BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Section 23300-23397, as added or amended by Statutes 1974, Chapter 1392, Sections 2 and 3; Statutes 1975, Chapter 1247; Statutes 1976, Chapter 1143; Statutes 1977, Chapter 1175; Statutes 1978, Chapter 465; Statutes 1979, Chapter 370; Statutes 1980, Chapter 676; Statutes 1981, Chapter 1114; Statutes 1984, Chapter 226; Statutes 1985, Chapter 702; Statutes 1986, Chapter 248; Statutes 1994, Chapter 923; Statutes 2002, Chapter 784; and Statutes 2004, Chapter 227 Governor's Press Release dated May 10, 2004 Filed on October 13, 2006 By the County of Santa Barbara, Claimant.	Case No.: 06-TC-02 *County Formation Cost Recovery* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted April 19, 2013*) (*Served April 25, 2013*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on April 19, 2013. Ms. Anne Rierson, Deputy County Counsel, appeared on behalf of the County of Santa Barbara. Ms. Carla Shelton appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to deny the test claim at the hearing by a vote of 6 to 0.

Summary of the Findings

Government Code section 23300 et seq., as enacted in Statutes 1974, chapter 1392, sections 2 and 3, as amended by Statutes 1975, chapter 1247; Statutes 1976, chapter 1143; Statutes 1977, chapter 1175; Statutes 1978, chapter 465; Statutes 1979, chapter 370; Statutes 1980, chapter 676; Statutes 1981, chapter 1114; Statutes 1984, chapter 226; Statutes 1985, chapter 702; Statutes 1986, chapter 248; Statutes 1994, chapter 923; Statutes 2002, chapter 784; and Statutes 2004, chapter 227; and the alleged executive order, Governor's Press Release, dated May 10, 2004, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim statutes and alleged executive order do not impose any reimbursable state-mandated activities upon local government, and increased costs alone are not reimbursable absent a mandated new program or higher level of service imposed upon an eligible local government claimant.

All requirements of the County Formation Law first enacted in Statutes 1974, chapter 1392 are denied, having been enacted prior to January 1, 1975. In addition, the subsequent amendments to the test claim statutes enacted between 1975 and 2004 do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. Many of the amendments were not substantive, while others imposed requirements upon the state, or the proponents of a new county

A subset of statutes enacted on or after January 1, 1975 arguably impose new requirements on the county to hold a second election to name the officials of the newly formed county, and select a county seat, if the first election results in the voters' approval of the new county. But, because in this case, the proposition in the first election failed, claimant has not incurred costs for the activities related to a second election. Because there is no evidence in the record that the claimant or any other county incurred increased costs mandated by the state to implement these statutes, they are denied.[1]

Several amendments are alleged to have imposed activities and costs upon the Mission County Formation Review Commission, which is not an eligible claimant because it is not subject to the tax and spend provisions of the California Constitution. Costs incurred by the review commission are shifted to the county by statute; but without a corresponding new program or higher level of service imposed on the county, those costs are not reimbursable pursuant to the courts' interpretation of article XIII B, section 6. Moreover, the costs are shifted pursuant to provisions of Statutes 1974, chapter 1392, which were enacted prior to January 1, 1975, and never amended and, thus, not eligible for reimbursement under article XIII B, section 6(a)(3). Finally, the Legislature's findings and determinations when enacting the County Formation Law regarding the existence of reimbursable state-mandated program under the former Revenue and

[1] However, if another county in the future incurs costs for the second election, that county may file a test claim including evidence of the costs incurred with the Commission within 12 months of first incurring costs.

Taxation Code are not dispositive, and that public policy is not a sufficient justification for finding a reimbursable state mandate.

COMMISSION FINDINGS

I. Chronology

10/13/2006	Claimant, County of Santa Barbara, filed the test claim with the Commission.
10/31/2006	Commission staff deemed the filing complete.
12/06/2006	The Department of Finance (DOF) submitted written comments on the test claim.
01/03/2007	Claimant submitted a rebuttal to DOF's comments.
10/30/2012	Commission staff issued the draft staff analysis and proposed statement of decision, setting the matter for the January 25, 2013 hearing.
11/13/2012	Claimant requested an extension of time to file comments and a postponement of the hearing.
11/14/2012	Claimant's request for an extension of time and postponement of hearing was granted. Matter was set for hearing on April 19, 2013.
01/17/2013	DOF submitted written comments on the draft staff analysis.
01/18/2013	Claimant submitted written comments on the draft staff analysis.

II. Background

This test claim seeks reimbursement for costs incurred by Santa Barbara County pursuant to a failed attempt to partition the county and create, from the northern area of the county, a new local government, Mission County. Claimant Santa Barbara County (hereafter "claimant" or "county") incurred costs related to complying with the County Formation Law, including the formation and staffing of a County Formation Review Commission, the determination of eleven economic impact and feasibility criteria identified in Government Code section 23332, and the conduct of a popular election to determine whether the new county should be created.

The process of forming a new county, under the County Formation Law, is triggered when proponents of the new county circulate petitions throughout the existing county or counties that would be partitioned, and collect a certain number of signatures, in proportion to the whole number of registered voters in the existing county or counties, within a defined time period. When certified by the county clerk to be complete, the petitions are forwarded to the County Board of Supervisors, and then to the Governor, who is required by statute to appoint a review commission to study the economic and fiscal impacts of partitioning the county, as provided. An election is then held to determine if a new county should be created. The costs of the review commission's study, by statute, fall to the new county, if created; but if defeated, the costs fall to the existing principal county.

In this case, proponents of the new Mission County began circulating petitions in April 2003. On December 10, 2003, the Santa Barbara County Clerk, Recorder, and Assessor certified the petitions "sufficient to proceed." The County Board of Supervisors transmitted the petition to then-Governor Schwarzenegger on January 8, 2004. The Governor appointed five commissioners, as provided for under section 23331, to serve on the Mission County Formation Review Commission. The appointment was announced in a press release on May 10, 2004, wherein the Governor charged the county formation commission with completing a "comprehensive assessment and report for the community regarding the impact of the proposed Santa Barbara County split on the region."[2]

The review commission was required to make determinations regarding the eleven criteria listed in section 23332, as noted above, and began meeting on May 17, 2004.[3] The review commission requested a loan of operating funds from the State Controller's Office (SCO) in the amount of $400,000, to be repaid with interest. The funds were appropriated in the 2004 Budget Act, enacted July 31, 2004.[4] On August 19, 2004, County Administrator Michael Brown sent a letter to the SCO requesting that these funds be made available to his office, on behalf of the "Santa Barbara County Formation Commission."[5] On September 27, 2004 the review commission voted unanimously to extend its term upon approval by the Governor, which was subsequently granted. [6] The commission and county staff completed the required assessment, made the required determinations, and created the Final Report of the Mission County Formation Review Commission, dated March 28, 2005. The report was presented to the County Board of Supervisors, and the county secured the measure for the June 2006 ballot, at which time the measure was defeated.[7]

The claimant has alleged the entirety of the County Formation Law, Government Code section 23300-23397 as enacted in Statutes 1974, chapter 1392, p. 3039, sections 2 and 3, and the

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[2] Exhibit A, Test Claim p. 1.

[3] Exhibit A, Test Claim p. 2.

[4] Statutes 2004, chapter 208 (SB 1113) § 2.00 [Line Item 9210-102-0001 states: "The amount appropriated in this item is for allocation by the State Controller to the Santa Barbara county Formation commission pursuant to [provisions of the County Formation Law]…The amount appropriated in this item is a loan and shall be repaid with interest within one year from the date upon which the issue of county formation is voted on by the people."].

[5] Exhibit E, Letter to the State Controller's Office requesting $400,000 warrant to be sent to the County Administrator's Office, dated August 19, 2004.

[6] Exhibit A, Test Claim p. 2; Exhibit D, Letter Requesting Extension of Time from Mission County Formation Review Commission to Governor Schwarzenegger, dated Sept. 27, 2004.

[7] Exhibit A, Test Claim p. 2.

