage collection and engineering	7,178,663	7,188,088
General and administration	<u>4,442,638</u>	<u>4,223,584</u>
Total operating expenses before depreciation	<u>22,872,176</u>	<u>23,100,338</u>
DEPRECIATION (Note 2)	<u>17,127,661</u>	<u>16,093,787</u>
Total operating expenses	<u>39,999,837</u>	<u>39,194,125</u>
Operating loss	<u>(7,947,996)</u>	<u>(8,818,608)</u>
NONOPERATING REVENUES (EXPENSES):		
Investment income and net gains	1,902,866	1,527,372
Interest expense	(839,808)	(897,698)
Loss on retirement of utility in service capital assets	(97,969)	(168,026)
Gain (loss) on equity investment in Easy Bay		
Dischargers Authority	(142,783)	(150,303)
Other nonoperating expenses	<u>(981,460)</u>	<u>(1,098,450)</u>
Net non-operating revenues (expenses)	<u>(159,154)</u>	<u>(787,105)</u>
Loss before contributions of capital assets	(8,107,150)	(9,605,713)
Connection fees and other contributed capital	<u>3,503,054</u>	<u>6,519,344</u>
Change in net assets	(4,604,096)	(3,086,369)
NET ASSETS, BEGINNING OF YEAR, as restated (Note 10)	<u>367,626,389</u>	<u>370,712,758</u>
NET ASSETS, END OF YEAR	<u>\$ 363,022,293</u>	<u>\$ 367,626,389</u>

The accompanying notes are an integral part of these financial statements.

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



April 26, 2012

Ms. Heather Hudson
State Controller's Office
Redevelopment Agencies/Special
Districts Reporting Section
P.O. Box 942850
Sacramento, CA 94250

Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Request for Information

Local Agency Ethics, 07-TC-04

Statutes 2005, Chapter 700

City of Newport Beach and Union Sanitary District, Co-Claimants

Dear Ms. Hudson:

Union Sanitary District has submitted evidence to the Commission purporting to show that it uses tax revenues and is subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution. This evidence appears to contradict what is found in the State Controller's Annual Special District Report and in all of the district's financial disclosure documents found on its web site. In an effort to make sense of this contradiction, we are requesting copies of the annual reports submitted to the State Controller by Union Sanitary District pursuant to Government Code section 12463. We request that you send the copies of the reports electronically **as soon as possible** as this matter is set for hearing on May 25, 2011 and the hearing binders for the commission members containing the proposed statements of decisions and final staff analyses will be sent out on May 11, 2012.

Please contact me at (916) 323-3562 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

Enclosures: April 11, 2012 comments on draft staff analysis filed by Union Sanitary District

Patton, Nancy@CSM

From: Hudson, Heather [hhudson@sco.ca.gov]
Sent: Monday, April 30, 2012 1:19 PM
To: Patton, Nancy@CSM
Subject: RE: Letter Requesting Info
Attachments: P & L for Union Sanitary 2006 - 2010.xlsx; Union Sanitary 2010-11.pdf

As requested, I have attached a copy of the Union Sanitary District's 2011 Special District Financial Transactions Report and a spreadsheet containing the submitted profit and loss data for the fiscal years 2006 through 2010.

Let me know if you need anything else.

From: Patton, Nancy@CSM [<mailto:Nancy.Patton@csm.ca.gov>]
Sent: Thursday, April 26, 2012 11:11 AM
To: Hudson, Heather
Subject: Letter Requesting Info

Hi Heather,

Heather Halsey asked me to send this letter and attachment to you

Thanks
Nancy Patton

Union Sanitary District (Alameda)
Special Districts Financial Transactions Report

General Information

Fiscal Year 2011

Mailing Address

Street 1 Is Address Changed?

Street 2

City State Zip

Email

Members of the Governing Body

	First Name	Middle Initial	Last Name	Title
Member	<input type="text" value="Anjali"/>	<input type="text"/>	<input type="text" value="Lathi"/>	<input type="text" value="President"/>
Member	<input type="text" value="Jennifer"/>	<input type="text"/>	<input type="text" value="Toy"/>	<input type="text" value="Vice President"/>
Member	<input type="text" value="Tom"/>	<input type="text"/>	<input type="text" value="Handley"/>	<input type="text" value="Secretary"/>
Member	<input type="text" value="Pat"/>	<input type="text"/>	<input type="text" value="Kite"/>	<input type="text" value="Board Member"/>
Member	<input type="text" value="Manny"/>	<input type="text"/>	<input type="text" value="Fernandez"/>	<input type="text" value="Board Member"/>
Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Member	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Other Officials

	First Name	Middle Initial	Last Name	Title
	<input type="text" value="Richard"/>	<input type="text" value="B"/>	<input type="text" value="Currie"/>	<input type="text" value="Manager"/>
	<input type="text" value="David"/>	<input type="text" value="M"/>	<input type="text" value="O'Hara"/>	<input type="text" value="Attorney"/>
	<input type="text" value="Maria"/>	<input type="text" value="T"/>	<input type="text" value="Scott"/>	<input type="text" value="Fiscal Officer"/>
	<input type="text" value="Richard"/>	<input type="text" value="A"/>	<input type="text" value="Cortes"/>	<input type="text" value="Fiscal Officer"/>

Report Prepared By

	First Name	Middle Initial	Last Name	Phone No
	<input type="text" value="Maria"/>	<input type="text" value="T"/>	<input type="text" value="Scott"/>	<input type="text" value="(510) 477-7515"/>

Independent Auditor

	First Name	Middle Initial	Last Name	Phone No
	<input type="text" value="AJ"/>	<input type="text"/>	<input type="text" value="Major"/>	<input type="text" value="(925) 734-6600"/>

Union Sanitary District (Alameda)
Special Districts Financial Transactions Report - Waste Disposal Enterprise

Revenues, Expenses and Changes in Fund Equity

Fiscal Year 2011

Operating Revenues	
Service Charges	38,486,824
Permit and Inspection Fees	987,948
Connection Fees	3,381,963
Standby and Availability Charges	
Service Type Assessments	
Other Services	
Sales	
Total Operating Revenues	\$42,856,735
Operating Expenses	
Sewage Collection	14,342,352
Sewage Treatment	10,532,692
Sewage Disposal	
Solid Waste Disposal	
Administration and General	5,574,250
Depreciation and Amortization	16,323,858
Other Operating Expenses	
Total Operating Expenses	\$46,773,152
Operating Income (Loss)	(\$3,916,417)
Non-Operating Revenues	
Interest Income	274,328
Rents, Leases and Franchises	
Taxes and Assessments	
Current Secured and Unsecured (1%)	
Voter Approved Taxes	
Property Assessments	
Special Assessments	
Prior Year Taxes and Assessments	
Penalties and Cost on Delinquent Taxes and Assessments	
Federal	
Aid for Construction	
Other Federal	
State	
Aid for Construction	
State Water Project	
Homeowners Property Tax Relief	
Timber Yield	

Union Sanitary District (Alameda)
Special Districts Financial Transactions Report - Waste Disposal Enterprise

Revenues, Expenses and Changes in Fund Equity

Fiscal Year	2011	
State Other and In-Lieu Taxes		
Other Governmental Agencies		
Redevelopment Pass-Through		
Other		
Other Non-Operating Revenues		
Total Non-Operating Revenues		\$274,328
Non-Operating Expenses		
Interest on Long-Term Debt		1,114,313
Other Interest		
Other Non-Operating Expenses		846,612
Total Non-Operating Expenses		\$1,960,925
Non-Operating Income (Loss)		(\$1,686,597)
Income (Loss) Before Operating Transfers		(\$5,603,014)
Operating Transfers In (Intra-District)		
Operating Transfers Out (Intra-District)		
Net Income (Loss)		(\$5,603,014)
Fund Equity, Beginning of Period		\$356,504,838
Contributed Capital		
Federal		
State		
Other Governmental Agencies		
Non-Governmental Agencies		4,468,806
Prior Period Adjustments		
Residual Equity Transfers		
Other		
Fund Equity, End of Period		\$355,370,630

Union Sanitary District (Alameda)

Special Districts Financial Transactions Report - Long-Term Debt

General Obligation Bonds, Revenue Bonds, Certificates of Participation and Other

Fiscal Year 2011

District-wide or Improvement District/Zone	District-wide
Improvement/Zone (If Applicable)	
Type of Debt	Other Long-Term Indebtedness
Activity	Waste Disposal Enterprise
Purpose of Issue	Increase Capacity at WTF
Nature of Revenue Pledged	Use Permit
Percent of Pledge	100.00
Year of Authorization	1995
Principal Amount Authorized	6,043,042
Principal Amount Issued	6,043,042
Beginning Maturity Date	1995
Ending Maturity Date	2012
Principal Amount Unmatured, Beginning of Fiscal Year	\$916,696
Adjustments - Increase (Decrease)	
Principal Amount Issued During Fiscal Year	
Principal Amount Matured During Fiscal Year	444,998
Principal Amount Defeased During Fiscal Year	
Principal Amount Unmatured, End of Fiscal Year	\$471,698
Principal Amount in Default, End of Fiscal Year	
Interest in Default, End of Fiscal Year	
Amount Held in Bond Reserve	

Union Sanitary District (Alameda)
Special Districts Financial Transactions Report - Long-Term Debt

Construction Financed by the United States and/or the State of California

Fiscal Year 2011

Type of Debt	State of California
Activity	Waste Disposal Enterprise
Purpose of Debt	Lower Hetch Hetchy Project
Maximum Repayment, Beginning of Fiscal Year	\$1,629,069
Adjustments - Increase (Decrease)	484,310
Maximum Repayment, End of Fiscal Year	\$2,113,379
Amount Received to Date	2,113,379
Amount Expended to Date on Behalf of District	
Principal Amount Unmatured, Beginning of Fiscal Year	\$2,059,450
Adjustments - Increase (Decrease)	
Principal Amount Received During Fiscal Year	
Principal Amount Matured During Fiscal Year	89,368
Principal Amount Unmatured, End of Fiscal Year	\$1,970,082
Principal Amount Delinquent	
Interest Amount Delinquent	
Interest Amount Accrued	

Union Sanitary District (Alameda)
Special Districts Financial Transactions Report - Long Term Debt

Construction Financed by the United States and/or the State of California

Fiscal Year 2011

Type of Debt	State of California
Activity	Waste Disposal Enterprise
Purpose of Debt	Primary Clarifier Project
Maximum Repayment, Beginning of Fiscal Year	
Adjustments - Increase (Decrease)	8,821,860
Maximum Repayment, End of Fiscal Year	\$8,821,860
Amount Received to Date	909,968
Amount Expended to Date on Behalf of District	
Principal Amount Unmatured, Beginning of Fiscal Year	
Adjustments - Increase (Decrease)	
Principal Amount Received During Fiscal Year	909,968
Principal Amount Matured During Fiscal Year	
Principal Amount Unmatured, End of Fiscal Year	\$909,968
Principal Amount Delinquent	
Interest Amount Delinquent	
Interest Amount Accrued	

Union Sanitary District (Alameda)
Special Districts Financial Transactions Report - Long-Term Debt

Construction Financed by the United States and/or the State of California

Fiscal Year 2011

Type of Debt	United States
Activity	Waste Disposal Enterprise
Purpose of Debt	Cedar Blvd Project
Maximum Repayment, Beginning of Fiscal Year	\$0
Adjustments - Increase (Decrease)	1,998,384
Maximum Repayment, End of Fiscal Year	\$1,998,384
Amount Received to Date	1,998,384
Amount Expended to Date on Behalf of District	
Principal Amount Unmatured, Beginning of Fiscal Year	\$1,793,462
Adjustments - Increase (Decrease)	
Principal Amount Received During Fiscal Year	204,922
Principal Amount Matured During Fiscal Year	90,836
Principal Amount Unmatured, End of Fiscal Year	\$1,907,548
Principal Amount Delinquent	
Interest Amount Delinquent	
Interest Amount Accrued	

Union Sanitary District (Alameda)

Special Districts Financial Transactions Report - Long-Term Debt

Construction Financed by the United States and/or the State of California

Fiscal Year 2011

Type of Debt	United States
Activity	Waste Disposal Enterprise
Purpose of Debt	Irvington Equalization Storage
Maximum Repayment, Beginning of Fiscal Year	\$14,311,353
Adjustments - Increase (Decrease)	
Maximum Repayment, End of Fiscal Year	\$14,311,353
Amount Received to Date	14,311,353
Amount Expended to Date on Behalf of District	
Principal Amount Unmatured, Beginning of Fiscal Year	\$10,691,178
Adjustments - Increase (Decrease)	
Principal Amount Received During Fiscal Year	
Principal Amount Matured During Fiscal Year	651,576
Principal Amount Unmatured, End of Fiscal Year	\$10,039,602
Principal Amount Delinquent	
Interest Amount Delinquent	
Interest Amount Accrued	

Union Sanitary District (Alameda)
Special Districts Financial Transactions Report - Long-Term Debt

Construction Financed by the United States and/or the State of California

Fiscal Year 2011

Type of Debt	United States
Activity	Waste Disposal Enterprise
Purpose of Debt	Newark Pump Station Upgrade
Maximum Repayment, Beginning of Fiscal Year	\$10,283,321
Adjustments - Increase (Decrease)	
Maximum Repayment, End of Fiscal Year	\$10,283,321
Amount Received to Date	10,283,321
Amount Expended to Date on Behalf of District	
Principal Amount Unmatured, Beginning of Fiscal Year	\$10,142,626
Adjustments - Increase (Decrease)	
Principal Amount Received During Fiscal Year	350,561
Principal Amount Matured During Fiscal Year	409,713
Principal Amount Unmatured, End of Fiscal Year	\$10,083,474
Principal Amount Delinquent	
Interest Amount Delinquent	
Interest Amount Accrued	

