Hearing Date: July 28, 2005
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ITEM ___

RECONSIDERATION OF PRIOR STATEMENT OF DECISION
DRAFT STAFF ANALYSIS

Government Code Sections 54952, 54954.2, 54957.1, and 54957.7

Statutes 1993, Chapters 1136, 1137, and 1138; Statutes 1994, Chapter 32

CSM 4469

Brown Act Reform (04-RL-4469-08)

Reconsideration Directed By Statutes 2004, Chapter 316, Section 3, Subdivision (c)
(Assem. Bill No. 2851 ("AB 2851")

EXECUTIVE SUMMARY

Background

Statutes 2004, chapter 316, section 3, subdivision (c), requires the Commission on State Mandates (Commission) to reconsider its prior decision in the *Brown Act Reform* test claim. Section 3 of the bill states in relevant part the following:

> Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:
>
> (c) Brown Act Reforms [sic] (CSM 4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

The Brown Act was initially enacted in 1953 and governs the open meetings conducted by local legislative bodies. In 2001, the Commission adopted a statement of decision on *Brown Act Reform* (CSM 4469), a test claim addressing the 1993 and 1994 amendments to the Brown Act. The Commission found that the test claim legislation imposes a reimbursable state-mandated program by: (1) adding two new legislative bodies required to comply with the Brown Act; (2) requiring permanent and temporary advisory bodies to comply with the full notice and agenda requirements of the Brown Act; and (3) requiring all legislative bodies to comply with public disclosure and reporting requirements for closed session meetings.

Since the statement of decision was adopted, however, case law and statutory changes to Government Code section 17500 et seq. have occurred, which impact the types of bodies whose costs may be currently reimbursed under this program.

Conclusion

Staff concludes that the notice and agenda, and closed session activities imposed by the test claim legislation (Gov. Code, §§ 54952, 54954.2, 54957.1, and 54957.7 as added or amended by Stats. 1993, chs. 1136, 1137, and 1138, and Stats. 1994, ch. 32) are not mandated by the state within the meaning of article XIII B, section 6 and, thus, are not reimbursable with respect to the following local legislative bodies:

- Local bodies created by state or federal statute that are not required by state or federal law to exist.
- Local advisory bodies created by the local entity.
- Redevelopment agencies and joint powers authorities, and any decision-making or advisory body created by these agencies.

Staff Recommendation

Staff recommends that the Commission adopt this analysis.

STAFF ANALYSIS

Chronology

12/29/94	Test claim filed by County of Santa Clara (*Brown Act Reform*, CSM 4469)
08/07/00	City of Newport Beach substitutes in the claim as the test claimant
06/28/01	Statement of Decision adopted by Commission
04/25/02	Parameters and Guidelines adopted by Commission. The parameters and guidelines were consolidated with the parameters and guidelines for *Open Meetings Act* (CSM 4257) for annual reimbursement claims filed for the 2001-2002 fiscal year and thereafter.
12/--/03	Legislative Analyst's Office issues report entitled *New Mandates: Analysis of Measures Requiring Reimbursement*
08/25/04	Statutes 2004, chapter 316 (Assem. Bill No. 2851), which directs the Commission to reconsider *Brown Act Reform* (CSM 4469), becomes effective
03/01/05	Notice of reconsideration, briefing and hearing schedule issued
04/01/05	City of Newport Beach files opening comments
05/19/05	Draft staff analysis issued

Background

Statutes 2004, chapter 316, section 3, subdivision (c), requires the Commission to reconsider its prior decision in the *Brown Act Reform* test claim. Section 3 of the bill states in relevant part the following:

> Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:
>
> (c) Brown Act Reforms [sic] (CSM 4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

<u>*Brown Act Reform* test claim (CSM 4469)</u>

The Brown Act was initially enacted in 1953 and governs the open meetings conducted by local legislative bodies, such as boards of supervisors, city councils, school boards, and other specified local legislative bodies. The Brown Act requires that the deliberative processes by legislative bodies, including discussion, debate, and the acquisition of information, be open and available to the public, unless a specific closed session exception applies to the matter.[1]

[1] See the 2003 pamphlet published by the Attorney General's Office, entitled "The Brown Act, Open Meetings for Local Legislative Bodies," page 1.

In 1988, the Commission adopted an earlier statement of decision addressing the Brown Act in the *Open Meetings Act* test claim (CSM 4257). The Commission's parameters and guidelines for the *Open Meetings Act* program authorized reimbursement for the increased costs to prepare and post a notice and an agenda containing a brief general description of each item of business to be transacted or discussed at least 72 hours before the meeting of the local legislative body. For purposes of seeking reimbursement for the *Open Meetings Act* program, "legislative body" was defined in former Government Code sections 54952 and 54952.2 to include the governing body of a local agency, permanent decision-making committees or boards created by formal action of the governing body, and temporary decision-making committees or boards created by formal action of the governing body.