Governor's Press Release of May 10, 2004. Several amendments to the County Formation Law are considered as well.[8]

Test claim statutes

The County Formation Law, commencing with Government Code section 23300, provides that "[n]ew counties *may be formed* and created from portions of one or more existing counties solely pursuant to the provisions of this chapter."[9] The 1974 statute, as enacted, provides as follows:

- Section 23320 provides that "proceedings for the creation of a proposed county shall be initiated by petition" of qualified electors.[10]
- Section 23321 describes the number of signatures required, depending on the population of the proposed county in relation to the county or counties to be partitioned.[11]

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8 In the draft staff analysis, Commission staff concluded that only the 1974 statute had been properly pled, and therefore declined to take jurisdiction of any later amendments to the County Formation Law that may have created reimbursable activities. Commission staff stated the posture taken as follows:

> Claimant has alleged a number of activities and costs that were enacted in later amendments to the County Formation Law, but has not pled the statutes that amended the law. Government Code sections 17521 and 17553 require that a test claim specifically identify the statute or executive order that allegedly imposes costs mandated by the state. Thus, the Commission does not have jurisdiction over the statutes that have not been pled. This decision determines only whether the 1974 County Formation Law as added and the Governor's 2004 press release constitute a reimbursable state-mandated program.

The claimant objected to this position, arguing that the initial test claim filing complied with the test claim requirements since the test claim attached the applicable code sections, as amended post-1975, and alleged in the test claim narrative the constitutional requirement to reimburse the county for activities that resulted from the post-1975 amendments.

Claimant did, however, fail to list the statutes and chapters pled in Box 4 of the test claim form, and to attach copies of the statutes and chapters pled, as required. Nevertheless, staff finds that the discussion in the narrative of the test claim combined with the, undated print-out of the code, as it presumably appeared when the test claim was filed, is sufficient to put the parties on notice that the post-1975 amendments were intended to be pled. As described in the analysis below, under section A.2., the post-75 statutes are analyzed and considered in this statement of decision as if properly pled.

[9] Government Code section 23300 (Stats. 1974, ch. 1392 § 2).

[10] Government Code section 23320 (Stats. 1974, ch. 1392 § 2).

[11] Government Code section 23321 (Stats. 1974, ch. 1392 § 2).

- Sections 23325-23329 require that a petition be filed with the clerk of the county or counties from which the new county is to be formed; that the clerk of the county or counties verify the petitions and the signatures therein; and that the clerk certify the petition to the board of supervisors of the affected counties.[12]
- Section 23330 then requires the board of the principal county to "forthwith transmit a copy of the petition to the Governor."[13]
- Section 23331 provides that the Governor, upon receipt of the petition pursuant to section 23330, "shall create a County Formation Review Commission… and appoint five persons to be members of the commission."[14]
- Section 23332 provides that, once appointed, the commission "shall determine all of the following:"

  (a) A fair, just, and equitable distribution, as between each affected county and the proposed county, of the indebtedness of each affected county.

  (b) The fiscal impact of the proposed county creation on each affected county.

  (c) The economic viability of the proposed county.

  (d) The final boundaries of the proposed county.

  (e) A procedure for the orderly and timely transition of service functions and responsibilities from the affected county or counties to the proposed county.

  (f) The division of the proposed county into five supervisorial districts.

  (g) The division of the proposed county into a convenient and necessary number of judicial, road and school districts, the territory of which shall be defined. To the extent possible, existing judicial, road and school districts located within the territory of the proposed county shall be maintained.

  (h) The county officials to be elected at the election on the proposed county creation.

  (i) That the boundaries of the proposed county do not create a territory completely surrounded by any affected county.

  (j) The location of the county seat of the proposed county.[15]
- Section 23335 requires that the members of the commission meet within 10 days and elect a chairman and appoint a secretary.[16]

[12] Government Code sections 23325-23326; 23328 (Stats. 1974, ch. 1392 § 2).

[13] Government Code section 23330 (Stats. 1974, ch. 1392 § 2).

[14] Government Code section 23331 (Stats. 1974, ch. 1392).

[15] Government Code section 23332 (Stats. 1974, ch. 1392 § 2).

- Section 23336 requires the commission to "hear any protests and objections to the creation of the proposed county," in a noticed public hearing.[17]
- Section 23339 gives the commission subpoena power.[18]
- Section 23340 requires the cooperation of "all officers and employees any affected county."[19]
- Section 23341 provides that the commission shall adopt a resolution and transmit its report within 180 days.[20]
- Section 23343 provides that the commission "shall receive as compensation" a $50 per diem along with actual expenses incurred. Sections 23343 also, notably, provides that "[i]f the proposed county is created, all expenses of the commission…shall be borne by the new county, or, if the proposed county is not created, by each affected county, in equal shares."[21]
- Sections 23350-23374 provide for an election to be held to determine whether to form the county.[22]
- Section 23374, in particular, provides that the costs of the election "shall be paid by the principal county, if the creation of the proposed county is defeated, or by the proposed county if it is created pursuant to this chapter."[23]

After the original enactment of the County Formation Law in 1974, the Legislature enacted several substantive amendments, which are analyzed to determine whether they mandate new requirements and result in costs mandated by the state. These post-1975 amendments include:

- Section 23331 was amended by Statutes 1975, chapter 1247, to provide that the Governor must appoint the members of a review commission within 120 days after receipt of a certified petition.[24]

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[16] Government Code section 23335 (Stats. 1974, ch. 1392 § 2).

[17] Government Code section 23336 (Stats. 1974, ch. 1392 § 2).

[18] Government Code section 23339 (Stats. 1974, ch. 1392 § 2).

[19] Government Code section 23340 (Stats. 1974, ch. 1392 § 2)

[20] Government Code section 23341 (Stats. 1974, ch. 1392 § 2).

[21] Government Code section 23343 (Stats. 1974, ch. 1392 § 2).

[22] Government Code sections 23350-23374 (Stats. 1974, ch. 1392 § 2).

[23] Government Code section 23374 (Stats. 1974, ch. 1392 § 2).

[24] Government Code section 23331 (as amended, Stats. 1975, ch. 1247).

- Section 23341 was amended by Statutes 1975, chapter 1247, to provide that a review commission may vote to extend its term of 180 days by up to 180 additional days, upon approval by the Governor.[25]

- Section 23344, added in 1975, provides that the commission may borrow money for operating expenses, and that the loan must be repaid within one year of the election on the county formation issue.[26]

- Section 23340.5, added in 1978, provides that the commission may appoint counsel and fix compensation.[27]

- Sections 23301, 23324, 23332-23334, 23336-23338, 23350-23352, 23354-23355, 23359, 23363, 23368-23369, and 23373 were amended, and sections 23374.1 through 23374.19 were added, in Statutes 1979, chapter 370, in order to bifurcate the election process, as discussed below, to first determine whether a new county shall be formed at an initial required election, and later determine the county seat of the approved county and the officials to be elected to positions in the approved county at a subsequent election, contingent upon the result of the first.[28]

- Section 23332 was amended again by Statutes 1984, chapter 226, to provide that a review commission's report and determinations must include, when dividing the proposed county into five supervisorial districts, "The boundaries of the districts shall be established in a manner which results in a population in each district which is as equal as possible to the population in each of the other districts within the county."[29]

- Finally, section 23332 was amended again by Statutes 1985, chapter 702, to provide that a review commission's determinations must include

  (h) Which county offices shall be filled by election at the subsequent election of officials for an approved county conducted pursuant to Article 4.5 (commencing with Section 23374.1), and which of the offices shall be filled by appointments made by the board of supervisors of the approved county. At a minimum, 'the county offices to be filled by election shall be those which by law, are required to be filled by election.

  ¶ …¶

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[25] Government Code section 23341 (as amended, Stats. 1975, ch. 1247).

[26] Government Code section 23344 (added, Stats. 1975, ch. 1247).

[27] Government Code section 23340.5 (added, Stats. 1978, ch. 465).

[28] Statutes 1978, chapter 465.

[29] Government Code section 23332(f) (Stats. 1984, ch. 226).

(k) The appropriations limit for the proposed county in accordance with Section 4 of Article XIII B of the California Constitution.[30]

A number of other minor, largely technical amendments made to section 23300 et seq. are mentioned briefly below.[31]

III. Positions of the Parties and Interested Parties

A. Claimant's Position

Claimant alleges that the test claim statutes and alleged executive order constitute a reimbursable state-mandated program. Claimant alleges that the county was mandated by the state to incur costs in connection with the statutes and the executive order. As explained below, claimant identifies $996,007 in actual costs of the county formation process incurred June 2006, pursuant to the defeat of the county formation ballot measure. Claimant notes that these costs accrued during a period spanning fiscal years 2002-2003 through 2005-2006, but that the costs were "incurred," for the purposes of Government Code section 17551, after the June 2006 election. Claimant also estimates $24,680 in interest, due in June 2007, on the $400,000 loan provided by the SCO to the Mission County Formation Review Commission. There are no further costs identified by the claimant going forward, and no statewide cost estimate is applicable to these facts; only the county incurred costs, and no other entity will incur currently foreseeable costs pursuant to the test claim statute.[32]

Claimant requests reimbursement for the following:

(1) Staffing and administrative costs *of the review commission*, including fees for legal counsel and salaries and benefits of the commission staff. These costs are alleged to include $340,982 for staffing and $161,782 for other administrative costs.