Union Sanitary District (Alameda)

Special Districts Financial Transactions Report - Long-Term Debt

Construction Financed by the United States and/or the State of California

Fiscal Year 2011

Type of Debt	United States
Activity	Waste Disposal Enterprise
Purpose of Debt	Treatment Plant Upgrade
Maximum Repayment, Beginning of Fiscal Year	\$30,000,000
Adjustments - Increase (Decrease)	
Maximum Repayment, End of Fiscal Year	\$30,000,000
Amount Received to Date	30,000,000
Amount Expended to Date on Behalf of District	
Principal Amount Unmatured, Beginning of Fiscal Year	\$7,338,559
Adjustments - Increase (Decrease)	
Principal Amount Received During Fiscal Year	
Principal Amount Matured During Fiscal Year	1,762,243
Principal Amount Unmatured, End of Fiscal Year	\$5,576,316
Principal Amount Delinquent	
Interest Amount Delinquent	
Interest Amount Accrued	

Union Sanitary District (Alameda)
Special Districts Financial Transactions Report - Long-Term Debt

Construction Financed by the United States and/or the State of California

Fiscal Year 2011

Type of Debt	United States
Activity	Waste Disposal Enterprise
Purpose of Debt	Willow St/Central Ave Rehab
Maximum Repayment, Beginning of Fiscal Year	\$1,710,608
Adjustments - Increase (Decrease)	
Maximum Repayment, End of Fiscal Year	\$1,710,608
Amount Received to Date	1,710,471
Amount Expended to Date on Behalf of District	
Principal Amount Unmatured, Beginning of Fiscal Year	\$1,569,182
Adjustments - Increase (Decrease)	
Principal Amount Received During Fiscal Year	
Principal Amount Matured During Fiscal Year	70,723
Principal Amount Unmatured, End of Fiscal Year	\$1,498,459
Principal Amount Delinquent	
Interest Amount Delinquent	
Interest Amount Accrued	

Union Sanitary District (Alameda)
Special Districts Financial Transactions Report - Consolidated Balance Sheet

Assets

Fiscal Year	2011	General and Special Revenue Funds	Debt Service Funds	Capital Projects Funds	Enterprise Funds	General Fixed Assets	General Long-Term Debt	Total Memorandum Only
Assets								
Cash and Cash Equivalents				963,372				\$963,372
Taxes Receivable								\$0
Interest Receivable				166,452				\$166,452
Accounts Receivable				2,835,878				\$2,835,878
Loans, Notes, and Contracts Receivable								\$0
Due from Other Funds								\$0
Inventory of Materials and Supplies				482,914				\$482,914
Other Current Assets				26,626				\$26,626
Lease Payments Receivable								
Unearned Finance Charges								
Investments				54,386,422				\$54,386,422
Restricted Assets				75,000				\$75,000
Deferred Charges								
Amortized Discount on Long-Term Debt								
Other Assets				1,409,072				\$1,409,072
Fixed Assets								
Land				5,395,902				\$5,395,902
Buildings and Improvements				601,905,625				\$601,905,625
Equipment				5,900,164				\$5,900,164
Construction in Progress				8,443,102				\$8,443,102
Total Fixed Assets				\$621,644,793		\$0		\$621,644,793
Accumulated Depreciation				288,697,815				\$288,697,815
Net Fixed Assets				\$332,946,978		\$0		\$332,946,978
Other Debits								
Amount Available in Debt Service Funds								
Amount to be Provided								
Total Assets		\$0	\$0	\$0	\$393,292,714	\$0	\$0	\$393,292,714

Special Districts Financial Transactions Report - Consolidated Balance Sheet

Liabilities and Equity

Fiscal Year	2011	General and Special Revenue Funds	Debt Service Funds	Capital Projects Funds	Enterprise Funds	General Fixed Assets	General Long-Term Debt	Total Memorandum Only
Liabilities and Equity								
Accounts/Warrants Payable					3,309,747			\$3,309,747
Loans and Notes Payable								\$0
Interest Payable - Matured/Accrued					394,482			\$394,482
Other Current Liabilities					1,085,159			\$1,085,159
Compensated Absences Payable					675,549			\$675,549
Due to Other Governments								\$0
Due to Other Funds								\$0
Long-Term Debt								
General Obligation Bonds								\$0
Revenue Bonds								\$0
Certificates of Participation								\$0
Special Assessment								\$0
Federal					29,105,399			\$29,105,399
State					2,880,050			\$2,880,050
Time Warrants								\$0
Other Long-Term Indebtedness					471,698			\$471,698
Unamortized Premium on Long-Term Debt								\$0
Advances for Construction								\$0
Deferred Revenue								\$0
All Other Non-Current Liabilities								\$0
Total Liabilities		\$0	\$0	\$0	\$37,922,084		\$0	\$37,922,084
Fund Equity								
Contributed Capital								
Investments in General Fixed Assets								
Retained Earnings								
Reserved					317,367,667			\$317,367,667
Unreserved					38,002,963			\$38,002,963
Fund Balances								
Reserved								\$0
Unreserved Designated								\$0
Unreserved Undesignated								\$0
Total Fund Equity		\$0	\$0	\$0	\$355,370,630			\$355,370,630
Total Liabilities and Fund Equity		\$0	\$0	\$0	\$393,292,714		\$0	\$393,292,714

Year	Service Charge	Permit/Fee	Connector	Total Oper	Sewage Co	Sewage Tre	Admin Gen	Depreciatic	Total Exper
2006	29257270	1118247	3819854	34195371	7188088	11688666	4223584	16093787	39194125
2007	30951916	1099925	3503054	35554895	7178663	11250875	4442638	17127661	39999837
2008	32851938	922013	3746046	37519997	8228553	11683287	4726556	15829000	40467396
2009	35103885	809171	2621801	38534857	8658679	12938404	5200792	16531601	43329476
2010	37217073	968475	2467083	40652631	9338919	13995781	5322085	16243535	44900320

Income/Lo	Interest Re	Other Reve	Total NonC	Interest on	Other Expe	Total NonC	NonOp Incr	Net Income
-4998754	1527372	2699490	4226862	897698	1416779	2314477	1912385	-3086369
-4444942	1902866		1902866	839808	1222212	2062020	-159154	-4604096
-2947399	1746157		1746157	775179	431211	1206390	539767	-2407632
-4794619	1136138		1136138	647171	147733	794904	341234	-4453385
-4247689	349012		349012	867781	171608	1039389	-690377	-4938066

Beginning Eq	Contribute	PY Adjustme	Ending Equity
383393609			380307240
380307240		-12680851	363022293
363022293	2485655		363100316
363100316	26983		358673914
358673914	729264	2039726	356504838



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(Cite as: 8 Cal.App. 41)

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C

PERCIVAL E. WOODS, Appellant,
v.
DANIEL POTTER, Auditor of City of San Diego,
etc., Respondent.

Civ. No. 467.

Court of Appeal, Second District, California.
April 3, 1908.

MUNICIPAL CHARTER OF SAN DIEGO--MEMBERS OF COMMON COUNCIL NOT ENTITLED TO COMPENSATION.

Under the municipal charter of the city of San Diego, the members of the common council are not entitled to receive any compensation; and an ordinance passed by them over the mayor's veto purporting to vote salaries to themselves is ineffective.

ID.--PRESUMPTION FROM SILENCE OF CHARTER--CONTEMPORANEOUS CONSTRUCTION.

The presumption arising from the silence of the charter as to compensation of members of the council is strengthened by the rule of contemporaneous construction, and the presumption from eighteen years' acquiescence that it was not intended by the makers of the charter that the members of the common council should have any compensation for services.

ID.--TRUST POSITION OF MEMBERS OF COUNCIL.

The members of the council occupy a trust position under the charter, and cannot claim compensation not allowed by the charter nor by any legislative act.

ID.--REDUCTION OF MEMBERSHIP.

An amendment of the charter reducing the number of the members of the council from twenty-seven to nine members, without any change in the provision of the charter on the subject of compensation of such members, cannot affect the intention of the makers of the charter on that subject as originally expressed therein.

ID.--WRIT OF MANDATE NOT ALLOWA-

BLE--CHANGE OF COMPENSATION DURING OFFICE-- CLAIM NOT PRESENTED--CAUSE OF ACTION NOT STATED.

A writ of mandate cannot be allowed to enforce compensation allowed during a term of office of members of the council which did not before exist; and the petition therefor does not state a cause of action upon a claim for such compensation not established by the terms of the charter, against the county auditor, where no claim therefor is shown to have been first presented to the auditing committee and passed upon by them, as required by the charter.

APPEAL from a judgment of the Superior Court of San Diego County. Benjamin F. Bledsoe, Judge presiding.

The facts are stated in the opinion of the court.

*42 A. A. Haines, and Haines & Haines, for Appellant.

George Puterbaugh, City Attorney, for Respondent.

TAGGART, J.

Appeal from a judgment denying a writ of mandate to compel the issuance of a salary warrant.

Defendant is auditor of the city of San Diego, and plaintiff was elected a member of the common council of that city at an election held April 2, 1907, the term of his office to commence May 6, 1907. The claim of plaintiff to salary is based upon Ordinance No. 2814 of the city of San Diego, passed and adopted by the common council by a two-thirds vote after its disapproval by the mayor of the city. The ordinance was originally passed February 25th, disapproved by the mayor March 7th, and adopted by a two-thirds vote of the council on April 3, 1907, one day after the election of plaintiff, and by its terms was to take effect and be in force from and after May 6, 1907.

The freeholders' charter under which the city of San Diego is organized took effect the first Monday in May, 1889 (Stats. 1889, pp. 643-729). It contains provisions relating to the compensation of all the charter officers of the city, except the members of the

common council, as to whom the charter is silent. Ten officers are given fixed annual salaries, the salaries of two and the deputies of one are to be fixed by the common council, and the members of five boards are to serve without compensation.

***43** The right to create the salary in question is assumed to depend upon an exercise of a power vested in the common council by either one or both of two clauses of the charter, to wit: Subdivision 38 of section 1 of chapter II of article II, which reads: "To make rules and regulations for the government of all servants, employees, officers, and departments, and to fix the fees and charges for all official services, and to fix salaries and wages not otherwise provided by general laws or by this charter"; or a clause in section 1, chapter IX of article III, which reads: "The annual salaries of the officers and the compensation of the employees of the city shall be as follows: [Salary for mayor and other officers as to whom the amount to be received is fixed.] And all other officers and employees as may be fixed by the Common Council, and all salaries shall be payable monthly."

The petition alleges that prior to the passage of Ordinance No. 2814 (from 1889 to 1907) "there has been no exercise of power by the Common Council, of said city, for or against providing, fixing or establishing any salary, or compensation, for members of said Common Council." From this allegation it clearly appears that prior to the passage of Ordinance No. 2814 there was not only no salary fixed which could be increased, but there was no salary or compensation attached to the office at all. The presumption arising from the absence of express authorization of compensation by the charter is strengthened by the rule of contemporaneous construction, and, the presumption from eighteen years' acquiescence, that it was not intended by the makers of the charter that the members of the common council should have any compensation for services. It further appears that, in 1905, by an amendment of the charter the number of members of the council was changed from twenty-seven to nine, but no change was made in the provisions of the charter relating to official salaries. This failure is significant, as this omission should have been supplied by an amendment to the charter. The propriety of this is apparent, when it is observed that the general clause under which the present ordinance is justified places the authority to create and fix such salaries in the hands of that body itself. The intention of the makers

of the charter, as expressed by the original charter, cannot be affected by the mere reduction in the number of members of the council by the amendment of 1905.

***44** To meet the effect of the clause in the charter requiring that "all official salaries provided for in this charter" shall be readjusted and fixed anew in the month of January, 1891, and every four years thereafter, appellant contends that as this is the first and original fixing of his compensation, and not a readjustment, or fixing again, or anew, this clause has no application. If we accept this argument as having any weight, then it logically follows that the common council would (the first time) have the power to fix their compensation at any amount they desired, and the members of the council so fixing such salary might thereby become the recipients of their own bounty bestowed without limitation from the public treasury. The same line of reasoning is used in meeting respondent's claim that the ordinance is in violation of section 9 of article XI of the constitution.

None of the cases cited by appellant to support this view consider the question whether or not the power which creates the office should also determine the right of the officer to compensation. In none was it held or contended that a subordinate body was authorized to create a salary for an office which owed its existence to a superior authority, nor do we think such authority could be implied. The two clauses of the charter relied upon here as granting the power relate generally to servants and employees, as well as officers of the corporation. The salary of no other charter officer of the city is dependent upon the existence of this power. The use of the word "officer" in the sense in which it is used in these clauses, or either of them, does not necessarily imply that a charter officer is intended. ([Patton v. Board of Health](#), 127 Cal. 395, [78 Am. St. Rep. 66, [59 Pac. 702](#)].)