This reconsideration addresses the Commission's subsequent statement of decision, adopted on June 28, 2001, on the *Brown Act Reform* test claim (CSM 4469). The *Brown Act Reform* test claim addressed the 1993 and 1994 amendments to the Brown Act. The Commission found that Government Code section 54952, as amended by the test claim legislation, imposed a reimbursable state-mandated program by adding two new "legislative bodies" required to comply with the provisions of the Brown Act. The two new "legislative bodies" are (1) local bodies created by state or federal statute, and (2) standing committees, irrespective of their composition (including those with less than a quorum of the members of the legislative body) with a continuing subject matter jurisdiction, or a meeting schedule fixed by formal action.

The Commission also found that the test claim legislation, which repealed former Government Code sections 54952.3 and 54952.5, and amended Government Code section 54954.2, imposed a reimbursable state-mandated program. These code sections require permanent and temporary advisory bodies consisting of a quorum of the members of the legislative body that were created by formal action of the local governing body, to comply with the full notice and agenda requirements of the Brown Act by preparing and posting, at least 72 hours before the meeting, a notice and an agenda that contained a brief general description, generally not to exceed 20 words, of each item of business to be transacted or discussed at the meeting of the advisory body. Under prior law, advisory bodies were not required to comply with the all the requirements of the Brown Act. They were only required to deliver notice of their meetings 24 hours prior to the meeting and to provide in their bylaws for the time and place of holding regular meetings. (Former Gov. Code, § 54952.3.)

Finally, the Commission concluded that Government Code sections 54954.2, 54957.1, and 54957.7 impose a reimbursable state-mandated program by requiring *all* legislative bodies defined in the Brown Act to comply with the following public disclosure and reporting requirements for closed session meetings:

- Include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.
- Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session.

- Reconvene in open session prior to adjournment and report, either orally or in writing, the actions and votes taken in closed session for the items identified in Government Code sections 54957.1, subdivision (a)(1-4, 6).[2]
- Provide copies of closed session documents as required by Government Code section 54957.1, subdivision (b) and (c).

On April 25, 2002, the Commission adopted the parameters and guidelines for *Brown Act Reform*, with a reimbursement period beginning January 1, 1994. The parameters and guidelines were consolidated with the parameters and guidelines for the *Open Meetings Act* program (CSM 4257) for annual reimbursement claims filed for the 2001-2002 fiscal year and thereafter.

In December 2003, the Legislative Analyst's Office (LAO) issued a report entitled "New Mandates: Analysis of Measures Requiring Reimbursement." In the report, LAO opined that "the manner in which local agencies provide for public participation in local *advisory body* hearings and the disclosure of matters discussed in executive session do not reach the level of importance necessitating a statewide mandate." (Emphasis in original.)[3] LAO recommended that the Legislature either revise the Brown Act Reform program to make these requirements advisory guidelines, or direct the Commission to reconsider the *Brown Act Reform* test claim in light of the 2003 California Supreme Court decision in *Department of Finance v. Commission on State Mandates (Kern High School Dist.)*[4]. The LAO report states in relevant part the following:

> The California Supreme Court's recent decision in *Department of Finance versus Commission on State Mandates* suggests that the commission's findings regarding the Brown Act Reform mandate were overly broad in their interpretation as to the types of legislative bodies eligible for mandate reimbursement. Should the Legislature wish to *maintain* the Brown Act Reform mandate, we recommend the Legislature direct the commission to reconsider the Brown Act Reform mandate Statement of Decision in light of the California Supreme Court's decision. . . . (Emphasis in original.)[5]

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[2] The actions and votes required to be disclosed include the following: approval of a final agreement concluding real estate negotiations pursuant to Government Code section 54956.8; approval given to legal counsel to defend, seek or refrain from seeking appellate review, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Government Code section 54956.9; approval given to legal counsel of a final settlement of pending litigation, as defined in Government Code section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding; the disposition reached on claims discussed in closed session pursuant to Government Code section 54956.95; and the approval of a final agreement concluding labor negotiations with represented employees pursuant to Government Code section 54957.6. (Gov. Code, § 54757.1, subd. (a).)

[3] Exhibit ___, page 8.

[4] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727.

[5] Exhibit ___, page 8.

In 2004, AB 2851 was enacted to require the Commission to reconsider the *Brown Act Reform* program. Thus, this reconsideration presents the following issues:

- What is the effective date of the Commission's decision on reconsideration?
- Does the test claim legislation constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since the test claim statutes were enacted?

Comments Filed by the City of Newport Beach

On April 1, 2005, the City of Newport Beach filed comments on this reconsideration. The City argues that the Commission's prior final decision in *Brown Act Reform* was correctly decided and asserts that the Supreme Court case of *Kern High School District* is distinguishable. The City states in relevant part the following:

> To the best of the knowledge of the [sic] information and belief of the City of Newport Beach, there have been no federal statutes nor federal cases which have affected the ultimate finding by the Commission on State Mandates that the within matter constitutes a reimbursable state mandated program under the California Constitution, Article XIII B, Section 6, as well as the California Government Code.
>
> It is anticipated that the purpose for the within reconsideration is to determine whether the State has any continuing responsibility to fund the within program in light of *Department of Finance v. Commission on State Mandates* (2004) 30 Cal.4th 727. In that matter, the court held that since the school districts and county were not legally obligated to participate in eight of the nine programs which were the subject of the test claim, the participation was voluntary and thus not reimbursable. As to the last program, the court held that as the program came accompanied by program funding, there was a source of funds for the "reasonable district administrative expenses" which included the Open Meetings Act, and thus there were no costs mandated by the state.
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> Unlike school districts, which had the option of participating in school site councils, the City's boards and commissions are not voluntary programs for which the City has the option to participate. Additionally, these boards and commissions are not grant funded, such as to eliminate the State's responsibility to defray the cost of compliance.
>
> Even if there were grant funds available, the Commission's Parameters and Guidelines require that such grant funds are to be deducted from the cost of performing the mandate …[6]

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[7] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[8] "Its

[6] Exhibit ___.

purpose 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."[9] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[10] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[11]

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.[12] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[13] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[14]

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[7] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "(a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[8] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

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

[10] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[11] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[12] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

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

[14] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[15] -

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.[16] 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."[17]

Issue 1: What is the effective date of the Commission's decision on reconsideration?

AB 2851, an urgency statute that became effective on August 25, 2004, directs the Commission to reconsider its statement of decision on the *Brown Act Reform* program. According to the legislative history, AB 2851 implements the changes recommended by the Assembly Special Committee on State Mandates. The Assembly Special Committee on State Mandates was established in 2003 to review all reimbursable state mandates, particularly those that have been suspended or deferred, and to recommend reforms to the reimbursement system.[18]

The parameters and guidelines for the *Brown Act Reform* program were adopted in 2002, with a reimbursement period beginning January 1, 1994. Over the last three years, reimbursement claims have been filed with the State Controller's Office for payment on this program.

AB 2851, however, does not specify the effective date for the Commission's decision on reconsideration.[19] The question is whether the Legislature intended to apply the Commission's decision on reconsideration retroactively back to the original reimbursement period of January 1, 1994 (i.e., to reimbursement claims that have already been filed), or to prospective claims filed in future budget years.

The City of Newport Beach suggests that the effective date of the Commission's decision on reconsideration should be the same as the date determined in the staff analysis on the reconsideration for the *Handicapped and Disabled Students* program; namely, July 1, 2004.[20]

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[15] *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

[16] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[17] *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.

[18] Senate Rules Committee, third reading analysis of AB 2851 (2003-2004 Reg. Sess.), as amended April 29. 2004.

[19] In this respect, AB 2851 is different than another recent statute directing the Commission to reconsider a prior final decision. Statutes 2004, chapter 227, directs the Commission to reconsider Board of Control test claims relating to regional housing. Section 109 of the bill states "[a]ny changes by the commission shall be deemed effective July 1, 2004."

[20] Exhibit ___.

However, unlike the statute directing the reconsideration of *Handicapped and Disabled Students* (Sen. Bill No. 1895), AB 2851 is *not* a trailer bill to the Budget Act of 2004.

Thus, for the reasons below, staff finds the Legislature intended that the Commission's decision on reconsideration apply prospectively to future budget years only, beginning July 1, 2005.

The California Supreme Court has recently upheld its conclusion that there is a strong presumption against retroactive legislation. Statutes generally operate prospectively only. A statute may be applied retroactively only if the statute contains "express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application."[21] The court explained its conclusion as follows:

> "Generally, statutes operate prospectively only." [Citation omitted.] "The presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly … For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." [Citation omitted.] "The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact." [Citation omitted.]
>
> This is not to say that a statute may never apply retroactively. "A statute's retroactivity is, *in the first instance, a policy determination for the Legislature* and one to which courts defer absent 'some constitutional objection' to retroactivity." [Citation omitted.] But it has long been established that a statute that interferes with antecedent rights will not operate retroactively unless such retroactivity be "the unequivocal and inflexible import of the terms, and the manifest intention of the legislature." [Citation omitted.] *"A statute may be applied retroactively only if it contains express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application*." [Citation omitted.] (Emphasis added.)[22]

There is nothing in the plain language of AB 2851 or its legislative history to suggest that the Legislature intended to apply the Commission's decision on reconsideration retroactively. In the absence of clear legislative intent to the contrary, staff finds that AB 2851 is not to be applied retroactively, and the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2005. Thus, if the Commission modifies its prior final decision in *Brown Act Reform*, subsequent changes to the parameters and guidelines will be effective for reimbursement claims filed for the 2005-2006 fiscal year.

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[21] *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 475.

[22] *Ibid.*

Issue 2: Does the test claim legislation constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since the test claim statutes were enacted?

AB 2851 directs the Commission to reconsider this claim "in light of federal statutes enacted and federal and state court decisions rendered since the test claim statutes were enacted." Staff is not aware of any federal statutes or federal court decisions that impact or affect California's open meeting laws, and no federal statutes or cases have been identified by the parties or interested parties for this particular claim.

However, as identified by the LAO, the California Supreme Court decision in *Kern High School District* impacts the analysis of this test claim with respect to the issue of whether the test claim legislation is mandated by the state for certain local legislative bodies that are not required to exist under state or federal law. In addition, case law and statutory changes to Government Code section 17500 et seq., have occurred since the statement of decision was adopted that impacts the types of bodies that are considered eligible claimants for purposes of mandate reimbursement.