(2) Fiscal and Indebtedness studies of the Final Report, requiring "countywide collaboration of all departments to understand and calculate service level delivery by geographic location matched to associated revenues and costs for those services." These costs are alleged to total $328,538.

(3) Indirect costs, including 10% of salaries of department heads and other staff. These costs are alleged to amount to $43,606.

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[30] Government Code section 23332(h);(k) (Stats. 1985, ch. 702).

[31] E.g., Statutes 1994, chapter 923 (SB 1546) [amended sections 23353, 23359, and 23365 replacing all references to the "clerk" of the affected county with "elections officer"]; Statutes 1997, chapter 164 [added article 3.5 to chapter 3 of Division 1 of title 3 of the Government Code, consisting of sections 23345 through 23348, addressing a specific county division review commission for Los Angeles County, and are not applicable to this test claim].

[32] Exhibit A, Test Claim at p. 4.

(4) Election costs totaling $121,099.[33]

Claimant relies on section 3 of Statutes 1974, Chapter 1392, alleging that the county should be reimbursed "because the Legislature clearly stated when it enacted the County Formation Law that there are state-mandated local costs that require reimbursement." The Legislature stated in its enactment that "there are state-mandated local costs in this act in 1975 and subsequent years that require reimbursement under Section 2231 of the Revenue and Taxation Code."[34]

Claimant further alleges that the formation process is a "new program," triggered by the 2004 executive order by Governor Schwarzenegger. Alternatively, claimant alleges that the duties performed by the county and the Formation Review Commission constitute "a higher level of service of an existing program."

Claimant also asserts that "the State should approve the subvention of funds for public policy reasons." Claimant alleges that the state mandated the activities and costs incurred "to support the public's participation in determining the form of county government that would best serve them." Claimant alleges that these are "unusual costs imposed on the County by the State to provide services to the public, in an amount that is substantial for the County to absorb."

The claimant states that no funding for this program was provided; aside from the loan from SCO, all costs of the county formation process were absorbed by the county's general purpose funds.[35]

In rebuttal comments submitted in response to the draft staff analysis, the claimant argues that case law conclusively establishes that the County Formation Law is a reimbursable state-mandated program, and that the repeal of former Revenue and Taxation code provisions, and the enactment of Government Code section 17500 et seq. do not preclude reimbursement. The claimant also argues that the Governor's 2004 press release implements the County Formation Law as it existed in 2004, irrespective of any defect in the claimant's pleadings. The claimant further argues that its test claim filing complied with the requirements by attaching copies of the applicable code sections that were amended by the Legislature after January 1, 1975, and providing sufficient information in its narrative to constitute notice of the statutes pled. And finally the claimant reiterates the position asserted in the test claim filing and the rebuttal comments submitted in response to DOF's comments on the test claim: that the test claim statutes and the Governor's executive order impose reimbursable state-mandated costs on the county.[36]

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[33] Exhibit A, Test Claim at p. 3.

[34] Section 3 of Statutes 1974, chapter 1392.

[35] Exhibit A, Test Claim pp. 4-6.

[36] Exhibit E, Claimant Comments on Draft Staff Analysis.

B. Department of Finance's Position

DOF submitted written comments on December 6, 2006, in which DOF asserts that the activities involved in the test claim are not reimbursable on the following grounds:

- The 1974 statutes alleged predate the subvention requirement of article XIII B, section 6. Any costs incurred in complying with those statutes are not reimbursable. DOF notes that the Governor's appointment of the Mission County Review Commission occurred in May 2004, but that the statute authorizing those appointments was enacted prior to January 1, 1975.
- The Mission County Review Commission is not an eligible claimant under article XIII B, section 6 and applicable provisions of the Government Code.
- Interest owing on the loan received by the review commission is not reimbursable because the statutes authorize a review commission to request a loan from the state, but do not require it to do so.
- The test claim "may have been filed after the statute of limitations pursuant to Government Code section 17551(c)." DOF notes that section 17551 requires that a test claim be filed not later than 12 months of the effective date of the statute or 12 months of first incurring costs, whichever is later. DOF notes that the test claim alleges costs from May 10, 2004 to June 30, 2006, "which extends beyond the 12 month filing period."[37]

DOF submitted written comments on the draft staff analysis and proposed statement of decision on January 17, 2013, in which DOF expressed "no concerns with the Commission's draft staff analysis." DOF stated that it "concurs with the Commission's recommendation to deny the test claim."[38]

IV. 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, 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.

[37] Exhibit B, Department of Finance Comments, pp. 1-2.

[38] Exhibit D, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

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."[39] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[40] However section 6 is limited: by its terms it *authorizes* the Legislature to provide for, but does not *require*, reimbursement of costs incurred pursuant to statutes enacted prior to 1975.[41]

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.[42]
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.[43]
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.[44]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs,

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

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

[41] See *County of Contra Costa v. State of California* (Cal. Ct. App. 3d Dist. 1986) 177 Cal.App.3d 62 (Fn1) [citing *County of Los Angeles v. State* (1984) 153 Cal.App.3d 568, 573, (Legislature's decision to make reimbursable "certain specified statutes enacted after January 1, 1973 [but before January 1, 1975]…constituted the exercise of the Legislative discretion authorized by article XIII B, section 6, subdivision (c), of the California Constitution") internal quotations omitted].

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

[43] *Id*. at 874-875 (reaffirming the test set out in *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.)

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

however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[45]

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[46] 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.[47] 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."[48]

A. Jurisdiction Issues

(1) Although the test claim filing did not meet the specific pleading requirements of Government Code section 17553 and section 1183 of the Commission's regulations, the claimant's narrative and attachments are sufficient to satisfy notice pleading requirements, and to provide sufficient notice of the statutes and requirements for which reimbursement is sought.

The test claim filing form submitted by Santa Barbara County cites the following under "test claim statutes or executive orders cited:"

A) California Government Code Sections 23300-23397, effective January 1, 1975.

B) Section 3 of Stats. 1974, c. 1392, p. 3039 (excerpt attached).

C) Press Released dated May 10, 2004 from Governor Schwarzenegger appointing members of the Mission County Formation Review Commission.

In comments filed on the test claim, DOF recommended that the Commission deny the test claim because "[s]ections 23300 through 23397 of the Government Code were enacted prior to January 1, 1975, with minor amendments in subsequent years." DOF continued: "[t]he Governor's appointments of the County Commission members in May 2004 implemented those Government Code Sections for Santa Barbara County but the appointments were made pursuant to a statute enacted prior to January 1, 1975." DOF concluded that "[a]ccordingly, a subvention of funds is not required."[49]

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[45] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[46] *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

[47] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

[48] *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose*, *supra*].

[49] Exhibit B, DOF Comments on Test Claim.

The claimant responded to DOF's comments in rebuttal comments, arguing that while article XIII B, section 6 does not require reimbursement for statutes enacted prior to January 1, 1975, section 6 does provide that the Legislature "may, but need not provide a subvention of funds for legislative mandates enacted prior to January 1, 1975," and that "the Commission is not barred from approving the test claim because of the date of enactment of the applicable statute."[50] The claimant also stressed again, in its rebuttal comments, that section 3 of Statutes 1974, chapter 1392 provided that "there are state-mandated local costs in this act in 1975 and subsequent years that require reimbursement under Section 2231 of the Revenue and Taxation Code." The claimant argued that this expression of the Legislature at the time the County Formation Law was enacted should control. And the claimant argued that the Governor's 2004 executive order "mandated either a new program or higher level of service of an existing program."

At the time this test claim was filed, Government Code section 17553 expressly stated that a test claim must include "[a] written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate."[51] And, the test claim was required to be supported with copies of "[t]he test claim statute that includes the bill number or executive order, alleged to impose or impact a mandate."[52] Furthermore, section 1183(d) of the Commission's regulations requires that test claims be filed on a form developed by the executive director and contain all of the elements and supplemental documents required by the form and statute. Claimant did, in fact, file the claim on the form developed by the executive director, which includes filing instructions on the test claim cover page in Box 4 which are relevant here. The instructions for Box 4 state "Please identify all code sections, statutes, bill numbers…that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 2901])." Likewise Government Code section 17553 directs the claimant to identify in the written narrative the specific sections of statutes or executive orders alleged to impose a mandate, and to support the written narrative with copies of "the test claim *statute that includes the bill number* alleged to impose or impact a mandate."[53]

The claimant did not reference "specific sections of *statutes*" enacted after 1975, but instead referenced, both on the cover page of the test claim filing, and throughout the narrative, the *code sections* that constitute the County Formation Law. Furthermore, for Box 4 on the test claim filing form, the code sections are cited as "Government Code Sections 23300-23397, effective January 1, 1975," and the only statute and chapter cited is Statutes 1974, chapter 1359, which, as discussed below, is not eligible for reimbursement. And, rather than attaching copies of the statutes and chapters constituting the pertinent amendments to the County Formation Law, the claimant attached an excerpt of Government Code section 23300 et seq., without any effective

[50] Exhibit C, Claimant's Rebuttal Comments, at p. 1.