Members of city councils occupy a position of trust, and are bound to the same measure of good faith toward their constituents that a trustee is to his *cestui que trust*. ([Andrews v. Pratt](#), 44 Cal. 309.) The mere fact that a member of such a body acts as such in connection with any matter in which he is interested vitiates the transaction. ([Finch v. Riverside](#), 87 Cal. 597, [25 Pac. 765].) It will be presumed that under such circumstances self-interest prevents the individual member from protecting the rights of the public

against his own. (Capital Gas Co. v. Young, 109 Cal. 140, [41 Pac. 869].) The charter here in question prohibits members of the common council from being directly or indirectly *45 interested in contracts whereby they may receive any money or profit from their own action taken in behalf of the city.

No contractual relations arise between an officer and the state by reason of the election or appointment of the former; there is no implied obligation to pay him for his services rendered. To recover he must show a right by law to compensation. (Abbott on Municipal Corporations, sec. 685; Irwin v. Yuba Co., 119 Cal. 686, [52 Pac. 35].) If the act authorizing the making of the city charter provides that the latter shall fix the compensation of the officers of a city, a provision in the charter fixing a maximum will not authorize the council to fix such a salary even within such maximum. (Taylor v. City of Tacoma, 8 Wash. 174, [35 Pac. 584].) If the officer is not satisfied with the compensation, he is not bound to hold the office or perform the duties thereof. (Coyne v. Rennie, 97 Cal. 593, [32 Pac. 578].)

In order, then, that a charter officer shall be entitled to compensation for his services, the burden is upon him to show that either the charter which created the office, or the legislative or constitutional authority under which the charter was framed, attached to that office the right to receive pay for his services. Such showing has not been made here. The power to “make rules and regulations for the government of all servants, etc., ... and to fix salaries and wages not otherwise provided by general law or by this charter,” or the recital that “all other officers and employees as may be fixed by the Common Council,” cannot be held to be a sufficient showing for this purpose. We have not overlooked the fact that in the section relating to official bonds there appears the clause, “all *salaried* officers of this city, other than the Mayor and members of the Common Council, must,” etc. Conceding that in the interpretation of a charter containing an ambiguous statement as to the right of the members of the city council to a salary this clause might be considered in determining the intentions of the charter makers, it can have no application where the charter is devoid of any authorization whatever. Our conclusion in this regard rests upon the fact that it nowhere appears that the charter makers intended that the members of the common council should be compensated for their services.

While this view disposes of the case, there are other reasons which appear to us to justify the trial court in denying *46 the writ asked for. The question of increase of compensation has been presented by both parties as if the time of the change or increase should be determined by the date of the passage of the ordinance. Our own supreme court has expressly said that the test of the time of increase is, “When did the law take effect?” (Harrison v. Colgan, 148 Cal. 76, [82 Pac. 674].) Those cases which construe constitutional inhibitions against an increase of salary similar to section 9 of article XI, upon the theory that its purpose is solely to prevent the possibility of an officer using his official position to obtain an increase of compensation after his election or his term begins, are distinguished by the opinion of the court in that case. The constitutional provision, it is said, was intended as well to avoid and prevent the abuses which may arise by reason of arrangements between candidates who are reasonably assured of election or appointment and the legislative power, if such arrangements be made to take effect after the election of such candidates, regardless of the time of the enactment. The date of the increase in this case, according to this rule, was May 6, 1907, and the discussions as to when the ordinance was enacted become unimportant.

If we were to accept the view of petitioner that he was entitled to receive a salary which was not fixed or expressly provided for by the charter, such a claim against the city would have to be presented to and allowed by the auditing committee of the city before a warrant for it could issue. (Secs. 1, 2, c. II, art. VI.) Only monthly salaries *fixed by the charter* are excepted from the rule provided in these sections. The complaint does not allege any such presentation and allowance, or rejection, and therefore, upon that theory, does not state a cause of action.

Judgment affirmed.

Shaw, J., and Allen, P. J., concurred.

A petition to have the cause heard in the supreme court, after judgment in the district court of appeal, was denied by the supreme court on June 2, 1908, Beatty, C. J., dissenting.

Cal.App. 2 Dist. 1908.

Woods v. Potter

8 Cal.App. 41, 95 P. 1125

END OF DOCUMENT

C

Effective:[See Text Amendments]West's Annotated California Codes [Currentness](#)Constitution of the State of California 1879 ([Refs & Annos](#))[Article XI](#). Local Government ([Refs & Annos](#))**→→ § 1. Counties; subdivisions of state; formation, consolidation and boundary change; removal of county seat; powers; officers and employees**

Sec. 1. (a) The State is divided into counties which are legal subdivisions of the State. The Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

(b) The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in [subdivision \(b\) of Section 4](#) of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

CREDIT(S)

(Adopted June 2, 1970. Amended Nov. 3, 1970; June 6, 1978; Initiative Measure, Nov. 4, 1986; June 7, 1988.)

Current with urgency legislation through Ch. 11 of 2012 Reg.Sess. and all propositions on the 6/5/2012 ballot.

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Effective: January 1, 2004

West's Annotated California Codes [Currentness](#)

Government Code ([Refs & Annos](#))

Title 2. Government of the State of California

Division 3. Executive Department ([Refs & Annos](#))

Part 2. Constitutional Officers ([Refs & Annos](#))

[Chapter 5](#). Controller ([Refs & Annos](#))

[Article 4](#). Reports ([Refs & Annos](#))

→→ § 12463. Annual reports of financial transactions of counties, cities, special districts and school districts; time to report; definitions

(a) The Controller shall compile and publish reports of the financial transactions of each county, city, and special district, respectively, within this state, together with any other matter he or she deems of public interest. The reports shall include the appropriations limits and the total annual appropriations subject to limitation of the counties, cities, and special districts. The reports to the Controller shall be made in the time, form, and manner prescribed by the Controller.

(b) Effective January 1, 2005, the Controller shall compile and publish reports of the financial transactions of each county, city, and special district pursuant to subdivision (a) on or before August 1, September 1, and October 1 respectively, of each year following the end of the annual reporting period. The Controller shall make data collected pursuant to this subdivision available upon request to the Legislature and its agents, on or before April 1 of each year.

(c) The Controller shall annually publish reports of the financial transactions of each school district within this state, together with any other matter he or she deems of public interest. The reports shall include the appropriations limit and the total annual appropriations subject to limitation of the school district. The reports to the Controller shall be made in the time, form, and manner prescribed by the Controller.

(d) As used in this section, the following terms have the following meanings:

(1) "School district" means a school district as defined in [Section 80 of the Education Code](#).

(2) "Special district" means any of the following:

(A) A special district as defined in [Section 95 of the Revenue and Taxation Code](#).

(B) A commission provided for by a joint powers agreement pursuant to Chapter 5 (commencing with 6500) of Division 7 of Title 1.

(C) A nonprofit corporation that is any of the following:

(i) Was formed in accordance with the provisions of a joint powers agreement to carry out functions specified in the

agreement.

(ii) Issued bonds, the interest on which is exempt from federal income taxes, for the purpose of purchasing land as a site for, or purchasing or constructing, a building, stadium, or other facility, that is subject to a lease or agreement with a local public entity.

(iii) Is wholly owned by a public agency.

CREDIT(S)

(Added by Stats.1945, c. 111, p. 459, § 3. Amended by Stats.1949, c. 1521, p. 2705, § 1; Stats.1985, c. 295, § 6; [Stats.1987, c. 1025, § 4](#); [Stats.2003, c. 126 \(S.B.1068\), § 1.](#))

HISTORICAL AND STATUTORY NOTES

Derivation

Stats.1911, c. 550, p. 1071, § 1.

CROSS REFERENCES

Appropriation for identified statutes included in the Governor's budget, see [Revenue and Taxation Code § 2246.2](#).

Financial reports of local agencies, see [Government Code § 53890 et seq.](#)

LIBRARY REFERENCES

[Counties](#)  [159](#).

[Municipal Corporations](#)  [885](#).

[Schools](#)  [92\(3\)](#).

[States](#)  [76](#).

Westlaw Topic Nos. [104](#), [268](#), [345](#), [360](#).

[C.J.S. Counties § 318](#).

[C.J.S. Municipal Corporations §§ 1628 to 1629](#).

[C.J.S. Schools and Schools Districts §§ 726, 728, 737](#).

[C.J.S. States §§ 388 to 389](#).

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d State of California § 46](#), Duties.

West's Ann. Cal. Gov. Code § 12463, CA GOVT § 12463

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Effective: January 1, 2002

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Government Code [\(Refs & Annos\)](#)

Title 5. Local Agencies [\(Refs & Annos\)](#)

Division 2. Cities, Counties and Other Agencies [\(Refs & Annos\)](#)

Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies [\(Refs & Annos\)](#)

 [Chapter 4. Financial Affairs \(Refs & Annos\)](#)

 [Article 9. Financial Reports \(Refs & Annos\)](#)

→→ § 53892. Contents

The report shall state all of the following:

- (a) The aggregate amount of taxes levied and assessed against the taxable property in the local agency, which became due and payable during the next preceding fiscal year.
- (b) The aggregate amount of taxes levied and assessed against this property collected by or for the local agency during the fiscal year.
- (c) The aggregate income during the preceding fiscal year, a general statement of the sources of the income, and the amount received from each source.
- (d) The total expenditures made by administrative departments during the preceding fiscal year, a general statement of the purposes of the expenditures, and the amounts expended by each department.
- (e) The assessed valuation of all of the taxable property in the local agency as set forth on the assessment roll of the local agency equalized for the fiscal year, or, if the officers of the county in which the city or district is situated have collected for the city or district the general taxes levied by the city or district for the fiscal year, the assessed valuation of all taxable property in the city or district as set forth on the assessment rolls for the county equalized for the fiscal year.
- (f) The information required by [Section 53892.2](#), as of the end of the fiscal year.
- (g) The approximate population at the close of the fiscal year and the population as shown by the last regular federal census.
- (h) Other information that the Controller requires.
- (i) Any other matters necessary to complete and keep current the statistical information on assessments, revenues and taxation, collected and compiled by any Senate or Assembly committee on revenue and taxation.
- (j) In the case of cities, the information required by [Section 53892.3](#).
- (k) In the case of community redevelopment agencies, the information required by [subdivisions \(a\), \(b\), and \(g\) of](#)

[Section 33080.1 of the Health and Safety Code](#). The Controller shall forward the information required pursuant to [subdivision \(c\) of Section 33080.1 of the Health and Safety Code](#) to the Department of Housing and Community Development for publication pursuant to Section 33080.6 of that code.

CREDIT(S)

(Added by Stats.1949, c. 1521, p. 2706, § 5. Amended by Stats.1967, c. 1138, p. 2809, § 5; Stats.1969, c. 212, p. 541, § 1; Stats.1984, c. 1523, § 4; [Stats.1990, c. 1608 \(S.B.1822\), § 6](#); [Stats.2001, c. 176 \(S.B.210\), § 17](#).)

HISTORICAL AND STATUTORY NOTES

Amendment of this section by Stats.1984, c. 1523, § 4, was a temporary provision and, by its own terms, was to be repealed on Jan. 1, 1991, at which time the text of this section as amended by Stats.1969, c. 212, § 1, was again to become operative.

The 1990 amendment by c. 1608, § 6, explicitly amended the section as amended by Stats.1984, c. 1523, and deleted a paragraph which read:

“This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1991, pursuant to [Section 9611 of the Government Code](#), Section 53892 of the Government Code, as amended by Section 1 of Chapter 212 of the Statutes of 1969, shall have the same force and effect as if this temporary provision had not been enacted.”

Section 7 of Stats.1990, c. 1608 (S.B.1822), provided for repeal of § 53892 as amended by Stats.1969, c. 212, § 1. It appears that the intent of Stats.1990, c. 1608, was to delete the temporary provision and the provision to which the section was to revert, leaving the section as amended by § 6 of Stats.1990, c. 1608 in full force and effect.

Short title, legislative findings, declarations and intent relating to Stats.2001, c. 176 (S.B.210), the Local Government Omnibus Act of 2001, see Historical and Statutory Notes under [Civil Code § 1360.5](#).

Derivation

Former § 50055 added by Stats.1949, c. 81, p. 257, § 1.

Stats.1911, c. 550, p. 1071, § 2, amended by Stats.1937, c. 187, p. 482, § 1.

CROSS REFERENCES

State Controller, generally, see [Government Code § 12402 et seq.](#)

LIBRARY REFERENCES

[Counties](#)  [159](#).

[Municipal Corporations](#)  [885](#).

Westlaw Topic Nos. [104](#), [268](#).

[C.J.S. Counties § 318](#).

[C.J.S. Municipal Corporations §§ 2096 to 2098](#).

West's Ann. Cal. Gov. Code § 53892, CA GOVT § 53892

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Division 2. Cities, Counties and Other Agencies [\(Refs & Annos\)](#)

Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies [\(Refs & Annos\)](#)

▣ [Chapter 4. Financial Affairs \(Refs & Annos\)](#)

▣ [Article 9. Financial Reports \(Refs & Annos\)](#)

→→ § 53894. Falsification; offense

An officer of a local agency wilfully and knowingly rendering a false report is guilty of a misdemeanor.

CREDIT(S)

(Added by Stats.1949, c. 1521, p. 2707, § 5.)

HISTORICAL AND STATUTORY NOTES

Derivation

Former § 50057: Stats.1911, c. 550, p. 1071, § 3, amended by Stats.1915, c. 406, p. 659, § 1; Stats.1937, c. 187, p. 483, § 2.

CROSS REFERENCES

Punishment for misdemeanors, see [Penal Code § 19](#).