For the reasons described below, staff finds that the activities imposed by the test claim legislation (notice and agenda requirements, and the closed session disclosure and reporting requirements) are not mandated by the state within the meaning of article XIII B, section 6 and, thus, are not reimbursable with respect to the following local legislative bodies:

- Local bodies created by state or federal statute that are not required by state or federal law to exist.
- Local advisory bodies created by the local entity.
- Redevelopment agencies and joint powers authorities, and any decision-making or advisory body created by these agencies.

<u>Local bodies created by state or federal statute</u>

Government Code section 54952, subdivision (a), as amended by the test claim legislation, defines the local governing "legislative bodies" required to comply with the Brown Act as follows:

> As used in this chapter, "legislative body" means:
>
> (a) The governing body of a local agency *or any other local body created by state or federal statute*. (Emphasis added.)[23]

The Commission determined that local bodies created by state or federal statute were new bodies required, for the first time, to comply with the open meeting and closed session requirements of the Brown Act and, thus, found that these bodies were eligible for mandate reimbursement under the *Brown Act Reform* program. For the reasons provided below, staff finds that the Commission's conclusion is legally incorrect under current law.

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[23] As used in the Brown Act, "local agency" is defined broadly to mean "a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency." (Gov. Code, § 54951.)

In 2003, the California Supreme Court decided the *Kern High School District* case.[24] *Kern High School District* involved state and federal statutes that created various school-related educational programs that required participating school districts to establish school site councils or advisory committees as a condition of receiving state or federal funds. Like the test claim legislation in *Brown Act Reform,* the test claim legislation in *Kern High School District* (Gov. Code, § 52952 and Ed. Code, § 35147) required the school site councils and advisory committees to comply with the open meeting provisions to prepare and post a notice and an agenda of their meetings. The school districts were seeking reimbursement for the costs to prepare and post the notice and agenda for each meeting.[25]

The court in *Kern High School District* considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The court reviewed the ballot materials for Proposition 4 that enacted article XIII B, section 6, which provided that "a state mandate comprises something that a local government entity is required or forced to do."[26] The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders." [27]

Given the background of article XIII B, section 6, the court determined that the "proper focus under a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs themselves."[28] In this respect, the court reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.[29] 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 that program does not constitute a reimbursable state mandate. (Emphasis in original.)[30]

The court also stated the following:

> [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

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[24] *Kern High School District, supra,* 30 Cal.4th 727.

[25] *Id.* at pages 730-731.

[26] *Id.* at page 737.

[27] *Ibid*.

[28] *Id*. at page 743.

[29] *Ibid.*

[30] *Ibid.*

> claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.][31]

The Supreme Court left undecided whether a reimbursable state mandate "might be found in circumstances short of legal compulsion—for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program."[32] Such facts were not presented in the case.

Nevertheless, the Supreme Court concluded that no reimbursable state mandate existed for eight of the nine school site councils and advisory committees since the school districts *elected* to participate in the underlying educational programs.[33] As to the last school site council in question, the court "assumed for purposes of analysis" that school districts were legally compelled to participate in the program. But the Court held that the program costs at issue (a unit cost of $90 to $106 per meeting) were already provided pursuant to the underlying statutory scheme and that the funding would cover the necessary notice and agenda related expenses.[34]

One year after the Supreme Court decided *Kern High School District*, the Court issued its decision *San Diego Unified School District.* [35] In *San Diego Unified School District*, the Court questions the strict application of the *City of Merced* case "so as to preclude reimbursement ... whenever an entity makes an initial discretionary decision that in turn triggers mandated costs."[36] The Court stated that:

> Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper.[37]

In particular, the Court examines the factual scenario from the past decision in *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, in which:

> an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.*, at pp. 537-538, 234 Cal.Rptr. 795.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ--and

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[31] *Id.* at page 731.

[32] *Ibid.*

[33] *Id.* at page 745.

[34] *Id.* at pages 746-747.

[35] *San Diego Unified School District, supra,* 33 Cal.4th 859.

[36] *Id.* at page 887.

[37] *Id.* at pages 887-888.

> hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced, supra,* 153 Cal.App.3d 777, 200 Cal.Rptr. 642, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and *hence we are reluctant to endorse, in this case,* an application of the rule of *City of Merced* that might lead to such a result. [Emphasis added.][38]

The Court did not rely on this analysis to reach its conclusions, thus the statements are considered dicta; however, staff recognizes that the Court was giving clear notice that the *City of Merced* "discretionary" rationale is not without limitation. What the Court did *not* do was disapprove either the *City of Merced* case, or its own rationale and holding in *Kern High School District.*

Rather, the 2003 decision of the California Supreme Court in *Kern High School District* remains good law, relevant, and its reasoning continues to apply in this case. The Supreme Court explained, "the proper focus under a legal compulsion inquiry is upon the nature of the claimants' participation in the underlying programs themselves."[39] Accordingly, where decision-making authority is reserved to a local government entity, and that entity chooses to participate in a voluntary underlying program, the Legislature may issue "downstream" requirements for participants in that program. Such downstream requirements with which the local government entity must comply do not constitute reimbursable state mandates.