[51] Government Code section 17553(b)(1) (As amended by Stats. 2004, ch. 890 (AB 2856)).

[52] Government Code section 17553(b)(3)(A) (As amended by Stats. 2004, ch. 890 (AB 2856)).

[53] Exhibit A, Test Claim Filing, Cover Page.

dates, bill numbers, or any other information, in an attempt to provide notice of the test claim *statutes* being pled.

Based on the arguments submitted by DOF and the claimants, and the test claim filing including the form and attachments submitted, Commission staff, in the draft staff analysis, presumed that the claimant had pled only the statutes and chapters enacted in 1974. The draft staff analysis concluded that the Legislature "may," but had not, provided for reimbursement of statutes enacted prior to January 1, 1975. Staff relied upon Government Code section 17514, which provides that "costs mandated by the state" are those costs incurred on or after January 1, 1980, as a result of statutes enacted on or after January 1, 1975. Furthermore, the date of enactment, not the effective date, is dispositive, for purposes of article XIII B, section 6, and Government Code section 17514.[54] The draft staff analysis declined to take jurisdiction of any subsequent amendments to the test claim statutes, which were not properly pled, in a manner consistent with the Government Code and the Commission's regulations.

The test claim filing is not clear and, with respect to the post-1975 statutes, does not comply with the specific filing requirements in Government Code section 17553 and section 1183(d) of the Commission's regulations. However, the California Supreme Court has held that "[p]leadings must be reasonably interpreted; they must be read as a whole and each part must be given the meaning that it derives from the context wherein it appears."[55] Here, as discussed above, the test claim, read as a whole, and given the meaning derived from the context of the narrative and the attached code sections, and claimant's comments on the draft, can be interpreted to implicate many of the later-enacted amendments to the County Formation Law. The claimant discussed certain alleged activities and costs in the narrative, such as the loan of operating funds from the Controller, authorized by section 23344 (added in Statutes 1975, chapter 1247), and the extension of the review commission's term by an additional 120 days, authorized by section 23341 (amended by Statutes 1975, chapter 1247). These activities cannot be found in Statutes 1974, chapter 1359; thus their discussion raises the specter of reimbursement for some activities and costs added after 1974.[56] And it can be gleaned, through extensive comparative examination of the amendments to the County Formation Law, that the undated code sections that the claimant printed and attached to the test claim filing are a "snapshot" of Government Code section 23300 et seq., as those sections existed between 2002 and 2004. For example, Government Code section 23332 was amended in Statutes 1985, chapter 702 to provide that the review commission must determine an appropriations limit for the new county, which the attached excerpt of the code reflects. Additionally, Government Code section 23396 was amended in Statutes 2002, chapter 784, and that amended text is included in the claimant's attachment. Finally, Government Code section 23344 was amended in 2004 (Stats. 2004, ch. 227 (SB 1102, effective August 16, 2004)) to provide that a review commission could seek a

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[54] *County of Orange v. Flournoy* (Cal. Ct. App. 3d Dist. 1974) 42 Cal.App.3d 908, 912-913.

[55] *Speegle v. Board of Fire Underwriters of the Pacific* (1946) 29 Cal.2d 34, at p. 42.

[56] See e.g., Exhibit A, Test Claim Filing, at p. 2.

loan of up to $400,000 for operating expenses; but the version of section 23344 attached to this test claim filing indicates a limit of $100,000 for the same loan, indicating that the excerpted code sections represent the law prior to August 16, 2004.

Accordingly, the Commission has jurisdiction to determine whether the County Formation Law, as added and amended by statutes enacted before the test claim filing (from 1974 to 2005) constitutes a reimbursable state-mandated program.

(2) The test claim was timely filed.

Subdivision (c) of section 17551 provides, in pertinent part:

> Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.[57]

Section 1183(c) of the Commission's regulations defines "within 12 months" to mean "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."[58] DOF has argued, in its comments, that the test claim "may have been filed after the statute of limitations pursuant to Government Code section 17551(c)."[59]

This test claim was filed October 13, 2006. Based on the filing date of the test claim, any costs incurred before July 1, 2005 would fall outside the 12 month statute of limitations as provided in sections 17551(c) and 1183(c).[60] DOF asserts that the costs claimed for reimbursement were incurred between May 10, 2004 to June 30, 2006, the earliest of which would extend beyond the 12 month filing period and beyond the statute of limitations.[61]

In this test claim, there are costs that would have been incurred by the county under the test claim statutes before July 1, 2005, but are not pled in the test claim. For example, Statutes 1979, chapter 370 substantially amended section 23324, imposing new requirements upon the county clerk of the principal county to publish the notice of intention to form a new county, to specify the date of a public hearing on the issue, and to act as a moderator at the public hearing. According to the test claim, petitions for the creation of Mission County began circulating in April 2003. The notice of intention therefore must have been filed, if the statute was adhered to, prior to the circulating of petitions, and the selection of an appropriate place for a public hearing and publishing of the notice must have also followed soon after, based on the plain language of the statute. And although the test claim is silent, the public hearing that the county clerk was

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[57] Government Code section 17551(c) (Statutes 1984, chapter 1459 § 1).

[58] Code of Regulations, Title 2, section 1183(c) (Register 2010, No. 44).

[59] Exhibit B, Department of Finance Comments, pp. 1-2.

[60] Government Code section 17551(c) (Statutes 1984, chapter 1459 § 1).

[61] Exhibit B, DOF Comments, p. 2. See also Code of Regulations, Title 2, section 1183(c).

expected to moderate should have taken place within 30 to 60 days of the filing of the notice of intention (which must have occurred, at the latest, in April 2003).

Therefore, all of the activities imposed upon the county clerk by the 1979 amendment to section 23324, as described above, must have occurred between April 2003 and the end of the month of June, placing those activities and costs in fiscal year 2002-2003. The test claim was filed October 13, 2006. According to the Government Code section 17551 and the Commission's regulations, costs incurred prior to the 2005-2006 fiscal year are therefore not eligible for reimbursement.

Similarly, all activities required by sections 23320 through 23330, as those sections are added or amended by Statutes 1974, chapter 1392; Statutes 1977, chapter 1175; and Statutes 1979, chapter 370, are denied, because those activities, occurring before the creation of a review commission, and required directly of the county, would have occurred prior to July 1, 2005. Based on the filing date of the test claim, any costs incurred before July 1, 2005 fall outside the 12 month statute of limitations as provided in sections 17551(c) and 1183(c), and are not eligible for reimbursement.

The remaining costs claimed, however, have been filed within the statute of limitations and were incurred after the review commission was appointed by the Governor and after the election for the formation of the new proposed county. The claimant seeks reimbursement for staffing and administrative costs of the Mission County Formation Review Commission following the election defeating the proposal; costs of completing the fiscal and indebtedness studies related to the proposed county; indirect costs; and election costs. The claimant argues, in its rebuttal, that the county did not "incur" these costs, for purposes of reimbursement, until the ballot measure was defeated in June 2006, leaving the county liable for the costs of the Review Commission, and the election, pursuant to Government Code sections 23343 and 23374.[62]

The claimant's view of events is consistent with the plain language of the statutes: the Mission County Formation Review Commission no longer exists, and any financial liabilities fell to the county by operation of sections 23343 and 23374, as enacted by Statutes 1974, chapter 1392,[63] after the election of June 2006. Therefore reimbursement for the costs claimed by the county as a result of the failed ballot measure would not be precluded based upon an October 2006 test claim filing.

Because the county was not made responsible for the costs and liabilities of the Mission County Formation Review Commission and the election activities performed by the county until after the

[62] Exhibit C, Claimant's Rebuttal to DOF Comments, p. 2.