LIBRARY REFERENCES

[Counties](#)  [102](#).

[Municipal Corporations](#)  [174](#).

Westlaw Topic Nos. [104](#), [268](#).

[C.J.S. Counties §§ 198 to 199](#).

[C.J.S. Municipal Corporations §§ 522 to 526](#).

West's Ann. Cal. Gov. Code § 53894, CA GOVT § 53894

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of State and local governments. A condition for exclusion is that the employee must not be subject to the civil service laws of the employing State or local agency.

§ 553.11 Exclusion for elected officials and their appointees.

(a) Section 3(e)(2)(C) provides an exclusion from the Act's coverage for officials elected by the voters of their jurisdictions. Also excluded under this provision are personal staff members and officials in policymaking positions who are selected or appointed by the elected public officials and certain advisers to such officials.

(b) The statutory term "member of personal staff" generally includes only persons who are under the direct supervision of the selecting elected official and have regular contact with such official. The term typically does not include individuals who are directly supervised by someone other than the elected official even though they may have been selected by the official. For example, the term might include the elected official's personal secretary, but would not include the secretary to an assistant.

(c) In order to qualify as personal staff members or officials in policymaking positions, the individuals in question must not be subject to the civil service laws of their employing agencies. The term "civil service laws" refers to a personnel system established by law which is designed to protect employees from arbitrary action, personal favoritism, and political coercion, and which uses a competitive or merit examination process for selection and placement. Continued tenure of employment of employees under civil service, except for cause, is provided. In addition, such personal staff members must be appointed by, and serve solely at the pleasure or discretion of, the elected official.

(d) The exclusion for "immediate adviser" to elected officials is limited to staff who serve as advisers on constitutional or legal matters, and who are not subject to the civil service rules of their employing agency.

§ 553.12 Exclusion for employees of legislative branches.

(a) Section 3(e)(2)(C) of the Act provides an exclusion from the definition of the term "employee" for individuals who are not subject to the civil service laws of their employing agencies and are employed by legislative branches or bodies of States, their political subdivisions or interstate governmental agencies.

(b) Employees of State or local legislative libraries do not come within this statutory exclusion. Also, employees of school boards, other than elected officials and their appointees (as discussed in § 553.11), do not come within this exclusion.

SECTION 7(o)—COMPENSATORY TIME AND COMPENSATORY TIME OFF

§ 553.20 Introduction.

Section 7 of the FLSA requires that covered, nonexempt employees receive not less than one and one-half times their regular rates of pay for hours worked in excess of the applicable maximum hours standards. However, section 7(o) of the Act provides an element of flexibility to State and local government employers and an element of choice to their employees or the representatives of their employees regarding compensation for statutory overtime hours. The exemption provided by this subsection authorizes a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, to provide compensatory time off (with certain limitations, as provided in § 553.21) in lieu of monetary overtime compensation that would otherwise be required under section 7. Compensatory time received by an employee in lieu of cash must be at the rate of not less than one and one-half hours of compensatory time for each hour of overtime work, just as the monetary rate for overtime is calculated at the rate of not less than one and one-half times the regular rate of pay.

§ 553.21 Statutory provisions.

Section 7(o) provides as follows:

(o)(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may

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65 Ops. Cal. Atty. Gen. 517, 1982 WL 155991 (Cal.A.G.)

Office of the Attorney General
State of California

Opinion No. 81-1206

August 24, 1982

THE HONORABLE PAUL B. CARPENTER
MEMBER OF THE CALIFORNIA SENATE

THE HONORABLE PAUL B. CARPENTER, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

Does a California city have authority to expend its funds to reimburse as travel expenses those costs which a physically handicapped member of a city council incurs for the handicap related assistance of others needed by the member to travel in the performance of official duties?

CONCLUSION

A California city has authority to expend its funds to reimburse as travel expenses those costs which a physically handicapped member of a city council incurs for the handicap related assistance of others needed by the member to travel in the performance of official duties if a demand for reimbursement of such costs is approved by the city council unless the charter or an ordinance of the city provides otherwise.

ANALYSIS

The question presented concerns the expenditure of funds of a California city, specifically payment for the assistance provided by another to a physically handicapped member of the city council who requires such assistance for travel in the performance of the member's official duties. This presents the question of the city's power to expend its funds for such purpose.

[Article XI, section 2\(a\), of the California Constitution](#)^[FN1] provides:

‘The Legislature shall prescribe uniform procedure for city formation and provide for city powers.’
The Legislature has complied with this mandate by the enactment of title 4 (§ 34000 et seq.) of the Government Code.

[Article XI, section 3\(a\)](#), provides in part:

‘For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. . . .’

[Article XI, section 5](#), provides:

‘[SEC. 5.](#) (a) It shall be competent in any city charter to provide that the city governed thereunder may make and

enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

‘(b) It shall competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.’

*2 Thus the powers of a California city are derived from the state Constitution, statutes and the city charter, if a charter has been adopted. Of course, these powers are subject to the requirements and limitations of the state and federal Constitutions.

The statute pertinent to the payment of the travel expenses of members of a city council is section 36514.5 which provides:

‘City councilmen may be reimbursed for actual and necessary expenses incurred in the performance of official duties.’

This statute provides the basic authority for cities which do not have a charter to pay the travel and other expenses of members of their city councils from city funds. However, a number of other constitutional and statutory provisions affect the extent of this power and the manner of its exercise.

Article XVI, section 6, provides in part:

‘The Legislature shall have no power . . . to . . . authorize the making of any gift, of any public money . . .’

This provision confines the expenditures of public funds to public purposes. In [Albright v. City of South San Francisco \(1975\) 44 Cal.App.3d 866, 869](#) the court stated:

‘An expenditure of municipal funds is permitted only where it appears that the welfare of the community and its inhabitants is involved and benefit results to the public.’

In the [Albright](#) case the court held that payments of city funds which exceed the amounts actually expended for a verifiable municipal purpose is the equivalent of a gift of public funds in contravention of the state Constitution. Performance of official duties by a member of the city council clearly serves a municipal purpose. In [Collins v. Riley \(1944\) 24 Cal.2d 912, 918](#) the court stated:

‘When an officer is required to travel in order to perform his duty, the payment of his actual necessary living expenses while away from home is a proper item of state expense and, unless expressly forbidden by the Constitution, it is a proper exercise of legislative authority to provide for the officer's reimbursement.’

In [Collins](#) the court specifically addressed the constitutional prohibition against increasing a legislator's compensation during his term of office holding that reimbursement of expenditures made necessary by reason of the office is not compensation within the meaning of the constitutional prohibition. The [Collins](#) case made no reference to the prohibition of gifts of public funds (then art. IV, § 31) but ordered payment of the travel expense claim thus ruling sub silentio that such payment did not constitute a gift of public funds.

In [Albright v. City of South San Francisco, supra, 44 Cal.App.3d 866](#) a taxpayer sought to enjoin the city's practice of paying councilmen \$50 a month as reimbursement for miscellaneous unitemized expenses and also sought reimbursement for prior payments. The judgment denying relief was reversed and the trial court was directed to issue the injunction and order reimbursement of the improper monthly payments. The court observed [\(at p. 870\)](#):

*3 ‘Respondents' reliance upon the authority of [Government Code section 36514.5](#) is misplaced. The section reads: ‘City councilmen may be reimbursed for actual and necessary expenses incurred in the performance of official duties.’ This section does not abrogate the applicability of sections 37201 through 37205 of the same

code. These require the filing of 'demands' that are to be audited in the manner prescribed by ordinance or resolution and are accompanied by a verification of the accuracy of the demand. In [Adams v. City of Modesto \(1901\) 131 Cal. 501, at page 502 \[63 P. 1083\]](#) the court stated that the purpose of the requirement that funds be expended only upon demands presented to the council 'is that they may be 'audited.'"

'To audit is 'to examine and verify.' (Webster's Third New Internat. Dict.) The informal practice that became custom in South San Francisco is such that neither actuality nor necessity of the components of the allowance is subject to verification. The specifics of where, when and purpose simply do not appear in the demands. Obvious questions arise: Are these expenses the same when a councilman is ill or on vacation? What portion is automobile expense or 'availability'? If compensable, does the 'availability' of a compact represent the same expenditure as medium or luxury automobiles? Were coffee breaks or meals with interested citizens related to specific municipal affairs? If audit is to be meaningful, some answer to these question must appear. In this connection, we see no impropriety in permitting these officers to now supplement their pro forma claims with the detail necessary to show the actual and necessary expenditures that were reimbursable under [Government Code section 36514.5.](#)'

Thus reimbursement of a member of a city council for expenses under [section 36514.5](#) is subject to the demand requirements of sections 37201 through 37205.

The rule is settled 'that compensation for official services depends entirely upon the law; that statutes relating to such compensation are strictly construed in favor of the government; that a public officer may only collect and retain such compensation as is specifically provided by law, and that any money paid by a governmental agency without authority of law may be recovered from such officer.'[\(County of San Diego v. Milotz \(1956\) 46 Cal.2d 761, 767.](#) The rule applies as well to reimbursement for expenses as to compensation for services. [\(Madden v. Riley \(1942\) 53 Cal.App.2d 814, 822;60 Ops.Cal.Atty.Gen. 16, 21 \(1977\).\)](#)

Next we focus on the kinds of expense for which [section 36514.5](#) authorizes reimbursement. For convenience we repeat its language: 'City councilmen may be reimbursed for actual and necessary expenses incurred in the performance of official duties.' This language indicates that an expense must meet four requirements to be reimbursable: (1) It must be an expense of a member of the city council; (2) It must be an 'actual' expense; (3) The expense must have been 'incurred in the performance of official duties'; and (4) It must be a 'necessary' expense. We consider each of these requirements in turn and its application to the question presented.

*4 [Section 36514.5](#) does not purport to authorize reimbursement of the expenses of any person other than a member of the city council. Thus payment of a claim presented by the person who provided assistance to a member of the city council on account of such assistance is not authorized by [section 36514.5](#). Those who provide services to a member of the city council must look to that member, not the city, for payment for their services in the absence of some contractual arrangements with the city.

Webster defines 'actual' as real or genuine as distinguished from potential, possible, hypothetical or nominal. In the context of [section 36514.5](#) we believe an actual expense refers to a specific sum of money which the council member has either paid or become legally liable to pay. Thus if the member of the city council neither paid for nor became legally liable to pay for the assistance to such member, such assistance is not the actual expense of the member. Creation of a legal liability to pay for such expenses would normally require an agreement to pay an ascertainable sum as consideration for the services made prior to the rendition of the services.

The requirement that the expense be 'incurred in the performance of official duties' places another qualitative restriction upon the kinds of expenses reimbursable under [section 36514.5](#). The question assumes that the travel of the city council member is in the performance of official duties. Thus we are not concerned in this opinion with the question of what activities constitute official duties. (See [60 Ops.Cal.Atty.Gen. 16, 21-24](#) for a discussion of that question regarding a similar statute.)

[Section 36514.5](#) requires that the expense must be 'necessary' to be reimbursable. Determining whether an expense of a public officer was necessarily incurred was considered in [County of Yolo v. Joyce \(1909\) 156 Cal. 429](#). In the [Joyce](#)

case the district attorney claimed reimbursement for the transcript of testimony in a criminal case he was prosecuting. The board of supervisors paid the claim but later sued to recover the amount paid because the court had not approved preparation of the transcript. The Court of Appeals reversed the judgment ordering reimbursement making these observations:

‘By section 228 of the County Government Act it is provided, however, that expenses necessarily incurred by the district attorney in the ‘prosecution of criminal cases’ are county charges which under subdivision 11 of section 25 of the same act are to be paid out of the county funds under a claim presented to and allowed by the board of supervisors.

‘. . . The district attorney is an executive officer charged with the detection of crime and the prosecution of criminal cases. In furtherance of the proper discharge of his duties the legislature has, under the section of the County Government Act, enlarged his power so as to permit him to incur expense necessary to enforce the criminal law. His authority to do so for that purpose is not made subject to the control or supervision of any court or judicial officer, but is a matter for the consideration of the board of supervisors alone to the extent of determining whether the expense was necessarily incurred so as to constitute a county charge. Of course, the right of a district attorney to incur expense is not an arbitrary one. All that the section of the County Government Act permits is to give to the district attorney, in the first instance, the discretion to determine whether it is necessary in the detection of crime, or the prosecution of a criminal case, to incur an expense chargeable against the county. Any such claim, however, must be presented to the board of supervisors for allowance, and that body reviews the action of the district attorney and determines whether the expense was a necessary one and acts accordingly. And as the board of supervisors is vested with the authority to determine the question whether the expense was necessary or not, and is the tribunal to which is committed under the County Government Act the jurisdiction to supervise the action of the district attorney in incurring the expense, its determination that it was a proper and necessary expense, is conclusive [citations].

*5 While the city council's discretion to determine what expenses are necessary is very broad as indicated in the *Joyce* case it is not unlimited. There must be some connection between the services being reimbursed and the performance of official duties to make the services ‘necessary’ thereto. In [California Teachers Assn. v. Board of Trustees \(1977\) 70 Cal.App.3d 431, 435](#) Presiding Justice Gardner discussed this question in a related context and observed:

‘Necessity connotes that which is indispensable, necessary, unavoidable because compelled, a requisite, required by social or legal compulsion or imperative need. Perhaps a good working definition is something that cannot be done without.’