Applying the *Kern* rule to specific local bodies created by state and federal statute in this case is difficult since the issue here is presented in the abstract. The underlying nature and purpose of the local bodies created by state or federal statute is not revealed in either the statutory scheme of the test claim legislation or in the record. [40] The Brown Act simply defines "local agency"

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[38] *Id.* at page 888.

[39] *Kern High School Dist., supra*, 30 Cal.4th at pages 743, 745; see also, *San Diego Unified School District, supra*, 33 Cal.4th at page 886, where the Supreme Court restated its holding in *Kern*: "We rejected the school districts' position, reasoning in part that because the districts' participation in the underlying programs was voluntary, the notice and agenda costs incurred as a result of that voluntary participation were not the product of legal compulsion and did not constitute a reimbursable state mandate on that basis."

[40] *San Diego Unified School District, supra*, 33 Cal.4th at page 890, where the Supreme Court stated that, with respect to test claim legislation on school expulsions, that "when such an issue is raised in an action for reimbursement, as opposed to its being raised in litigation challenging an actual expulsion on the ground of allegedly inadequate hearing procedures, the issue is inevitably is presented in the abstract, without any factual context that might help frame the legal issue. In such circumstances, courts are -- and should be – wary of venturing pronouncements (especially concerning matters of constitutional law)."

and "legislative body" broadly to include any and all political subdivisions or local entities of the state, and all bodies created by state or federal statute.[41]

The City of Newport Beach asserts that *Kern High School District* does not apply here. The City concludes that, unlike school districts that had the option of participating in school site councils, the City's boards and commissions are not voluntary programs for which the City has the option to participate. The City further asserts that its boards and commissions do not receive grant funds. The City, however, does not provide any citation to law or introduce any evidence to support its argument that *all* the underlying local agency boards and commissions subject to the Brown Act are mandatory.

Staff agrees that there are *some* underlying local agency boards and commissions that are required to exist by state law and, thus, are mandated by the state within the meaning of article XIII B, section 6 to comply with the *Brown Act Reform* requirements. For example, Public Utilities Code section 21670 requires every county in which there is located an airport that is served by a scheduled airline to establish an airport land use commission. In addition, Government Code sections 56300 and following require that each county have a local agency formation commission to encourage the "orderly formation and development of local agencies based upon local conditions and circumstances." (Gov. Code, §§ 56301, 56325.) Under these circumstances, for example, the underlying decision-making authority to establish these commissions is *not* reserved to the county, but is mandated by the state. Thus, the *Kern High School District* case supports the conclusion that the test claim legislation is a reimbursable state-mandated program for local bodies *required* to exist by state or federal law, such as the county airport land use commission and a local agency formation commission.[42]

However, there are local boards and commissions that are authorized, but not required, to exist by statute. In this situation the board or commission is created at the discretion of the local entity. For example, in the 2003 pamphlet published by the Attorney General's Office, entitled "The Brown Act, Open Meetings for Local Legislative Bodies," the Attorney General's Office concludes that joint powers authorities are "legislative bodies" within the meaning of Government Code section 54952, subdivision (a), of the test claim legislation since joint powers

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[41] As used in the Brown Act, "local agency" is defined broadly to mean "a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency." (Gov. Code, § 54951.) "Legislative body" is defined in relevant part as follows: "(a) The governing body of a local agency or any other local body created by state or federal statute;" and "(2) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. …"

[42] For purposes of claiming reimbursement, staff recommends that the parameters and guidelines or claiming instructions require eligible claimants to provide a list the bodies for which costs are claimed and the state or federal law that requires the existence of the body as supporting documentation for the claim.

authorities are created according to a procedure established by state law.[43] Although joint powers authorities are required to comply with the Brown Act, the law does not mandate the creation of joint powers authorities. Joint powers authorities are established pursuant to the Joint Exercise of Powers Act (Gov. Code, § 6500 et seq.). Joint powers authorities are made up of cities and counties that *voluntarily* elect to become members of the joint powers authority. Under the law, local agencies are *authorized* to enter into agreements to "jointly exercise any power common to the contracting parties."[44] The entity provided to administer or execute the agreement may be one or more of the parties to the agreement; a person, firm or corporation, including a nonprofit corporation, designated in the agreement; or a public entity, commission or board.[45] Furthermore, a joint powers authority has only the powers that are specified in the joint powers agreement.[46] There is no evidence in the law or in the record that local agencies are practically compelled by the state through the imposition of a substantial penalty to create a joint powers authority. Thus the underlying decision to create a joint powers authority is reserved to the discretion of the local entity and is not mandated by the state. Therefore, applying the rule in *Kern High School District*, reimbursement for the downstream activities in the *Brown Act Reform* program is not mandated by the state for bodies authorized to exist by statute, but created at the discretion of a local entity, such as a joint powers authority.