[63] Government Code section 23343 (Stats. 1974, ch. 1392) ["If the proposed county is created, all expenses of the commission, together with the reasonable costs of stationery, postage, and incidental expenses shall be borne by the new county, or, if the proposed county is not created, by each affected county, in equal shares."]; Government Code section 23374 (Stats. 1974, ch. 1392) ["All costs of an election shall be paid by the principal county, if the creation of the proposed county is defeated, or by the proposed county if it is created pursuant to this chapter."].

June 2006 ballot measure failed, the Commission finds that section 17551(c) does not bar the test claim. The test claim does not allege any of the costs discussed above that might be barred under section 17551(c); all costs specifically alleged were incurred by the county in June 2006, and the test claim was filed in October that same year, well within the 12 month period for filing.

B. The County Formation Law, as Enacted in 1974, Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning Of Article XIII B, Section 6 of the California Constitution and Government Code Section 17514.

The claimant requests reimbursement for Government Code sections 23300-23397, as added in 1974, as triggered by the Governor's 2004 order establishing the Mission County Formation Review Commission. DOF has argued that because the County Formation Law was enacted prior to January 1, 1975, the executive order implementing the County Formation Law (and thereby creating the Mission County Formation Review Commission), cannot be subject to reimbursement. The claimant has argued in rebuttal that the Commission is not barred from approving the test claim on the 1974 statute: article XIII B, section 6 provides that the Legislature "may, but need not" provide for reimbursement of costs incurred pursuant to pre-1975 statutes. The claimant further urges that the focus should be the 2004 executive order, notwithstanding the fact that the executive order implements a pre-1975 statute, not normally subject to subvention.[64] The claimant also argues, in comments submitted in response to the draft staff analysis, that the courts of appeal have conclusively established that the County Formation Law constitutes a reimbursable mandate.

The bulk of the County Formation Law, Government Code section 23300 et seq., was enacted in September of 1974, and made effective January 1, 1975.[65] At that time, former Revenue and Taxation Code section 2231 provided, in pertinent part:

> The state shall pay to each local agency and each school district an amount to reimburse the local agency or the school district for *the full costs, which are mandated by acts enacted after January 1, 1973,* of any new state-mandated program or any increased level of service of an existing mandated program.[66]

'Increased level of service' was in turn defined to mean "any requirement mandated by state law or executive regulation after January 1, 1973, which makes necessary expanded or additional costs to a local agency or a school district." In accordance with this broad reimbursement language, the Legislature declared, in section 3 of the 1974 County Formation Law, that "there are state-mandated local costs in this act in 1975-1976 and subsequent years that require

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[64] Exhibit C, Claimant's Rebuttal to DOF Comments, pp. 1-2.

[65] Government Code section 23300 et seq. (Statutes 1974, chapter 1392 § 1 [filed with Secretary of State September 26, 1974]).

[66] Former Revenue and Taxation Code section 2231 (Stats. 1973, ch. 358) [emphasis added].

reimbursement under Section 2231 of the Revenue and Taxation Code which can be handled in the regular budget process."[67]

In 1979, the voters enacted article XIII B, section 6, providing for a constitutional requirement of reimbursement to local government for state-mandated increased costs.[68] For a time, the constitutional requirement and the statutory requirement under the Revenue and Taxation Code existed concurrently.[69] The Revenue and Taxation Code sections have since been repealed, leaving only the reimbursement requirement of article XIII B, section 6 and the Government Code. Article XIII B, section 6 provides that "the Legislature *may, but need not*, provide a subvention of funds for… legislative mandates enacted prior to January 1, 1975, *or executive orders or regulations initially implementing* legislation enacted prior to January 1, 1975. The date of *enactment* of a statute, not the *effective date*, is dispositive, for purposes of state subvention requirements.[70]

Between the adoption of article XIII B, section 6 in 1979, and the repeal of the Revenue and Taxation Code provisions in 1985, former Revenue and Taxation Code sections 2207 and 2231 continued to provide, for a time, reimbursement for statutes enacted after January 1, 1973. In *County of Contra Costa v. State of California*, the court of appeal explained the extension of a statutory reimbursement requirement as follows:

> After the adoption of article XIII B, section 6, the Legislature in 1980 amended Revenue and Taxation Code sections 2207 and 2231, and expanded the definition of "costs mandated by the State" by including certain specified statutes enacted after January 1, 1973. (Statutes 1980, Chapter 1256 § 5.) In *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568, the court concluded that "this reaffimance constituted the exercise of the *Legislative discretion authorized by article XIII B, section 6, subdivision (c)*, of the California Constitution [to provide subvention of funds for mandates enacted prior to January 1, 1975]."

Thus the court in *Contra Costa* observed that the *extension of a statutory reimbursement requirement* to mandates imposed by statutes enacted after January 1, 1973 was within the Legislature's discretion, and not inconsistent with article XIII B, section 6, which provides that

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[67] Statutes 1974, chapter 1392, section 3.

[68] California Constitution, Article XIII B, section 6, Adopted November 6, 1979.

[69] Government Code section 17500 et seq. was enacted in Statutes 1984, chapter 1459, with the intention to "create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs." Revenue and Taxation Code sections 2231 and 2231.5 were repealed by Statutes 1986, chapter 879. Revenue and Taxation Code sections 2207 and 2207.5 were repealed by Statutes 1989, chapter 589.

[70] *County of Orange v. Flournoy* (Cal. Ct. App. 3d Dist. 1974) 42 Cal.App.3d 908, 912-913.

the Legislature "may, but need not" extend reimbursement to statutes enacted prior to January 1, 1975.[71]

In *Los Angeles Unified School District v. State of California* the court recognized that, pursuant to the repeal of the relevant Revenue and Taxation Code provisions, the Government Code and article XIII B, section 6 now control reimbursement. The district's original claim for reimbursement in that case relied on former Revenue and Taxation Code provisions, but when those statutory provisions were repealed before the matter reached the Second District on appeal, the court heard the case on the alternative ground of reimbursement under article XIII B, section 6. The court found that article XIII B, section 6 "*does not require reimbursement* for expenditures pursuant to a statute enacted [prior to January 1,1975]," and that due to the replacement of former Revenue and Taxation Code provisions with Government Code section 17500 et seq., "there is no present legislative intent to provide subvention as to pre-1975 statutes."[72] Thus, under the analysis of *County of Contra Costa* and *Los Angeles Unified School District*, the current text of Government Code section 17514 demonstrates a choice by the Legislature, within its discretion, that it will not provide subvention for statutes enacted prior to January 1, 1975, and will not permit the Commission to approve reimbursement for pre-1975 statutes.[73]

The claimant argues, in comments submitted in response to the draft staff analysis, that reliance on *Los Angeles Unified*, *supra*, is misplaced.[74] The claimant asserts that the following language is applicable to this case:

> [W]hen a right of action does not exist at common law, but depends solely upon a statute, the repeal of the statute destroys the right *unless the right has been reduced to final judgment* or unless the repealing statute contains a saving clause protecting the right in a pending litigation.[75]

The claimant argues that the county's right to reimbursement under the County Formation Law has been reduced to final judgment by the court of appeal, and that the judgment of the court conclusively establishes the right to reimbursement, irrespective of the repeal of former Revenue and Taxation Code sections 2207 and 2231. The claimant cites *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568, in which the court stated:

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[71] *County of Contra Costa v. State of California* (Cal. Ct. App. 3d Dist. 1986) 177 Cal.App.3d 62, 67 (Fn 1).

[72] *Los Angeles Unified School District v. State of California* (Cal. Ct. App. 2d Dist. 1991) 229 Cal.App.3d 552, at pp. 554 (Fn 2); 555-557.

[73] See *County of Contra Costa v. State of California, supra*, at p. 67 (Fn 1).

[74] Exhibit E, Claimant Comments on Draft Staff Analysis, at p. 2.

[75] *Los Angeles Unified School District v. State of California* (Cal. Ct. App. 2d Dist. 1991) 229 Cal.App.3d 552, at p. 557.