Thus ‘necessary’ suggests a relationship of dependence. In the context of [section 36514.5](#) this would mean that the performance of official duty is dependent upon incurring the expense in question. Yet the courts have not required a necessity in any absolute sense. In *Collins v. Riley, supra*, necessary traveling expenses were held to include an expenditure for hotel room and meals when traveling away from home on public business. It is physically possible to perform official duties at remote points without expenditures for hotel rooms and meals. One could carry meals from home and sleep in the car though this may not be convenient or very practical. The *Collins* case indicates that practical necessity is all that is required under the reimbursement statutes—a practical need based upon the prevailing business practices.

Applying the requirement that reimbursable expenses be ‘necessary’ to the question presented we note that the question assumes that the assistance of others is needed by the council member to travel in the performance of official duties. The assistance of others is often a practical necessity in modern travel. Payment for the services of many are included in hotel and restaurant bills. In the case of the handicapped person some of the services of others needed for travel may be unique because of the handicap so there may be no general prevailing business practice to provide such unique services. Nevertheless there is nothing in the word ‘necessary’ which suggests that because something is not necessary for all it may not be necessary for some. A special service may be absolutely essential for a handicapped member of the city council to travel and there can be no doubt that such service is ‘necessary’ within the meaning of [section 36514.5](#) in such a case. But as we have seen, absolute necessity is not required, practical necessity will suffice. Whatever services are normally employed by those having a particular handicap to enable them to travel become practically necessary for travel by those with such handicap. Such services would therefore constitute a ‘necessary’

expense within the meaning of [section 36514.5](#).

The determination whether a particular expense is ‘necessary’ under [section 36514.5](#) is made initially by the council member but is subject to review and final determination by the city council when it considers the member's demand for reimbursement. If the demand meets the statutory requirements that the expense is both actual and necessary the city council may approve the demand for payment. It should be noted, however, that [section 36514.5](#) authorizes but does not require reimbursement of specified expenses of members of the city council. The statute says such expenses ‘may be reimbursed.’ Section 14 provides that ‘shall’ is mandatory and ‘may’ is permissive and [section 5](#) provides that these definitions shall govern the construction of the Government Code unless the provisions or Context otherwise requires. Nothing in the provisions or context of [section 36514.5](#) requires a different construction. Thus a city council may refuse to reimburse an expense of one of its members which was actually incurred and necessary to the performance of the member's official duties.

*6 Many cities have specified the kinds of expenses which are reimbursable and the kind of information and verification required on the demand for reimbursement by city ordinance or resolution. [\[FN2\]](#) While preliminary audit procedures may be delegated the final audit responsibility rests with the city council in its approval or rejection of the demands. Of course, any ordinance would constitute a legislative act binding on the city council and its members until amended or repealed in the manner provided by law.

We noted at the beginning of this analysis that a city may derive some of its powers from a city charter. [Article XI, section 5](#) (quoted [supra](#)), provides that a city charter may provide for the regulation of municipal affairs and the regulation of municipal affairs pursuant to such charter shall supersede all laws inconsistent therewith.

In [City of Pasadena v. Charleville \(1932\) 215 Cal. 384, 385](#) (overruled on other grounds in [Purdy & Fitzpatrick v. State of California \(1969\) 71 Cal.2d 566, 585-586](#); see also [Sonoma County Organization of Public Employees v. County of Sonoma \(1979\) 23 Cal.3d 296, 317](#)) the court observed:

‘The hiring of employees generally by the city to perform labor and services in connection with its municipal affairs and the payment of the city's funds for services rendered to the city by its employees in the administration of its municipal affairs is not subject to or controlled by general laws.’

We believe that reimbursement of city officers and employees for expenses incurred in performing city duties is a municipal affair within the meaning of [article XI, section 5](#). (Cf. [Mayes v. Kuhn \(1950\) 97 Cal.App.2d 203](#) affirming a judgment that county supervisor was not entitled to mileage authorized by state statute because county charter provided otherwise.) Thus a city charter may provide for the reimbursement of expenses of members of a city council in a manner different from that provided in [section 36514.5](#). In such case the provisions authorized by the charter would supersede those in [section 36514.5](#).

We conclude that city funds may be lawfully expended to reimburse as travel expenses those costs which a physically handicapped member of a city council incurs for the handicap related assistance of others needed by the member to travel in the performance of official duties if a demand for reimbursement of such costs is approved by the city council unless the charter or an ordinance of the city provides otherwise.

GEORGE DEUKMEJIAN
Attorney General

JACK R. WINKLER
Assistant Attorney General

[\[FN1\]](#) Article references shall be to the California Constitution and unidentified section references shall be to the Government Code unless otherwise indicated.

[\[FN2\]](#) Section 37202 provides that ‘the legislative body shall approve or reject demands only after such demands have been audited in the manner prescribed by ordinance or resolution.’

65 Ops. Cal. Atty. Gen. 517, 1982 WL 155991 (Cal.A.G.)

END OF DOCUMENT

ASSEMBLY THIRD READING
AB 1234 (Salinas)
As Amended April 5, 2005
Majority vote

LOCAL GOVERNMENT 6-0

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|Ayes:|Salinas, De La Torre, | | |
|      |Houston, Lieber, Nation, | | |
|      |Wolk | | |
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SUMMARY : Clarifies the rules pertaining to compensation to members of a local government legislative body for attendance at authorized meetings and conferences; requires the establishment of guidelines for reimbursement of members of a local government legislative body for actual and necessary expenses incurred in the performance of official duties; and, establishes provisions for ethics training for local government officials and designated employees. Specifically, this bill :

- 1) Defines a "governing body" as the board of supervisors in the case of a county or city and county, the city council or board of trustees in the case of a city, and the board of directors or other governing body in the case of a district or other public agency.
- 2) Defines "local agency" as a city, county, city and county, charter city, or special district.
- 3) Specifies the types of occurrences that a legislative body member may attend and receive compensation from a local agency.
- 4) Authorizes a local agency to pay compensation for other types of occurrences if the legislative body adopts a written policy in a regular public meeting specifying other specific occasions for which a legislative body member may receive payment.
- 5) Specifies that local officials who receive a regular salary for performance of official duties are exempt from the above requirements.

- 6) Stipulates that these compensation provisions are additional to other laws authorizing payment of compensation to members of legislative bodies of local agencies.
- 7) Authorizes a local agency to reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties.
- 8) Requires that, if a local agency reimburses members of a legislative body for expenses, the governing bodies of the local agency must adopt a written policy in a regular public meeting specifying the types of occurrences for which a legislative body member may receive reimbursement of travel related expenses.
- 9) Authorizes a governing body to either adopt a travel reimbursement policy that specifies the procedures and reimbursement rates for meals, lodging, and travel, or use Internal Revenue Service (IRS) rates for reimbursement of meals, lodging, and travel.
- 10) Specifies that if the lodging is in connection with a conference, lodging costs shall not exceed the group rate published by the conference sponsor, if available. **140**
- 11) Requires that any expenses incurred that fall outside the

October 18, 2007

Mr. David M. O'Hara
Law Offices of David M. O'Hara
39300 Civic Center Drive, Suite 110
Fremont, CA 94538

Re: Notice of Dismissal of Test Claim Filing
(Cal. Code Regs, tit. 2, § 1183, subd. (i))
Ethics Training Requirements
Government Code sections 53234 and 53235.2;
Statutes 2005, Chapter 700 (AB 1234)
Union Sanitary District, Claimant

Dear Mr. O'Hara:

On September 17, 2007, the Commission on State Mandates (Commission) received a test claim filing on Government Code sections 53234 and 53235.2 (Stats. 2005, ch. 700 (AB 1234)), *Ethics Training Requirements*, by Union Sanitary District. The test claim filing was returned on September 28, 2007, on the ground that that it was not timely filed pursuant to Government Code section 17551, subdivision (c). The test claim was filed more than one year following the effective date of AB 1234, January 1, 2006.

The Commission has received your letter dated October 5, 2007, arguing that the test claim was timely filed pursuant to Government Code section 17551, subdivision (c), since it was filed "within twelve months of incurring increased costs as a result of the statute" Enclosed in your letter is a photocopy of a check made payable to you by Union Sanitary District in the amount of \$22,013.34 for services rendered to prepare the Ethics Training Manual and delivery of ethics training. The check is dated September 21, 2006. You contend that costs were incurred by Union Sanitary District as a result of AB 1234 on September 21, 2006, and that the time to file a test claim for reimbursement of costs as a result of AB 1234 began to accrue on September 21, 2006. Thus, you contend the filing of the test claim on September 17, 2007, was timely.

Upon further review of your letter and test claim filing, and for the reasons described below, we have determined that the Commission does not have jurisdiction to hear Union Sanitary District's claim. Therefore, the test claim filing is dismissed pursuant to the Commission's regulations. (Cal. Code Regs, tit. 2, § 1183, subd. (i).)

Union Sanitary District is Not an Eligible Claimant Under Article XIII B, Section 6

Reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from "proceeds of taxes," or tax revenues. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.)

[A]rticle XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on “appropriations subject to limitation,” which consists primarily of the authorization to expend during a fiscal year the “proceeds of taxes.” (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to the proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute “proceeds of taxes.” (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.)

Section 9 of Article XIII B sets forth specific circumstances wherein the costs in question *are not* “appropriations subject to limitation,” and therefore subvention is not required. One such exclusion to the limitation is found in subdivision (c), which applies to special districts:

Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per \$100 of assessed value; *or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.* (Emphasis added.)

Thus, article XIII B, section 6 does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments. (*County of Fresno, supra*, 53 Cal.3d at p. 487.) The courts have concluded that although article XIII B, section 6 does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of the provision demonstrates that it applies only to costs recovered solely from tax revenues. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.) A local agency cannot accept the benefits of an exemption from article XIII B’s spending limit while asserting an entitlement to reimbursement under article XIII B, section 6. (*City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.)

According to Union Sanitary District’s website,¹ the District receives revenue from four primary sources; “Sewer service charges, capacity fees, other minor operating revenues such as permits, inspections and outside work that we perform in cooperation with other municipalities, and interest earnings on reserve funds.” Its revenue is not funded through “proceeds of taxes,” or property taxes. Moreover, on May 10, 2007, the State Controller’s Office issued its annual report for special districts for fiscal year 2004-2005. The report shows, on page 226, that the revenues and expenditures of Union Sanitary District in fiscal year 2004-2005 were not subject to the appropriations limit of article XIII B of the California Constitution.²

¹ <http://www.unionsanitary.dst.ca.us/financialinfo.htm> (See attached.)

² The State Controller’s *Special Districts Annual Report*, dated May 10, 2007, is attached.

Therefore, since Union Sanitary District is not funded by proceeds of taxes, it is exempt from article XIII B's spending limit. Thus, Union Sanitary District is not a local agency eligible to claim reimbursement under article XIII B, section 6 of the California Constitution.

Accordingly, the test claim filing is dismissed and is hereby returned.

As provided in the Commission's regulations, you may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181, subdivision (c).

Please call Camille Shelton, Chief Legal Counsel, at (916) 323-8215 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enc.

From: JoAnne Speers [<mailto:SpeersJ@cacities.org>]
Sent: Monday, October 23, 2006 10:44 AM
To: Kolitsos, Katie
Cc: ted.prim@doj.ca.gov; jwallace@fppc.ca.gov
Subject: AB 1234 Online Training Launched

Hi Katie:

Just fyi, the FPPC launched its free online AB 1234 training course late last week, available through the FPPC's website at <http://localethics.fppc.ca.gov>. We also have the link on the Institute's AB 1234 webpage: www.ca-ilg.org/ab1234compliance.

The course is available to local officials without charge and is truly online (i.e., officials can access the course 24/7, read various screens, answer self-test questions, and ultimately can print out a certificate evidencing their participation in the course).

While we all acknowledge that this kind of training has its limitations, the FPPC, Attorney General and the Institute for Local Government collaborated on the effort to make sure that folks have a variety of options available to them to satisfy AB 1234's requirements. The Institute is very grateful to the AT&T Foundation for funding the Institute's contributions to this effort. John Wallace at the FPPC and Ted Prim at the AG's office performed yeoman service in getting this effort together.

This online course supplements the Institute's other AB 1234-related training options, including the more old-fashioned self-study materials we published earlier this year as a two-part series in *Western City* magazine (also available at www.ca-ilg.org/ab1234compliance) for those who want to print out and distribute the materials to their officials) as well as various in-person trainings being offered throughout the state.

This information has been posted to various local government listserves and distributed to the Leagues regional public affairs managers.

JoAnne Speers
Institute for Local Government
Direct Dial: 916/658-8233



JOHN CHIANG
California State Controller

December 13, 2011

To the Citizens, Governor, and Members of the Legislature of the State of California:

I am pleased to present the 60th edition of the *Special Districts Annual Report*, for the fiscal year ended June 30, 2010. This report is a compilation of financial data provided by county auditors and special district officials.

Information in this report was compiled from standardized reports utilizing accounting and reporting procedures in accordance with the Uniform Accounting Systems of Special Districts, prescribed in section 1113.1 of the California Code of Regulations. The exceptions are special districts engaged in electric and hospital activities. These special districts are required to use accounting systems prescribed by the California Public Utilities Commission, the Federal Power Commission, or the Office of Statewide Health Planning and Development. They are, therefore, exempt from the provisions of the California Code of Regulations.