Moreover, as determined by the Supreme Court in *Kern High School District*, any body created by state or federal statute as a condition of a local entity receiving program funds is not mandated by the state to comply with the *Brown Act Reform* program. Under these circumstances, the statute creating the legislative body may contain mandatory language requiring that the body exist. For example, one of the statutes at issue in *Kern High School Distric*t stated, "that each school district that receives funds provided by section 56062 '*shall* establish a districtwide American Indian advisory committee for American Indian early childhood education.'" (Emphasis added.).[47] But after reviewing the statutory scheme as a whole, the Court determined "the obligation to establish or maintain [such a body] arises only if a [local entity] elects to participate in, or continue to participate in, the particular program."[48] In addition, the Court determined that the costs in question to prepare and post a notice and agenda (between $90 and $106 per meeting) are "minimal" and "appear rather modest."[49] Those costs are the same for the *Brown Act Reform* program.[50] The Court determined that there was nothing in the statutory scheme to suggest that a local entity is precluded from using a portion of the

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[43] Exhibit ___, page 5. The Attorney General's Opinion on the Brown Act has been given considerable weight by the courts. (*Freedom Newspapers v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829.)

[44] Government Code section 6502.

[45] Government Code sections 6506, 6508.

[46] Government Code section 6508.

[47] *Kern High School District, supra*, 30 Cal.4th at page 744.

[48] *Ibid.*

[49] *Kern High School District, supra*, 30 Cal.4th at page 746, and fn. 16.

[50] The parameters and guidelines for *Brown Act Reform* allow claimants to claim a flat rate, between $90 and $100 per meeting, to prepare and post a notice and agenda. (Page 1323.)

funds obtained from the state for the implementation of the underlying funded program to pay the associated notice and agenda costs.[51] Therefore, reimbursement for the downstream activities in the *Brown Act Reform* program is not mandated by the state for bodies created by state or federal statute as a condition of receiving program funds.

While it may be true that legislative bodies created by a local entity or bodies created as a condition of receiving program funds will incur increased costs as a result of the test claim legislation, increased costs alone are not determinative of the issue whether the legislation imposes a reimbursable state-mandated program. The California Supreme Court has repeatedly ruled that evidence of additional costs alone, even when those costs are deemed necessary by the local entity, do not result in a reimbursable state-mandated program under article XIII B, section 6:

> We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.[52]

Therefore, staff finds that reimbursement for the downstream activities in the *Brown Act Reform* program to prepare and post a notice and an agenda (Gov. Code, § 54954.2, subd. (a)), and to comply with the disclosure and reporting requirements for closed session meetings (Gov. Code, §§ 54954.2, subd. (a), 54957.1, 54957.7) are not mandated by the state for the following local legislative bodies:

- Local bodies authorized by law, but are not required to exist by state or federal statute.
- Local bodies created by state or federal statute as a condition of a local entity receiving program funds.

Accordingly, staff finds that the Commission's decision in *Brown Act Reform* (CSM 4469), with respect to its finding that all bodies created by state or federal law are eligible for reimbursement under article XIII B, section 6, is not legally correct under current law. Based on the Supreme Court decisions in *Kern High School District* and *San Diego Unified School District*, staff finds that the test claim legislation constitutes a reimbursable state-mandated program for only bodies created by state or federal statute that are mandated by state or federal law to exist.

<u>Advisory bodies created by the local entity</u>

Government Code section 54952, subdivision (b), as amended by the test claim legislation, defines the "legislative bodies" that are created by the local entity and are required to comply with the Brown Act. Government Code section 54952, subdivision (b), states the following:

> As used in this chapter, "legislative body" means:
>
> (b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory

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[51] *Kern High School District, supra*, 30 Cal. 4th at page 746.

[52] *County of Los Angeles, supra*, 43 Cal.3d at page 54; see also, *Kern High School Dist., supra*, 30 Cal.4th at page 735.

> committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

The Commission determined that standing committees, which are advisory in nature, composed of *less than a quorum* of the governing body that have continuing subject jurisdiction or a meeting schedule fixed by formal action were new bodies required, for the first time, to comply with the open meeting and closed session requirements of the Brown Act. Thus, the Commission found that these bodies were eligible for mandate reimbursement under the *Brown Act Reform* program. The Attorney General's Office describes an advisory standing committee as one that has continuing jurisdiction over a particular subject matter, such as budget, finance, legislation, or parks and recreation, for example. On the other hand, an advisory committee with less than a quorum of the legislative body is not a standing committee required to comply with the Brown Act if it is created by a local entity solely to accomplish a specific task in a short period of time.[53]

In addition, Government Code section 54952, subdivision (b), lists permanent and temporary advisory committees or boards, created by formal action of the local entity, that consist of a quorum of the members of the legislative body as bodies required to comply with the Brown Act. Although the Commission concluded that these advisory bodies were subject under prior law to an abbreviated set of open meeting requirements (former Gov. Code, §§ 54952.3, 54952.5), the Commission determined that the test claim legislation mandated a higher level of service on these advisory bodies. Under prior law, advisory bodies were only required to deliver notice of their meetings 24 hours prior to the meeting and to provide in their bylaws for the time and place of holding regular meetings. (Former Gov. Code, § 54952.3.) The test claim legislation, which repealed former Government Code sections 54952.3 and 54952.5, and amended Government Code section 54954.2, required the permanent and temporary advisory bodies to comply with the full notice and agenda requirements of the Brown Act by preparing and posting, at least 72 hours before the meeting, a notice and an agenda that contain a brief general description, generally not to exceed 20 words, of each item of business to be transacted or discussed at the meeting of the advisory body. The Commission further concluded that the permanent and temporary advisory committees or boards were mandated by the state to comply with the closed session disclosure and reporting requirements.