> Statutes of 1974, chapter 1392, (Gov. Code § 23300 et seq.) established procedures for the creation of new counties. Those procedures imposed state-mandated local costs for 1975-1976 and succeeding years. '...[T]here are state-mandated local costs in this act in 1975-76 and subsequent years that require reimbursement under Section 2231 of the Revenue and Taxation Code which can be handled in the regular budget process.' (Stats. 1974, ch. 1392, § 3, p. 3039.)[76]

The claimant argues that the Commission should here be required to approve reimbursement under the Government Code and article XIII B, section 6, because a court of competent jurisdiction has previously found the County Formation Law to impose a reimbursable state mandate. The claimant argues:

> The issue of whether the County Formation Law is a reimbursable mandate was actually and necessarily litigated. We believe the decision in the above-cited *County of Los Angeles* case that the County Formation Law is a reimbursable state mandate should be given preclusive effect under the res judicata and collateral estoppel doctrines.[77]

The related doctrines of res judicata and collateral estoppel, as cited by the claimant, may apply to bind a later court, or in this context, the Commission, if certain elements are met, and injustice would not result. The California Supreme Court has described the elements of res judicata and collateral estoppel as follows:

> As generally understood, the doctrine of *res judicata* gives certain *conclusive effect* to a *former judgment* in subsequent litigation involving the same controversy. The doctrine has a double aspect. In its primary aspect, commonly known as claim preclusion, it operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. In its secondary aspect, commonly known as collateral estoppel, the prior judgment ... operates in a second suit ... based on a different cause of action ... as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action. The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding.[78]

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[76] *County of Los Angeles v. State of California* (Cal. Ct. App. 2d Dist. 1984) 153 Cal.App.3d 568, at p. 570.

[77] Exhibit E, Claimant Comments on Draft Staff Analysis, at p. 2.

[78] *Boeken v. Phillip Morris USA* (2010) 48 Cal.4th 788, at p. 797 [internal quotations and citations omitted] [Citing *People v. Barragan* (2004) 32 Cal.4th 236, 252–253].

Here, the claimant is seeking to apply the "secondary aspect," as discussed above: in the second action (here, a test claim), based on a new or different cause of action (a new attempt to divide an existing county by the process described in the law), the holding of the prior action is proffered to conclusively establish a disputed issue of fact or law.[79] As stated by the California Supreme Court, the claim or issue must be identical to the issue raised in the prior action, the prior action must result in a judgment on the merits, and the party against whom collateral estoppel is asserted must have been a party, or in privity with a party, in the prior action.

In this case, the claimant argues, in its comments, that it "was a party to a final appellate court judgment on the merits." The county continues: "[a]s a party, the County of Santa Barbara previously prevailed against the State in a final appellate court judgment finding the County Formation Law to be a reimbursable state mandate."[80] The claimant was named as a party to the prior action, and "the courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government."[81] Therefore, the element of privity is established, with respect to both the claimant, and the state.

Additionally, the prior action can be seen as a judgment on the merits: the court in *County of Los Angeles* considered whether the statutory right of reimbursement conflicted with article XIII B, section 6, as alleged by the state and determined that the County Formation Law (cited as "chapter 1392") constituted a reimbursable state mandate under provisions of the Revenue and Taxation Code.[82] The claimant concludes, in its comments on the draft staff analysis, that "[t]he issue of whether the County Formation Law is a reimbursable mandate was actually and necessarily litigated."[83]

But collateral estoppel is not available where the issue of law in the later action is not identical to that raised in the prior action. Here, the holding of the prior action, *County of Los Angeles*, *supra*, relies on former Revenue and Taxation Code sections, which, as discussed above, have been repealed. Section 2207 of the former Revenue and Taxation Code, at the time *County of Los Angeles* was heard, defined "costs mandated by the state" much more broadly than the current Government Code section 17514. Former Section 2207 provided:

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[79] The primary aspect, claim preclusion, is not applicable to these facts, because the current test claim relies on a new cause of action, i.e., new costs incurred under a test claim statute.

[80] Exhibit E, Claimant Comments on Draft Staff Analysis, at p. 2.

[81] *Carmel Valley Fire Protection Dist. v. State of California* (Cal. Ct. App. 2d Dist. 1987) 190 Cal.App.3d 521, at p. 535 [citing *Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, at p. 398].

[82] *County of Los Angeles v. State of California* (Cal. Ct. App. 2d Dist. 1984) 153 Cal.App.3d 568, at pp. 571-574 [discussion of amendment and re-enactment of definition of "costs mandated by the state" in Revenue and Taxation Code section 2207, and extending statutory right of reimbursement to statutes enacted after January 1, 1973].

[83] Exhibit E, Claimant Comments on Draft Staff Analysis, at p. 2.

"Costs mandated by the state" means any increased costs which a local agency is required to incur as a result of the following:

(a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program.

(b) Any executive order issued after January 1, 1973, which mandates a new program.

(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973.

(d) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a federal statute or regulation and, by such implementation or interpretation, increases program or service levels above the levels required by such federal statute or regulation.

(e) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a statute or amendment adopted or enacted pursuant to the approval of a statewide ballot measure by the voters and, by such implementation or interpretation, increases program or service levels above the levels required by such ballot measure.

(f) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which (i) removes an option previously available to local agencies and thereby increases program or service levels or (ii) prohibits a specific activity which results in the local agencies using a more costly alternative to provide a mandated program or service.

(g) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which requires that an existing program or service be provided in a shorter time period and thereby increases the costs of such program or service.

(h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program.[84]

This test claim, by contrast, turns on the reimbursement requirements of article XIII B, section 6 and Government Code section 17514. Government Code section 17514, which superseded and replaced section 2207 of the Revenue and Taxation Code, provides, in its entirety:

> "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute

[84] Former Revenue and Taxation Code section 2207 (Stats. 1980, ch. 1256).

enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

Government Code section 17514 conspicuously omits language in the definition provided by former Revenue and Taxation Code section 2207. Government Code section 17556 now addresses the fine distinction between a federal mandate and a state mandate; and between a voter-enacted ballot initiative and a state mandate, phrasing the distinction in prohibitive terms, rather than the opaque conditional language found in the above-cited provisions of section 2207. More significantly for this test claim, Government Code section 17514 clearly provides for reimbursement of an executive order *implementing any statute enacted on or after January 1, 1975*, while the former Revenue and Taxation Code provisions were interpreted to provide for reimbursement of an executive order issuing on or after January 1, 1973, irrespective of the date of the statute in question. Therefore, the issue of law in the present test claim is not identical to the issue in the prior action (*County of Los Angeles*, *supra*), and collateral estoppel does not conclusively establish a right to reimbursement.

Based on the foregoing, the Commission finds that reimbursement is not required for any activities or costs incurred by the county pursuant to the statutes enacted prior to January 1, 1975, consistent with article XIII B, section 6 and Government Code section 17514. The following code sections were enacted in Statutes 1974, chapter 1392:

- Government Code section 23300, which provides that new counties may be formed and created solely pursuant to the provisions of this chapter, was enacted in Statutes 1974, chapter 1392, and never amended. Section 23300, as enacted in Statutes 1974, chapter 1392, is therefore denied.
- Government Code sections 23320 through 23324, providing for the initiation of and the technical requirements of a new county formation petition, including the number of signatures required, and the time frame for collecting those signatures. Sections 23320 through 23324, as enacted in Statutes 1974, chapter 1392, are denied.
- Government Code sections 23325 through 23330, providing for receipt and review of a new county formation petition by the county clerk, were enacted in Statutes 1974, chapter 1392, and never amended. Sections 23325 through 23330, as enacted in Statutes 1974, chapter 1392, are therefore denied.
- Government Code sections 23331 through 23339, providing for the creation of a county formation review commission, and the appointment of members; providing that the commission shall determine ten economic, fiscal, and organizational criteria of the proposed county; providing the technical requirements of the review commission's meetings and public hearing(s); providing for exclusions of territory contiguous to the boundary of the proposed county by request of a property owner or any registered elector; and providing for subpoena power of the review commission. Sections 23331 through 23339, as enacted in Statutes 1974, chapter 1392, are denied.

- Government Code section 23340 was enacted in Statutes 1974, chapter 1392, to provide that all officers and employees of any affected county shall cooperate with, and perform any functions or produce any documents required by, a county formation review commission. Section 23340, as enacted in Statutes 1974, chapter 1392, is denied.
- Government Code section 23343, which provides that "[i]f the proposed county is created, all expenses of the commission, together with the reasonable costs of stationery postage, and incidental expenses shall be borne by the new county, or, if the proposed county is not created, by each affected county, in equal shares," was enacted in Statutes 1974, chapter 1392, and never amended. Section 23343 is therefore denied.
- Government Code section 23350, providing for the board of supervisors of each affected county to issue an order and proclamation and notice of election, to be held "the next established election date in the principal county not less than 74 days after receipt of the commission's determinations, for the purpose of determining whether the proposed county shall be created." Section 23350, as enacted in Statutes 1974, chapter 1392, is denied.
- Government Code sections 23351 through 23355, providing for the publication of the notice of election and its contents; and defining whom shall be eligible voters and what the ballots shall contain. Sections 23351 through 23355, as enacted in Statutes 1974, chapter 1392, are denied.
- Government Code sections 23357 through 23360, providing that the law governing the election shall be the general election laws of the state; providing for the selection of arguments to appear on the ballot; and providing for the ballot pamphlets and sample ballots to be mailed to qualified electors. Sections 23357 through 23359, as enacted in Statutes 1974, chapter 1392, are denied.
- Government Code sections 23361 through 23364, providing technical requirements of the election to be held. Sections 23361 through 23364, as enacted in Statutes 1974, chapter 1392, are denied.
- Government Code sections 23367 through 23369, providing for the duties of election officers; providing for a certified copy of the results of the canvass; and providing for a resolution of the county board of supervisors upon a vote in favor of the creation of the new county; and sections 23372, providing for filing of a resolution with the State Board of Equalization and the Secretary of State, and 23373, providing for a resolution upon the defeat of the new county. Sections 23367 through 23369, 23372 through 23373, as enacted in Statutes 1974, chapter 1392, are denied.
- Government Code section 23374, providing that the costs of an election shall be paid by the principal county if the proposed county is defeated, or by the proposed new county, if created, was enacted in Statutes 1974, chapter 1392, and never amended. Section 23374 is therefore denied.