Following are highlights of the financial activities of California's special districts for the fiscal year (FY) ended June 30, 2010:

- Total revenues decreased by 0.57% from \$40.32 billion in FY 2008-09 to \$40.09 billion in FY 2009-10. Non-Enterprise General Purpose transactions, mainly property taxes and the proceeds of long-term debt, accounted for the largest portion of reported revenues, increasing from \$12.52 billion to \$12.63 billion, a 0.86% increase.
- Total expenditures increased by 0.24% from \$40.85 billion in FY 2008-09 to \$40.95 billion in FY 2009-10. Non-Enterprise General Purpose transactions, mainly salaries, wages and benefits, and fixed assets, accounted for the largest portion of reported expenditures, increasing from \$11.82 billion to \$12.28 billion, a 3.84% increase.
- Total outstanding long-term debt decreased by 0.25% from \$75.14 billion in FY 2008-09 to \$74.95 billion in FY 2009-10. Revenue Bonds accounted for the largest portion of the debt, increasing from \$47.79 billion to \$46.66 billion, a 2.35% decrease.

I would like to thank the many government representatives who assisted in providing my office with this information in a timely manner. Their contributions and the dedicated work of my staff provide the Legislature and taxpayers with detailed information on the financial activities of California's special districts.

Sincerely,

Original signed by:

JOHN CHIANG
California State Controller

Table 1. Special District Annual Report — Fiscal Year 2009-10 — (continued)
 General Information: Revenues, Expenditures, Debt and Appropriations Limits by
 Special District in Alphabetical Order

Name of Special District	Principal County	Type Code (a)	Gov Body (b)	Activity	Total Revenues	Total Expenditures	Total Debt	Appropriations Limit	Total Annual Appropriations Subject to Limit
Twin Harb Community Services District — (continued)	Tuolumne	5.1	0	Local and Regional Planning or Development	\$ —	\$ —	—	—	—
—	—	—	—	Recreation and Park	148,982	140,879	—	—	—
—	—	—	—	Waste Disposal Enterprise	823,988	674,448	40,000	—	—
—	—	—	—	Water Enterprise	1,036,359	1,122,148	1,251,635	—	—
Twentynine Palms Cemetery District	San Bernardino	4.	0	Cemetery	231,956	228,357	—	—	—
Twentynine Palms County Water District	San Bernardino	42.	0	Fire Protection	1,274,905	1,287,052	—	—	—
—	—	—	—	Water Enterprise	4,451,384	3,894,326	2,649,058	—	—
Twin Cities Police Authority	Marin	50.	0	Police Protection and Personal Safety	8,557,274	7,989,517	—	—	—
Utah United School District School Building Corporation	Mendocino	54.	0	Financing or Constructing Facilities	2,934,518	4,865,000	—	—	—
Utah Valley Fire Protection District	Mendocino	7.	0	Fire Protection	1,114,583	1,323,077	580,483	—	—
Utah Valley Sanitation District (Mendocino)	Mendocino	31.	0	Waste Disposal Enterprise	4,144,009	3,872,976	—	26,336	4,341
Utah Valley Lighting District	Mendocino	18.	S	Lighting and Lighting Maintenance	6,384	4,341	—	—	—
Union Public Utility District	Calaveras	40.1	0	Water Enterprise	1,295,519	1,134,544	3,478,666	—	—
Union Sanitary District (Alameda)	Alameda	30.1	0	Waste Disposal Enterprise	411,001,643	45,939,709	34,511,153	—	—
United Water Conservation District	Ventura	46.4	0	Electric Enterprise	77,932	77,932	—	—	—
—	—	—	—	Flood Control and Water Conservation	7,994,100	6,777,009	8,550,477	—	—
—	—	—	—	Recreation and Park	141,425	482,873	—	—	—
—	—	—	—	Water Enterprise	8,848,849	8,428,714	8,305,890	—	—
United Water Conservation District Public Facilities Financing Corporation	Ventura	54.1	0	Financing or Constructing Facilities	—	—	15,465,000	—	—
University Heights Area Drain Maintenance (San Mateo)	San Mateo	19.	S	Drainage and Drainage Maintenance	17,949	396	—	395,406,886	186,008,910
Upland Cemetery District	Butte	4.	0	Cemetery	10,052	10,784	—	19,000	10,127
Upland Public Financing Authority	San Bernardino	50.	0	Financing or Constructing Facilities	265,463	265,285	1,560,000	—	—
Upper Kings Basin Integrated Regional Water Management Authority	Fresno	50.	0	Governmental Services	119,000	59,699	—	—	—
Upper Lake Cemetery District	Lake	4.	0	Cemetery	70,586	62,149	—	—	—
Upper Lake County Water District	Lake	42.	0	—	—	—	—	—	—

(a) Refers to type code description in Appendix A
 (b) Governing Body: S=County Board of Supervisors; C=City Council; O=Other


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|SENATE RULES COMMITTEE           | AB 1234 |
|Office of Senate Floor Analyses  |         |
|1020 N Street, Suite 524         |         |
|(916) 445-6614                   |         |
|327-4478                         |         |
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THIRD READING

Bill No: AB 1234
 Author: Salinas (D)
 Amended: 7/13/05 in Senate
 Vote: 21

SENATE LOCAL GOVERNMENT COMMITTEE : 9-0, 6/15/05
 AYES: Kehoe, Cox, Ackerman, Kuehl, Machado, McClintock,
 Perata, Soto, Torlakson

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 71-0, 4/21/05 - See last page for vote

SUBJECT : Local agencies: compensation and ethics

SOURCE : Author

DIGEST : This bill, provided that state law authorizes compensation, allows a local agency to compensate members of its legislative body for attending (1) a meeting of the legislative body, (2) a meeting of an advisory body, (3) a conference or educational activity that complies with the Brown Act, including ethics training, and (4) other events, but only if the governing body has adopted a written policy specifying those other occasions. This bill inserts cross-references to these requirements into special districts' principal acts. This bill does not apply to local agencies that pay salaries to the members of the their legislative bodies, including general law cities, certain irrigation districts, certain municipal utility

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districts, harbor districts, and counties.

ANALYSIS : Existing law provides for the establishment and operations of cities, counties, cities and counties, districts, and other local government agencies, the composition of their governing bodies, and the payment of governing body members for attending meetings and performing other duties, and prescribes conflicts of interest.

Compensation . The most common compensation for special districts' board members are stipends. Many districts pay stipends to their board members for attending a meeting or performing a day's work, following statutory schedules. Recreation and park districts, for example, may pay stipends of up to \$100 a day for attending board meetings, but directors cannot receive more than \$500 a month. A few types of special districts have statutory permission to pay regular monthly salaries to their board members: irrigation districts that are in the electricity business, harbor districts, and the East Bay Municipal Water District.

The California Constitution requires county supervisors in general law counties to set their own compensation by referendable ordinances. Charter counties must provide for setting their county supervisors' compensation in their charters. Most counties pay salaries to their county supervisors.

Charter cities set their own city councilmembers' compensation, most pay salaries. General law cities may pay salaries to their councilmembers, using a population-based statutory schedule.

This bill, provided that state law authorizes compensation, allows a local agency to compensate members of its legislative body for attending (1) a meeting of the legislative body, (2) a meeting of an advisory body, (3) a conference or educational activity that complies with the Brown Act, including ethics training, and (4) other events, but only if the governing body has adopted a written policy specifying those other occasions. This bill inserts cross-references to these requirements into special

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districts' principal acts. This bill does not apply to local agencies that pay salaries to the members of the their legislative bodies, including general law cities, certain irrigation districts, certain municipal utility districts, harbor districts, and counties.

Expenses . Cities, counties, and most special districts may reimburse the members of the legislative bodies for their actual and necessary expenses.

Provided that state law authorizes reimbursement for expenses and if a local agency pays reimbursement, this bill requires the agency to adopt written policies for reimbursing travel, meals, lodging, and other actual and necessary expenses. The agency's written policies may specify reasonable reimbursement rates. If the agency does not adopt its own rates, it must use the Internal Revenue Service's (IRS's) reimbursement rates. Reimbursement for lodging at a conference or an educational activity cannot exceed the maximum available group rate. If group rate lodging is not available, the official must use comparable lodging.

This bill requires the local legislative body's members to use government and group rates for travel and lodging when available. Expenses that fall outside the agency's travel policy or the IRS's rates must be approved by the agency in advance, unless services are not available at those rates. These limits do not supersede other laws setting local

reimbursement rates.

Local legislative body members must use expense report forms to claim reimbursement for meals, lodging, and travel. The expense reports must document compliance with the agency's reimbursement policies. Legislative body members must submit their expense reports within a reasonable time, along with expense receipts. At their next regular meeting, legislative body members must give brief reports about the meetings they attended at the agency's expense. The documents are subject to disclosure under the California Public Records Act.

Penalties for misusing public resources or falsifying expense reports include loss of reimbursement privileges, restitution to the local agency, civil penalties under

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existing law, and criminal prosecution, leading to prison and disqualification from office.

This bill inserts cross-references to these requirements into special districts' principal acts.

Ethics Training . State law prohibits unethical conduct by public officials:

1. Public officials cannot have financial interests in contracts made in their official capacities. Those contracts are void. Violations are crimes and can result in permanent disqualification from public office.
2. Those prohibitions do not apply to public officials who have only specified "remote interests" in contracts.
3. Local officials cannot engage in paid activities that conflict with their public duties. Local agencies can adopt their own rules and disciplinary procedures.
4. Local officials cannot solicit political contributions from other officials or their employees.
5. Public officials with prohibited financial interests must disclose the conflict, recuse themselves, and leave the discussion until matters conclude.

The Political Reform Act of 1974 also governs local officials' behavior, including disclosure of their economic interests and campaign regulations.

If a local agency provides "any type of compensation" to a member of its legislative body, this bill requires all members of the legislative body and its designated employees to receive two hours of ethics training every two years.

The ethics training must cover ethics principles and relevant ethics laws. This bill provides that if any entity develops criteria for the ethics training, then the Fair Political Practices Commission and the Attorney General shall be consulted regarding any proposed course content. A local agency must annually tell its local

officials about available ethics training. A local agency or local government association can offer ethics training courses (in person or online) or self-study materials. The training providers must give the participants proof of participation.

This bill sets deadlines for local officials to receive ethics training:

1. Local officials in office on January 1, 2006, must receive their ethics training by January 1, 2007. This requirement does not apply to elected officials whose terms end by January 1, 2007.
2. Local officials whose service begins on or after January 1, 2006, must receive their ethics training within a year of starting service. They must receive ethics training at least once every two years thereafter.

Ethics training at least once every two years is satisfactory for a local official who serves more than one local agency.

Local agencies that require ethics training must keep records of the dates that local officials met their requirements and of the providing entity. Regardless of other record retention statutes, local agencies must retain their records for at least five years. These records are public records subject to disclosure under the California Public Records Act.

Local charters . The California Constitution gives charter cities control over their "municipal affairs." The Constitution requires county charters to provide for their county supervisors' compensation. Because of these constitutional authorizations, the Legislature cannot control the governance of charter cities and charter counties, except on matters of statewide concern.

This bill declares that its provisions apply to charter cities, charter counties, and charter cities and counties because "transparency in the activities of local governments is a matter of statewide concern." This bill's definition of "local agency" includes charter cities,

CONTINUED

charter counties, and charter cities and counties.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 7/12/05)

Amador Water Agency
American Federation of State, County, and Municipal

Employees
 Association of California Water Agencies
 Baker, Manock & Jensen
 Bear Valley Community Services District
 Biggs-West Gridley Water District
 Bighorn-Desert View Water Agency
 Borrego Water District
 Browns Valley Irrigation District
 California Association of Recreation and Park Districts
 California Association of Sanitation Agencies
 California Fire Chiefs Association
 California Municipal Utilities Association
 California Special Districts Association
 California State Association of Counties
 Calleguas Municipal Water District
 Castaic Lake Water Agency
 Castroville Water District
 Central Basin Municipal Water District
 Contra Costa Water District
 Cucamonga Valley Water District
 Del Rio Woods Recreation and Park District
 East Bay Municipal Utility District
 Eastern Municipal Water District
 El Dorado Irrigation District
 El Toro Water District
 Elsinore Valley Municipal Water District
 Fall River Mills Community Services District
 Fire Districts Association of California
 Foothill Municipal Water District
 Goleta West Sanitary District
 Helix Water District
 Hidden Valley Lake Community Services District
 Hispanic Chamber of Commerce Silicon Valley
 Humboldt Bay Municipal Water District
 Imperial Irrigation District

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Indian Wells Valley Water District
 Irvine Ranch Water District
 Kern County Cemetery District
 Kern County Water Agency
 Kings River Conservation District
 Lagerlof, Senecal, Bradley, Gosney & Kruse, LLP
 Las Virgenes Municipal Water District
 League of California Cities
 Lincoln Avenue Water Company
 Merced Irrigation District
 Metropolitan Water District of Southern California
 Midpeninsula Regional Open Space District
 Modesto Irrigation District
 Monte Vista Water District
 Mosquito and Vector Control Association of California
 Municipal Water District of Orange County
 Nevada Irrigation District
 Olivenhain Municipal Water District
 Orange County Water District
 Pajaro Valley Water Management Agency
 Public Water Agencies Group
 Reclamation District No. 108
 Rincon del Diablo Municipal Water District
 Rio Alto Water District
 San Bernardino Valley Water Conservation District
 San Diego County Water Authority
 San Juan Water District