The Commission's decision was legally correct in the finding that the imposition of the full notice and agenda requirements for advisory bodies was new and increased the level of service for advisory bodies. However, staff finds the conclusion, that advisory committees created by the local entity are entitled to reimbursement, is *not* legally correct under current law since the state has not mandated the creation of these advisory bodies.

As indicated in the analysis above, the Supreme Court has explained that, for purposes of determining if the test claim legislation is mandated by the state, the "the proper focus under a

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[53] See the 2003 pamphlet published by the Attorney General's Office, entitled "The Brown Act, Open Meetings for Local Legislative Bodies," pages 5 and 6.

legal compulsion inquiry is upon the nature of the claimants' participation in the underlying programs themselves."[54] If the local entity's participation in the underlying program is voluntary, "the notice and agenda costs incurred as a result of that voluntary participation [are] not the product of legal compulsion and [do] not constitute a reimbursable state mandate on that basis."[55]

In this case, local entities have not been mandated by the state to create the advisory bodies listed in Government Code section 54952, subdivision (b). The decision-making authority to create an advisory body, as plainly stated in Government Code section 54952, subdivision (b), is left to the discretion of the local entity. Such entities are "created by charter, ordinance, resolution, or formal action of a [local] legislative body."

Moreover, there is no evidence in the law or in the record that local entities are practically compelled by the state through the imposition of a substantial penalty to create permanent or temporary advisory committees.

Accordingly, applying the rule in *Kern High School District*, reimbursement for the downstream activities in the *Brown Act Reform* program to prepare and post a notice and an agenda (Gov. Code, § 54954.2, subd. (a)), and to comply with the disclosure and reporting requirements for closed session meetings (Gov. Code, §§ 54954.2, subd. (a), 54957.1, 54957.7) are not mandated by the state for the following local legislative bodies:

- Standing committees with less than a quorum of members of the legislative body that have continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent and temporary advisory bodies.

<u>Redevelopment agencies and joint powers authorities, and any decision-making or advisory body created by these agencies.</u>

The Brown Act defines "local agency" broadly to include " a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency. (Gov. Code, § 54951.)

The Commission's decision in *Brown Act Reform* applies to the following eligible claimants: "any county, city, a city and county, school or special district that incurs increased costs as a result of this reimbursable state mandated program."[56]

For the reasons provided below, staff finds that the Commission's inclusion of "special district" as an eligible claimant is too broad, and recommends that the Commission define "special district" for purposes of this program pursuant to current case law and statutory law. Under current law, redevelopment agencies and joint powers authorities, once included within the statutory definition of "special district," are not eligible for reimbursement under article XIII B, section 6 of the California Constitution.

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[54] *Kern High School Dist., supra*, 30 Cal.4th at pages 743.

[55] *San Diego Unified School District, supra*, 33 Cal.4th at page 886, where the Supreme Court restated the holding in *Kern.*

[56] See parameters and guidelines, page 1323.

In 2004, the Legislature amended Government Code section 17520 to *delete* joint powers authorities and redevelopment agencies from the definition of special districts that are eligible to claim reimbursement pursuant to article XIII B, section 6.[57] It is a fundamental rule of statutory construction that "the Legislature is deemed to be aware of . . . judicial decisions already in existence, and to have enacted or amended a statute in light thereof."[58] The courts also presume the Legislature intends to change the meaning of a law when it alters the statutory language by deleting express provisions of the statute.[59]

Before the Legislature amended Government Code section 17520, several decisions by the courts were published holding that local entities must be subject to the tax and spend limitations of articles XIII A and XIII B to be eligible for reimbursement of costs incurred to implement a "program" under section 6. In *County of San Diego v. Commission on State Mandates*,[60] the Supreme Court explained that section 6 represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies. The purpose of section 6 is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities *because they are subject to taxing and spending limitations under articles XIII A and XIII B.*[61] [Emphasis added.]

Thereafter, the courts of appeal issued two decisions concluding specifically that redevelopment agencies are not subject to article XIII B, section 6 since they are not bound by the spending limitations in article XIII B, and are not required to expend any proceeds of taxes.[62]

The same finding applies to joint powers authorities. Joint powers agencies are established pursuant to the Joint Exercise of Powers Act (Gov. Code, § 6500 et seq.) and are made up of cities and counties that voluntarily become members of the joint powers authority. Under the Act, local agencies are authorized to enter into agreements to "jointly exercise any power common to the contracting parties."[63] The entity provided to administer or execute the agreement may be one or more of the parties to the agreement; a person, firm or corporation, including a nonprofit corporation, designated in the agreement; or a public entity, commission or

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[57] Statutes 2004, chapter 890 (Assem. Bill No. 2856).