- Government Code sections 23375 through 23386, providing for the transfer of services, indebtedness, and revenue collection from the affected counties to the new county, were enacted in Statutes 1974, chapter 1392, and never amended. Sections 23375 through 23386 are therefore denied.
- Government Code sections 23394, 23395, and 23397, addressing the organization of courts of the new county, if created, were enacted in Statutes 1974, chapter 1392, and never amended. Sections 23394, 23395, and 23397 are therefore denied.

C. Government Code Section 23300 Et Seq., as Amended After 1975, and the Governor's Press Release Dated May 10, 2004 Do Not Impose a Reimbursable State-Mandated Program.

The following analysis will address the activities and costs arising from statutes enacted on or after January 1, 1975.

(1) Amendments enacted by Statutes 1975, chapter 1247 do not impose any state-mandated programs upon local government.

Statutes 1975, chapter 1247 amended section 23331 to provide that the Governor must appoint the members of the review commission within 120 days following receipt of the petition certification. There are no requirements imposed upon local governments by this amendment.

Statutes 1975, chapter 1247 also amended section 23341 to provide that a review commission may be granted up to 180 additional days to complete its determinations and transmit its report to the affected counties, upon a majority vote of the commission and the approval of the Governor. The claimant does not identify the portion of its expenses attributable to the 120 day extension of the commission's term, but does include the letter requesting the Governor approve an extension, dated September 27, 2004. The commission members took office May 10, 2004, and their term would have expired November 10, 2004, but for a vote to extend the term until February 10, 2005. The letter states that the commission had made "significant progress to date," but that an extension of time was deemed necessary to complete the work required.[85] The review commission presented its report to the Santa Barbara County Board of Supervisors on March 15, 2005.[86] Some amount of the commission's expenses must be considered to have been incurred between the time the original 180 day term expired, and the date that the commission's report was submitted to the county. Because an extension of time was discretionary, rather than mandated by the state, any costs incurred during the extension cannot be considered state-mandated. The California Supreme Court has noted that:

> [A]s is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by

[85] Exhibit A, Test Claim Filing, Letter from the Mission County Review Commission to Governor Arnold Schwarzenegger, dated September 27, 2004.

[86] Exhibit X, Minutes of the Santa Barbara County Board of Supervisors, March 15, 2005.

> state law, but only those costs resulting from a *new program or an increased level of service imposed upon them by the state*.[87]

The key issue is whether the program or service is *imposed upon* the local government entity eligible to claim reimbursement under article XIII B, section 6, or is a program or service that the local government has the *discretion* to undertake. In *City of Merced v. State of California*, the city argued that it was subject to a reimbursable mandate when required by statute to compensate a business owner for the loss of business goodwill pursuant to exercising the power of eminent domain to take the underlying property. The Board of Control (predecessor to the Commission) determined that the requirements of the eminent domain statute imposed a reimbursable mandate, but the court of appeal concluded that the exercise of the eminent domain power was a discretionary act, and that therefore no activities were mandated.[88] In accord is *Department of Finance v. Commission on State Mandates* (*Kern*), in which a state statute required districts maintaining school site councils to comply with the state's open meetings laws, including preparing and posting an agenda in advance, and keeping council meetings open to the public. The court recognized that the notice and hearing requirements could be found to generate activities not previously required, but there was no mandate under the law to establish a school site council in the first instance, and therefore the activities and costs claimed were not mandated. The California Supreme Court reaffirmed *City of Merced*, and held that where activities alleged to constitute a mandate are conditional upon participation in another or an underlying voluntary or discretionary program, or upon the taking of discretionary action, there can be no finding of a mandate.[89]

The language of section 23341, as amended by Statutes 1975, chapter 1247, is clearly and indisputably discretionary: section 23341, as amended, provides as follows:

> The commission shall adopt a resolution making its determination and transmit its report in writing to the board of supervisors of each affected county, within 180 days of the date of notice and acceptance by the last appointed member and shall be signed and attested to by all the members of the commission. The commission *may be granted* up to 180 additional days to comply with the provisions of this section, *upon a majority vote* of the commission and the approval of the Governor.[90]

The language here states that the commission "may be granted" extra time. It does not provide for the commission's term to be extended involuntarily. There is no new program or higher level of service mandated by this amendment, and the remaining requirements are denied, as discussed above, because they pre-date the January 1, 1975 subvention requirement of article XIII B,

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[87] *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835 [emphasis added].

[88] *City of Merced v. State of California* (Cal. Ct. App. 5th Dist. 1984) 153 Cal.App.3d 777.

[89] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 743.

[90] Government Code Section 23341 (Stats. 1974, ch. 1392; Stats. 1975, ch. 1247).

section 6 and Government Code section 17514. Thus, section 23341, as amended by Statutes 1975, chapter 1247, does not impose a state-mandated program.

The same result obtains with respect to section 23344, added by Statutes 1975, chapter 1247, providing that a review commission *may borrow* funds for operating expenses. Section 23344, as added by Statutes 1975, chapter 1247, provides as follows:

> (a) The commission *may borrow* those moneys as may be necessary to meet its expenses until the costs of the commission have been determined pursuant to Section 23343.
>
> (b) As an alternative to the procedure authorized by subdivision (a), the Controller, upon appropriation by the Legislature from the General Fund, shall *loan those moneys as the commission shall determine necessary* to meet its expenses until the costs have been determined pursuant to Section 23343. The loan shall be at an interest rate equal to that of the Pooled Money Investment Fund at the time the loan is made.[91]

The claimant here seeks reimbursement for the interest owing on a $400,000 loan of operating funds, estimated in the test claim filing in the amount of $24,860.[92]

These activities were undertaken at the *discretion* of the Mission County Review Commission; they are not state-mandated activities, under the tests articulated in *City of Merced*, *supra*, and *Kern, supra*. Even if all other activities were found to be mandated by the state, and hence, reimbursable, reimbursement would not be required for the interest on the loan taken at the discretion of the review commission, or the portion of operating costs attributable to the period of time after the commission voted for an extension of its term.

The Commission finds that these statutes do not impose a state-mandated program within the meaning of article XIII B, section 6. Sections 23331 and 23341, as amended by Statutes 1975, chapter 1247; and 23344, as added by Statutes 1975, chapter 1247, are therefore denied.

(2) Amendments enacted by Statutes 1976, chapter 1143 do not impose any state-mandated programs upon local government.

Statutes 1976, chapter 1143 added section 23306.5 to the Government Code, which provides that "[n]otwithstanding the provisions of subdivision (c) of Section 23306, a county may be created from the territory of Nevada County provided that the territory which is proposed to be transferred from such county does not exceed 25 percent of the total territory of such county." The Commission finds that this amendment provides for an exemption from the minimum square mileage restriction of section 23306, but does not impose any state-mandated requirements upon

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[91] Government Code section 23344 (Stats. 1975, ch. 1247; Stats. 1978, ch. 465; Stats. 2004, ch. 227).

[92] Exhibit A, Test Claim, p. 4.

any local government. Section 23306.5, as amended by Statutes 1976, chapter 1143, is therefore denied.

(3) Amendments enacted by Statutes 1977, chapter 1175 do not impose any state-mandated programs upon local government.