Santa Ana Watershed Project Authority
 Santa Clara County La Raza Roundtable
 Santa Clara County Special Districts Association
 Santa Clara Valley Water District
 Solano Irrigation District
 South San Joaquin Irrigation District
 South Tahoe Public Utility District
 Stockton East Water District
 Tehama-Colusa Canal Authority
 Tulare Irrigation District
 Tuolumne Utilities District
 United Water Conservation District
 Vallecitos Water District
 Valley Center Municipal Water District
 Vista Irrigation District
 Walnut Valley Water District
 Water Replenishment District of Southern California

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West Basin Municipal Water District
 Yorba Linda Water District

ASSEMBLY FLOOR :

AYES: Aghazarian, Arambula, Baca, Benoit, Berg, Bermudez,
 Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez,
 Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore,
 Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg,
 Hancock, Harman, Haynes, Jerome Horton, Shirley Horton,
 Houston, Huff, Jones, Karnette, Klehs, Koretz, La Malfa,
 Laird, Leno, Leslie, Levine, Lieber, Liu, Matthews, Maze,
 McCarthy, Mountjoy, Mullin, Nakanishi, Nava, Negrete
 McLeod, Niello, Parra, Plescia, Richman, Ridley-Thomas,
 Sharon Runner, Ruskin, Saldana, Salinas, Spitzer,
 Strickland, Torrico, Tran, Umberg, Vargas, Walters, Wolk,
 Wyland, Yee, Nunez

NO VOTE RECORDED: Bass, Gordon, Keene, La Suer, Montanez,
 Nation, Oropeza, Pavley, Villines

AGB:mel 7/13/05 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

RESOLUTION NO. 2652

**UNION SANITARY DISTRICT
ORDINANCE NO. 31.34**

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF SEWER SERVICE CHARGES FOR FISCAL YEARS 2011, 2012 AND 2013 FOR SERVICES AND FACILITIES FURNISHED BY DISTRICT'S WASTEWATER SYSTEM, COLLECTION PROCEDURES, PENALTIES FOR DELINQUENCY, RESTRICTION ON USE OF FUNDS DERIVED, ELECTION TO HAVE SEWER SERVICE CHARGES COLLECTED ON THE ALAMEDA COUNTY TAX ROLL

The Board of Directors of the UNION SANITARY DISTRICT does ordain as follows:

**ARTICLE I
GENERAL**

SECTION 1. PURPOSE

- (a) The purpose of the sewer service charge is to raise revenue for the cost of maintenance and operation of the UNION SANITARY DISTRICT wastewater facilities used for the collection, treatment and disposal of wastewater, industrial wastewater, industrial waste, payment of principal and interest on bonds and capital recovery costs in accordance with Federal and State Revenue Program guidelines. The funds derived from the sewer service charge shall be used for only those purposes provided for in Division 5, Part 3, Chapter 6, Article 4 (commencing with Section 5470) of the Health and Safety Code of the State of California.
- (b) The purpose of this ordinance is to establish a method of sharing the cost of operation of the District's collection, transport, and treatment facilities among the users of sewer service. For commercial and industrial dischargers, an estimation of the relevant wastewater flow constituents and loadings are utilized which are known to be historically valid.
- (c) Quantity of wastewater flow is an important factor in the cost of collection, transport and treatment of industrial and commercial wastewater discharge. Therefore, the quantity of discharge is calculated from flow for the prior year. These flows may vary widely. The District bills the industrial and commercial users the following year for what is in essence the previous year's discharge. For this reason there can be no adjustments to sewer service charges based only upon a change in water usage for a particular user. This change in usage will be reflected in the ensuing year's bill.

ARTICLE II
DEFINITIONS

SECTION 1. DWELLING UNITS

The following residential establishments shall be deemed to have the following number of dwelling units:

- (a) Single family residential dwelling, designed for occupancy by one family: one dwelling unit.
- (b) Duplex, triplex, fourplex, townhouse or condominium, apartment house, mobile home park or other multi-residential establishment, designed for occupancy for living purposes by more than one family, which is divided into separate housekeeping units, each of which is designed for occupancy by one family only: each housekeeping unit shall be deemed to be one dwelling unit.

SECTION 2. COMMERCIAL OR INSTITUTIONAL USE

Any parcel or portion thereof discharging domestic wastewater and shall include the following:

- (a) Parcels used for commercial or business purposes.
- (b) Hotel, auto court, motel and similar transient living facilities.
- (c) Schools, churches, hospitals, convalescent homes, parks, public office and service buildings public transportation facilities, or other types of public facilities or publicly owned facilities available for public use.

SECTION 3. INDUSTRIAL

Any parcel or portion thereof used for manufacturing, processing or other operations which discharges non-domestic wastewater by reason of manufacturing, processing or other operations involved.

SECTION 4. DOMESTIC WASTEWATER

Wastewater of a quality essentially similar to that of a single family dwelling.

SECTION 5. OWNER

Any human being, individual, firm, company, partnership, association, and private or public and municipal corporations, the United States of America, the State of California, districts and all political subdivisions, governmental agencies and mandatories thereof.

SECTION 6. FAST FOOD RESTAURANTS

Restaurants that serve all food on disposable plates, cups and utensils.

SECTION 7. FULL SERVICE RESTAURANTS

Restaurants with sit down service that utilize washable plates, cups or utensils.

ARTICLE III **SEWER SERVICE CHARGE**

SECTION 1. CLASSIFICATION

The owner of each parcel of property as it appears on the Assessor's records of Alameda County lying within the UNION SANITARY DISTRICT and upon which there are wastewater facilities shall pay a sewer service charge in accordance with the purpose for which said parcel is used, as hereinafter set forth in Section 2. In the event that the use of any parcel results in the discharge of wastewater in more than one classification, there shall be an annual charge for each classification of use of said parcel and the annual sewer service charges for such parcel shall be the aggregate of all such annual charges.

SECTION 2. RATES

Each individual parcel of land connected to the District sewer system is subject to a minimum charge equal to one dwelling unit as listed in (a) below, with the exception of those multiple dwelling units which are specified in subsection (b).

- (a) Residential dwelling units as defined in Section 1(a) of Article II: FY 2011
\$289.84 per dwelling unit per year. FY 2012 \$304.33 per dwelling unit per year.
FY 2013 \$319.55 per dwelling unit per year.
- (b) Residential dwelling units as defined in Section 1(b) of Article II: FY 2011
\$255.93 per dwelling unit per year. FY 2012 \$268.73 per dwelling unit per year.
FY 2013 \$282.17 per dwelling unit per year

Sewer service charges that exceed the minimum rate specified above in subsection (a) shall be calculated as follows:

- (c) Restaurants shall pay either the rate for fast food or full service restaurant as defined in Sections 6 and 7 of Article II. Unit rates for the volume of wastewater discharged are as follows:

Fast Food Restaurants \$5.80 per 1,000 gallons per year in FY 2011;
\$6.09 in FY 2012; \$6.39 in FY 2013.

Full Service Restaurants \$7.41 per 1,000 gallons per year in FY 2011;
\$7.78 in FY 2012; \$8.17 in FY 2013.

- (d) Commercial or institutional use as defined in Section 2 of Article II, or wastewater discharged from industrial uses that are not sampled by the District, shall be determined by classifying the parcel into one of three strength classifications: strong, moderate or weak. Unit rates for the volume of wastewater discharged and examples of the types of uses which fall into the strong, moderate and weak categories are as follows:

Weak - \$2.87 per 1,000 gallons discharged per year in FY 2011; \$3.01 in FY 2012; \$3.16 in FY 2013.

Examples of establishments assigned to the weak user classification group include, but are not limited to the following: garden/nurseries, libraries, retail stores, schools, churches, spas and health clubs, professional offices, and soft water processing. The weak strength category is based on an average wastewater strength for the group of 144 milligrams per liter of suspended solids, and 331 milligrams per liter of chemical oxygen demand.

Moderate - \$3.28 per 1,000 gallons discharged per year in FY 2011; \$3.44 in FY 2012; \$3.61 in FY 2013.

Examples of establishments assigned to the moderate user classification group include, but are not limited to the following: car washes, service stations, bars, dining and reception halls, hotels and motels without dining facilities, hospitals, convalescent homes, mixed multi-tenant retail (unless a more specific rate applies) cold storage facilities, theaters, medical offices, and miscellaneous commercial and industrial. The moderate strength category is based on an average wastewater strength for the group of 199 milligrams per liter of suspended solids, and 536 milligrams per liter of chemical oxygen demand.

Strong - \$6.07 per 1,000 gallons discharged per year in FY 2011; \$6.37 in FY 2012; \$6.69 in FY 2013.

Examples of establishments assigned to the strong user classification group include, but are not limited to the following: auto steam cleaners, bakeries, restaurants, markets with a bakery or deli, mortuaries, bowling alleys with dining facilities. The strong strength category is based on an average wastewater strength for the group of 489 milligrams per liter of suspended solids, and 1,839 milligrams per liter of chemical oxygen demand.

- (e) Industrial use as defined in Section 3 of Article II and that have wastewater sampled by the District shall be based on the total volume, chemical oxygen demand and suspended solids discharged to the sewer system. The charges for these three components shall be calculated and added to arrive at the total

sewer service charge. The unit rates for each of the three components are provided below:

Volume - \$1.82 per 1,000 gallons per year in FY 2011; \$1.91 in FY 2012; \$2.01 in FY 2013.

Chemical Oxygen Demand - \$184.72 per 1,000 pounds per year in FY 2011; \$193.96 in FY 2012; \$203.66 in FY 2013.

Suspended Solids - \$338.68 per 1,000 pounds per year in FY 2011; \$355.61 in FY 2012; \$373.39 in FY 2013.

SECTION 3. ADJUSTMENTS

The owner of any parcel subject to the scheduled charges set forth in Section 2 above may appeal to the Union Sanitary District staff if the charges imposed do not fairly reflect the quantity of discharge made to the sanitary sewer for any period. Any appeal should be made within ninety (90) days of receiving the tax bill reflecting the charges imposed, which relate to actual usage of water for the prior year. In most instances, the Union Sanitary District staff will make any adjustment which is in order. Any such appeal can only relate to the quantity of water actually discharged to the sewer system and cannot relate to strength of discharge or category of discharger. The Union Sanitary District staff will have forty-five (45) days to act on any request for adjustment or the request will be deemed denied. After a decision on the adjustment request, the owner will have fifteen (15) days to appeal to the Board of Directors, in writing. The Board of Directors shall act on such appeal within sixty (60) days. The determination of an appeal by the Board of Directors of Union Sanitary District shall constitute a final determination regarding any requested adjustment.

SECTION 4. OPTIONAL SERVICES

- (a) Segregation of Charges for Multi-tenant Parcels - Sewer Service Charges for parcels of land with multiple tenants shall be determined by assigning the parcel into one of three strength categories, strong, moderate, or weak as defined by this ordinance. This determination shall be made by the District based on the quantity of flow from each strength category. The strength category which includes a majority of flow shall be the strength category assigned to the entire parcel.
- (b) As an optional service, the property owner may request in writing, that the District segregate the annual sewer service charges by considering the flow from each water meter on the property as a separate calculation. The flow from each water meter would be assigned into one of three strength categories (strong, moderate, or weak) or into one of the restaurant categories and calculated separately. The charge for each water meter shall be totaled and the entire amount billed to the parcel with the property tax bill. When the charges are segregated, a written breakdown of the District's strength assignments and calculations will be provided to the property owner by October first of each year. To request the start

or stop of this optional service, the property owner or authorized representative, shall give written notice by June first for the upcoming fiscal year starting July first. Upon receipt of written notice to start this optional service, the District will continue to segregate the charges each year until it is given a written notice to discontinue the service.

- (c) In order to qualify for and receive this optional service initially, the property owner must be able to provide documentation acceptable to the District (such as a site plan or plumbing plan) showing which water meters serve which tenants. Insufficient documentation, as determined by the District, will be grounds to disqualify a property from receiving this optional service.
- (d) Property owners who request this optional service shall pay an annual service charge, which shall be added to the total sewer service charges and collected with the property tax bill. Annual service charges shall be as follows:

\$50.00 Per year per water meter, for the first year the service is started or re-started

\$25.00 Per year per water meter, for the second and succeeding years the service is provided

ARTICLE IV **BILLING AND COLLECTING**

SECTION 1. MAILING

Except as provided elsewhere in this ordinance, the District shall ascertain the amount of each sewer service charge applicable to each parcel in the district, and shall mail to the owner thereof a bill for the first installment on or before November 1 of each year, and a bill for the second installment on or before the following February 1 of each year. Each bill so mailed shall contain a statement that a delinquency in payment for sixty (60) days shall constitute a lien against the parcel against which the charge is imposed, and that when recorded shall have the force, effect and priority of a judgment lien for three years unless sooner released or otherwise discharged. Failure of the District to mail any such bill or failure of the owner to receive any such bill shall not excuse the owner of any parcel from the obligation of paying any sewer service charge for any parcel owned by him.

SECTION 2. DUE DATES OF CHARGES

All sewer service charges shall become due and payable in the following installments. One-half thereof on November 1 of each year and one-half thereof on the following February 1 of each year.

SECTION 3. DELINQUENCY DATES

The first installment due on November 1 of each year is delinquent if not paid by 5:00 P.M. on December 10 of each year. The second installment due February 1 of each year is delinquent if not paid by 5:00 P.M. on the following April 10 of each year.