[58] *People v. Harrison* (1989) 48 Cal.3d 321, 329.

[59] *People v. Mendoza* (2000) 23 Cal.4th 896, 916.

[60] *County of San Diego, supra,* 15 Cal.4th at page 81.

[61] *Ibid; See also, Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 980-981, 985; and *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280-281.

[62] *Redevelopment Agency, supra,* 55 Cal.App.4th at page 986. The Third District Court of Appeal adopted the reasoning of the *Redevelopment Agency* decision in *City of El Monte, supra,* 83 Cal.App.4th at page 281.

[63] Government Code section 6502.

board.[64] A joint powers authority is a separate entity from the parties to the agreement and is not legally considered to be the same entity as its contracting parties.[65]

A joint powers authority has only the powers that are specified in the joint powers agreement.[66] Unlike one of their city or county members, joint powers authorities do not have the independent statutory authority to levy and to collect tax revenue. Rather, they receive funds through membership dues paid with the proceeds of taxes of their city and county members.

In addition, as explained below, joint powers authorities are not subject to the spending limitation prescribed by article XIII B. Article XIII B, section 8, subdivision (b), defines "appropriations subject to limitation" for local government to mean "any authorization to expend during a fiscal year the *proceeds of taxes levied by or for that entity* and the proceeds of state subventions to that entity (other than subventions made pursuant to section 6) exclusive of refunds of taxes . . . ." [Emphasis added.] As indicated above, joint powers authorities do not have the independent power to tax. Thus, the issue is whether their local agency members, that do have the power to tax, can levy taxes "for" the joint powers authority, making those tax proceeds subject to the spending limitation of article XIII B.

In 1985, the Second District Court of Appeal, in *Bell Community Redevelopment Agency v. Woosley*, interpreted the phrase "taxes levied by or for an entity" in the definition of "appropriations subject to limitation" in article XIII B, section 8.[67] Although the *Bell* case involved a redevelopment agency, the court's interpretation of the spending limit in article XIII B is instructive and relevant to this case.

The *Bell* court determined that the phrase "taxes levied by or for an entity" has a long-standing special meaning, dating back to an 1895 law that provided for the levy of taxes "by and for" municipal corporations. Based on the interpretation of the phrase, the court concluded that a local agency does not levy taxes for a redevelopment agency since a redevelopment agency does not have the power to tax. Thus, "costs" incurred by an entity that does not have the power to tax are not subject to the spending limit in article XIII B. The court's holding is as follows:

> This [1895] act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. [Citations omitted.] The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. [Citation omitted.] In levying taxes for the city the county was levying "municipal taxes" through the ordinary county machinery. [Citation omitted.]
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> Thus, the salient characteristics of one entity levying taxes "for" another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the

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[64] Government Code sections 6506, 6508.

[65] Government Code section 6507; 65 Opinions of the California Attorney General 618, 623 (1982).

[66] Government Code section 6508.

[67] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24.

> levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the "levied for" entity." *It is obvious that none of these characteristics has any applicability to the redevelopment process … The first and foremost fact which mandates this conclusion is that a redevelopment agency does not have the power to tax. [Citation omitted.] That being the case, we resolve that the county is not levying taxes "for" the Agency*. (Emphasis added.)[68]

Similarly, a county or city member of a joint powers authority does not levy taxes for the joint powers authority because the joint powers authority does not have the power to tax. Therefore, the "costs" incurred by a joint powers authority to prepare and post a notice and agenda, and comply with the closed session requirements of the Brown Act, are not subject to the tax and spend limitations of articles XIII A and XIII B.

As stated above, it is presumed that the Legislature was aware of these court decisions and deleted from the definition of "special district" the entities that were not subject to the tax and spend provisions of article XIII A and XIII B, i.e., redevelopment agencies and joint powers agencies.

Accordingly, staff finds that the costs incurred by redevelopment agencies and joint powers authorities, or any decision-making or advisory body created by these agencies, are not entitled to reimbursement for the activities in the *Brown Act Reform* program to prepare and post a notice and an agenda (Gov. Code, § 54954.2, subd. (a)), and to comply with the disclosure and reporting requirements for closed session meetings (Gov. Code, §§ 54954.2, subd. (a), 54957.1, 54957.7).

CONCLUSION

Staff concludes that the notice and agenda, and closed session activities imposed by the test claim legislation (Gov. Code, §§ 54952, 54954.2, 54957.1, and 54957.7 as added or amended by Stats. 1993, chs. 1136, 1137, and 1138, and Stats. 1994, ch. 32) are not mandated by the state within the meaning of article XIII B, section 6 and, thus, are not reimbursable with respect to the following local legislative bodies:

- Local bodies created by state or federal statute that are not required by state or federal law to exist.
- Local advisory bodies created by the local entity.
- Redevelopment agencies and joint powers authorities, and any decision-making or advisory body created by these agencies.

<u>Staff Recommendation</u>

Staff recommends that the Commission adopt this analysis.

[68] *Id.* at pages 32-33.