(a) Government Parcels. For all government or public parcels or for any parcel which is not subject to taxation and not on the tax roll the sewer service charge shall become due and payable on January 1 of each year. Payment is due on January 1 of each year and is delinquent if not paid by 5:00 P.M. on February 15 of each year.

SECTION 4. PENALTIES FOR NON-PAYMENT, LIEN

Except as otherwise provided in this ordinance for collection of sewer service charges through general tax law, whenever a delinquency shall occur for non-payment, a penalty shall be paid in accordance with the requirements of the Alameda County Tax Collector. After delinquency for sixty (60) days, such unpaid charge and penalty shall constitute a lien upon the parcel of land against which the charge was levied.

SECTION 5. COLLECTION OF CHARGES ON TAX ROLL

- (a) Pursuant to the provisions of Division 5, Part 3, Chapter 6, Article 4, of the Health and Safety Code of the State of California, and subject to the exceptions hereinafter set forth, the District hereby elects as an alternative procedure for the collection of sewer service charges prescribed or imposed by the provisions of this ordinance to have all such sewer service charges for each fiscal year commencing with fiscal-year 1974-75, collected on the tax roll in the same manner, by the same persons, and at the same time as, and together with and not separately, from general taxes.
- (b) The amount of the charges shall constitute a lien against the lot or parcel of land against which the charge has been imposed as of the date prescribed by law as the lien date for general property taxes. The Tax Collector of the County of Alameda shall include the amount of the charges on bills for taxes levied against the respective lots and parcels of land.
- (c) Thereafter the amount of the charges shall be collected at the same time and in the same manner and by the same persons as, together with and not separately from, the general taxes for the District and shall be delinquent at the same time and thereafter be subject to the same delinquency penalties.
- (d) All laws applicable to the levy, collection and enforcement of general taxes of the District, including, but not limited to, those pertaining to the matters of delinquency, correction, cancellation, refund and redemption, are applicable to such charges. The Tax Collector of Alameda County may, in his discretion, issue separate bills for such charges and separate receipts for collection on account of such charges. The County of Alameda shall be compensated for services

rendered in connection with the levy, collection and enforcement of such charges in an amount to be fixed by agreement between the Board of Supervisors of Alameda County and the Board of Directors of the UNION SANITARY DISTRICT.

- (e) The sewer service charges for any and all governmental or public parcels or for any parcel which is not subject to taxation on the tax roll shall be collected in accordance with other provisions of this ordinance.

SECTION 6. TIMING OF SEWER SERVICE CHARGE CALCULATIONS

- (a) The sewer service charge to be billed for the current fiscal year is calculated based on water use and pollutant strength records for the period March to February preceding this fiscal year.
- (b) The owner of property served by Union Sanitary District is responsible for the payment of sewer service charges regardless of whether or not the owner actually conducts any business or utilizes any services for wastewater disposal on the premises. The charges made herein are for the fiscal year beginning July 1 and ending the following June 30.
- (c) In the event a property receives a new connection from the Alameda County Water District after March of a given year, there will be no sewer service charge imposed until the following year, and the sewer service charge imposed will be calculated on the basis of water usage for the previous fiscal year.

SECTION 7. RESPONSIBILITY TO PAY

In the event of a sale or transfer of real property, the owner of record at the time the annual sewer service charge bill is payable (one-half each on November 1 and February 1 of each year) is responsible for payment of charges. It is understood that the current owner will be assessed sewer service charges based on flows as calculated in Section 2 of Article III and Section 6 of Article IV. It shall be the responsibility of the prior and new owner to account for the payment of upcoming sewer service charges in their real property transfer agreements. Notwithstanding such accounting, the property owner of record at the time the annual sewer service charge is payable is responsible for payment.

ARTICLE V **ENFORCEMENT**

SECTION 1. FAILURE TO PAY

In the event of the failure of any owner to pay when due any sewer service charges, applicable to a parcel owned by him, the District may enforce payments of such delinquent charges in any of the following manners:

- (a) The District may have such parcel disconnected from the sanitary sewer system. In the event such disconnection should create a public hazard or nuisance, the manager or his representatives may enter upon the parcel for the purpose of doing such things as may be reasonably necessary to alleviate or remove such hazard or menace.

The owner of such parcel shall have a duty to reimburse the District for all expenses incurred by District in disconnecting any such parcel, or in doing other things authorized by this Section; and no reconnection shall be made until all such charges are paid.

- (b) During the period of non-connection or disconnection, habitation of such parcel by human beings may constitute a public nuisance, whereupon the Sanitary Board may cause proceedings to be brought for the abatement of the occupancy of said parcel by the human beings. In such event, and as a condition of connection or reconnection, there shall be paid to the District reasonable attorney's fees and costs of suit arising in said action.
- (c) The District may institute action in any court of competent jurisdiction to collect any charges, penalties and interest which may be due and payable in the same manner as any other debts owing to the District may be collected, in which event the District shall have judgment for the costs of suit and reasonable attorney's fees.
- (d) Any and all delinquent payments may be placed on the tax roll, and collected with the property taxes, as provided in this ordinance.
- (e) Such other action may be taken as may be authorized by law and the District Board.

SECTION 2. AUTHORITY

All powers authorized by this Article for the enforcement and collection of said sewer service charges, penalties and interest are cumulative and may be pursued alternatively or collectively as the District determines.

ARTICLE VI **MISCELLANEOUS**

SECTION 1. VACANCY

No credit, adjustment or refund will be made to any owner because the structure or any portion thereof on a parcel is vacant or the wastewater facilities are not being utilized.

SECTION 2. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional, or unenforceable, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Directors of the UNION SANITARY DISTRICT hereby declares that it would have passed the provisions of this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, sentences, clauses or phrases may be declared invalid, unconstitutional or unenforceable.

SECTION 3. PUBLICATION AND MINUTE ENTRY

This ordinance shall take effect and be in force July 15, 2011, and at least one week prior to said date a summary of the changes shall be published in The Argus, a newspaper of general circulation published in the UNION SANITARY DISTRICT service area. This ordinance shall be entered in the minutes of the District.

Passed and adopted by the Board of Directors of UNION SANITARY DISTRICT on this 27th day of June 2011, by the following vote:

AYES: Fernandez, Handley, Kite, Lathi, Toy


NOES: ---

ABSENT: ---

ABSTAIN: ---



President, Board of Directors
UNION SANITARY DISTRICT

ATTEST:


Secretary, Board of Directors
UNION SANITARY DISTRICT

Adopted June 27, 2011

- home
- about us
- what's new
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- environmental programs
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- preventing and reporting odors
- permits & fees

union sanitary district > doing business with usd > sewer service charges & ordinances

Sewer Service Charges and Ordinances

Revenues to operate the District are collected yearly from residents and businesses that are connected to the sanitary sewer system. The following information will explain how yearly Sewer Service Charges are calculated and what steps businesses can take to minimize the charges.

Annual Sewer Service Charges are placed on your Alameda County property tax statement. The charges appear on the tax statement as a line item next to our phone number 477-7500 and are listed as "Union Sewer Svc." Sewer Service Charges are not a property tax and are not related to the assessed value of a property. They represent a charge for a service provided, similar to your phone and P.G. & E. bills. We simply include the yearly charges on the property tax statement to save the administrative cost of generating and mailing our own invoices. More details on how the charges are calculated are provided below.



Residential Customers are charged at a flat rate.

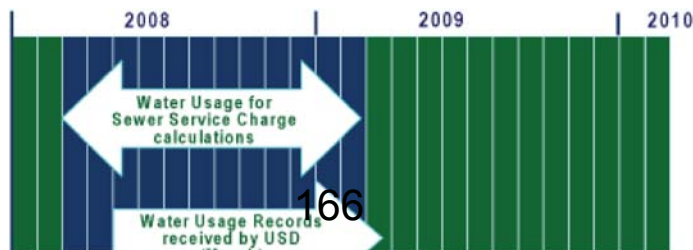
Charges for residential customers are based on a flat rate per dwelling unit. The current rate (2011-2012) per dwelling unit is \$304.33 per year. This is the charge for a single family home. A property with multiple housing units such as an apartment complex is charged \$268.73 for each dwelling unit on the property. For example, a ten unit apartment complex would be charged \$268.73 x 10 or \$2,687.30 per year. This rate is effective July 15, 2011.



How water use is determined for Commercial & Industrial Charges

Charges for commercial and industrial customers are based on the volume and pollutant strength of the wastewater being treated. The volume of wastewater is determined from water meter records obtained from the Alameda County Water District. Credit is given for water used that is not discharged to the sanitary sewer, such as landscape irrigation. Due to the lead time involved to get yearly charges placed on the County property tax statements, the Sewer Service Charges on the current year's tax statement reflect services already provided. Water use for purposes of computing the service charge is measured from March through February of the previous year. The Sewer Service Charge for this period is then placed on the property tax statement that is mailed out in October, with the first installment due December 10th. The Sewer Service Charge Timing Chart below, illustrates when charges are collected.

SEWER SERVICE CHARGE Timeline for Commercial & Industrial Users



Union Sanitary District



How pollutant strength is determined for Commercial and Industrial Charges

Pollutant strength is measured in samples of wastewater for two components: chemical oxygen demand (COD), and suspended solids (SS). Wastewater with high strength costs the District more to treat. For example, wastewater with high levels of suspended solids produces more sludge (a by-product of treatment). Sludge is treated and then disposed of at an agricultural site. If more sludge is produced, our hauling and disposal costs are higher. Therefore, rates are structured so that customers are charged based on the volume of solids they contribute to the system.

Wastewater strength for commercial and industrial customers is determined by one of three primary methods: *General Assignment*, *Specific Assignment*, and *Direct Sampling*.

General Assignment: Most commercial and industrial customers, or properties that include several different types of businesses, are calculated by the General Assignment method. With this method, customers are assigned a general strength of strong, moderate or weak. The three rate components, VOLUME, COD, and SS are combined into one rate per 1,000 gallons of wastewater discharged. The current rates for Fiscal Year 2012 (as of July 15, 2011) are shown below:

- Strong \$6.37 per 1,000 gallons per year
- Moderate \$3.44 per 1,000 gallons per year
- Weak \$3.01 per 1,000 gallons per year

Specific Assignment: Strength values are based on studies of wastewater from similar types of businesses and represent an "average" for that group. The total charges under this method are the sum of three components - volume, COD, and SS. USD's current rates for restaurants are listed below:

- Fast Food Restaurants \$6.09 per 1,000 gallons per year
- Full Service Restaurants \$7.78 per 1,000 gallons per year

Direct Sampling: This method applies only to industrial customers with industrial discharge permits. Under this method, samples of wastewater are collected and sent to a laboratory for analysis. Both COD and SS are measured and then averaged with other samples taken that year to determine an average strength for use in calculating Sewer Service Charges. The sum of three components determines the total charge. The current rates for each component are:

- Volume (Flow) = \$1.91 per 1,000 gallons per year
- COD = \$193.96 per 1,000 pounds per year
- SS = \$355.61 per 1,000 pounds per year

For more details on how annual charges are calculated, see the sample rate calculations for all three methods.

[Sample Rate Calculations](#)

How Sewer Service Rates Are Established

Union Sanitary District is governed by a five-member Board of Directors which is elected by the residents of the service area. Rates are reviewed each year based on financial plans for the District and are subject to approval by the Board. Before rates are set, a notice is published in the Argus newspaper. If a rate increase is proposed, the District also complies with Proposition 218 "Right to vote on Taxes" notification requirements. The annual public hearing is normally scheduled in June of each year with rates becoming effective in July. Customers are encouraged to participate in the public hearings and can send written comments on items before the Board to the attention of the General Manager.

How Sewer Service Charges Can Be Minimized

For commercial and industrial customers that are under the Specific or General Assignment methods, the most effective way of minimizing charges is water conservation. Charges are directly tied to the volume of water used; therefore, saving-water will reduce the Sewer Service Charge as well as charges for water. There is a wide variety of water-saving fixtures on the market. Low-flow toilets, shower heads and faucet aerators are among the most cost effective. For industrial customers under the Direct Sampling method, water conservation and any reductions in pollutant loadings will minimize service charges. One of the most effective ways to reduce loadings is to minimize the amount of waste being discharged to the sanitary sewer system. The District sponsors a Pollution Prevention Program to assist customers in reducing their waste streams. Call in the District's Commercial/Residential Customer Team at (510) 477-7500 for more information. More specific information on water conservation can be obtained from the Alameda County Water District at (510) 659-1970.



Renting or Leasing

Due to the lag in billing, commercial or industrial customers who rent or lease their property should carefully consider how Sewer Service Charges are addressed in the lease or rental agreement. Changes in tenants with different demands for water or that have different wastewater strengths will affect the yearly service charge. A landlord may not become aware of potential changes in service charges until well after tenant changes have occurred. **All Sewer Service Charges are billed to the property owner. Property owners are responsible for paying the charges whether or not they are able to collect from their tenants.**

Ordinances

[Sewer Service Charge Ordinance](#) Ordinance 31.34 An ordinance providing for the establishment of sewer service charges for fiscal years 2011, 2012 and 2013. Effective date July 15, 2011.

[Plan Review/Permitting Ordinance](#) Ordinance 34.06 An ordinance for plan review, construction permits, inspection of sewerage installation and collection of fees. Effective date February 27, 2012.

[New Connections Ordinance](#) Ordinance 35.18 An ordinance providing for the collection of capacity charges for connection to the main sewers of USD. Effective date August 31, 2011.



Accepted for payment of permits and fees.

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