Statutes 1977, chapter 1175 amended sections 23320 and 23321, addressing the requirements of a petition to initiate proceedings to determine whether to form a new county. Sections 23320 and 23321 provide requirements that must be satisfied by the proponents of a new county formation measure, and the amendments also address only the requirements that must be satisfied by those same proponents. The amended sections do not impose any requirements on local government. Statutes 1977, chapter 1175 also made a small technical change to section 23350, substituting "statewide primary or general election date" for "established election date in the principal county." The Commission finds that none of the amendments made by Statutes 1977, chapter 1175 impose state-mandated programs within the meaning of article XIII B, section 6. Sections 23320, 23321, and 23350, as amended by Statutes 1977, chapter 1175, are therefore denied.

(4) Amendments enacted by Statutes 1978, chapter 465 do not impose any state-mandated programs upon local government.

Statutes 1978, chapter 465 added section 23340.5, which provides:

> Anything in a county or city and county charter to the contrary notwithstanding, the commission, in lieu of using the county counsel of the affected county, *may appoint a counsel and fix and order paid such counsel's compensation* to provide legal assistance to the commission in the performance of any functions requested by the commission and necessary for the performance of its duties.[93]

The claimant includes in its "Cost Accumulation Report" $87,267 for "Legal counsel – Biering," and $31,708 for "Legal counsel – Stark."[94] Prior to the 1978 addition of this section, a review commission had no apparent authority to appoint counsel. However, as discussed above, where a cost is incurred based on discretionary action authorized by a statute, reimbursement is not required.[95] Here the amendment authorizes, but does not require, a review commission to appoint counsel and order compensation. The Commission finds that section 23340.5, as added by Statutes 1978, chapter 465, does not impose a state-mandated program, within the meaning of article XIII B, section 6.

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[93] Government Code section 23340.5 (Stats. 1978, ch. 465).

[94] Exhibit A, Test Claim, Mission County Formation Review Cost Accumulation Report.

[95] See *City of Merced v. State of California, supra* (Cal. Ct. App. 5th Dist. 1984) 153 Cal.App.3d 777; *Department of Finance v. Commission on State Mandates, supra* (*Kern*) (2003) 30 Cal.4th 727, 743.

Statutes 1978, chapter 465 also amended section 23344, addressing the borrowing of operating funds by a review commission. The amended section changed "Controller" to "State Controller," and provided for an additional $300,000 to be transferred from the General Fund to the County Formation Revolving Fund, which "may be expended for any obligation incurred by any commission at any time." This amendment does not impose any state-mandated requirements upon local government, and is therefore denied.

(5) Amendments enacted by Statutes 1979, chapter 370 do not impose any reimbursable state-mandated new programs or higher levels of service upon local government.

a. Non-substantive amendments that do not impose any new state-mandated requirements

Statutes 1979, chapter 370 amended section 23301 to add a definition of "approved county," and added section 23330.5, which prohibits a new petition regarding the same territory for five years after a petition is certified. These amendments and additions to the County Formation Law do not impose any requirements upon local government.

b. Costs incurred as a result of amendments to the responsibilities of a county formation review commission are not reimbursable because a review commission is not a claimant eligible for reimbursement under article XIII B, section 6 or Government Code section 17500 et seq.

Statutes 1979, chapter 370 amended sections 23332 through 23334, and 23336 through 23338. These sections address the responsibilities of a county formation review commission. Section 23332, as amended by Statutes 1979, chapter 370, clarifies that the review commission must determine the boundaries of the proposed county *pursuant to inclusions and exclusions of territory requested by property owners or registered electors*, and must determine the county officials to be elected at the election of such officials (rather than at the election on the county formation measure).[96] Section 23333, as amended, requires a review commission to consider projected revenues of the proposed county and each affected county. Section 23334 was amended to provide that the unfunded liability of a county retirement system should be considered a factor in calculating that county's indebtedness.[97] Section 23336 was amended to provide that, in addition to hearing protests and objections to the proposed county, the review commission shall also hear any support for the proposed county at the hearing. Section 23337 was amended to provide that at the hearing a review commission shall hear all support for the creation of the proposed county, and may grant or deny any request for exclusion from, or inclusion in, the proposed county. Section 23337.5 was amended to provide that an owner of real property contiguous to the boundary of the proposed county may make a written request for exclusion from, or inclusion in, the proposed county. Section 23338 provided that any registered elector of the territory may make a similar request. Prior to these amendments both sections

[96] Government Code section 23332(d) (as amended by Stats. 1979, ch. 370).

[97] Government Code section 23334 (as amended by Stats. 1979, ch. 370).

23337.5 and 23338 provided only for requests for real property or other territory to be excluded from the new county, and did not provide for a request for *inclusion* in the proposed county.[98]

But none of these requirements impose a state-mandated new program or higher level of service upon local government, because a county review commission is not an eligible claimant before the Commission, and because the county, ultimately responsible for the resulting costs, incurs liability pursuant to a statute enacted prior to January 1, 1975, and never amended. DOF noted this distinction in its initial comments on the test claim: "[t]he determinations required of the County Commission are not reimbursable to the claimant since the County Commission is not an eligible claimant subject to Article XIIIB, Section 6 of the California Constitution."

Courts have recognized 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."[99] Reimbursement is required under article XIII B, section 6 only for school districts, and local agencies that are subject to the tax and spend limitations of articles XIII A and XIII B; and then only when the costs in question can be recovered solely from "proceeds of taxes," or general revenues controlled by the local agency.[100]

While a county formation review commission appears from the test claim statutes to have some degree of autonomy while in existence, it is equally clear that a formation review commission does not have statutory authority to independently raise its own tax revenues.[101] Because a county formation review commission, under the test claim statute, is neither a school district nor a local government subject to tax and spend limitations of articles XIII A and XIII B, DOF's assertion is correct, that the Mission County Formation Review Commission is not an eligible claimant.[102]

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[98] Government Code sections 23336-23338 (as amended by Stats. 1979, ch. 370).

[99] *County of San Diego, supra*, 15 Cal. 4th 68, 81 (citing *Lucia Mar, supra*, 44 Cal.3d 830). See also, *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 980-981, 985 (*Redevelopment Agency*); and C*ity of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280-281 (*City of El Monte*).

[100] *County of Fresno, supra*, 53 Cal.3d 482, 486-487; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (Cal. Ct. App. 4th Dist. 1997) 55 Cal.App.4th 976, 986.

[101] See Government Code sections 23339 (Statutes 1974, chapter 1392 § 2) [commission having subpoena power]; 23343 (Statutes 1974, chapter 1392 § 2) ["all expenses of the commission…shall be borne by the new county, or, if the proposed county is not created, by each affected county, in equal shares"]; 23344 (Stats. 1975, ch. 1247; Stats. 1978, ch. 465; Stats. 2004, ch. 227) [authority to borrow money for operating costs].

[102]Exhibit B, Department of Finance Comments, p. 2.

Even though the county is now the claimant before the Commission, the costs shifted from the Mission County Review Commission remain ineligible for reimbursement, for two reasons: first, the cost-shifting that leaves the county liable for the review commission's expenses and debt is accomplished by way of section 23343, which was enacted prior to January 1, 1975 in Statutes 1974, chapter 1392, and never amended, and is therefore itself outside the constitutional subvention requirement of article XIII B, section 6 and Government Code section 17514. Section 23343 does not impose a new program or higher level of service upon the county; it imposes only costs. Section 23343, as discussed above, is therefore not subject to the subvention requirement of article XIII B, section 6, and must be denied.

Secondly, unless coupled with a state-mandated activity or task, costs alone are not reimbursable when shifted from one local entity to another. The courts have continued to hold that *not* all costs incurred by a local entity as a result of a new program are reimbursable under article XIII B, section 6. "Section 6 was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State."[103] In *Lucia Mar Unified School District v. Honig*, the California Supreme Court held 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." However, in the context of the costs of a program for which costs were shifted from the state to the school districts, the court recognized that "whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state…the result seems equally violative of the fundamental purpose underlying section 6."[104] Accordingly, and pursuant to later interpretations by the courts, a test claim statute may impose a reimbursable state-mandated program in one of two ways:

(1) The test claim statute orders or commands a local agency or school district to engage in an activity or task,[105] and the required activity or task is new, constituting a "new program," or creates a "higher level of service" over the previously required level of service;[106] or

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[103] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816; *Lucia Mar Unified School District v. State of California* (1988) 44 Cal.3d 830, 835; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735); *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189-1190.

[104] *Lucia Mar, supra*, 44 Cal3d at p. 836.

[105] *Long Beach Unified School District v. State of California* (1991) 225 Cal.App.3d 155, 174.

[106] *San Diego Unified School Dist., supra*, (2004) 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835-836.

(2) A reimbursable state-mandated program has been found to exist in some instances when the state shifts fiscal responsibility for a mandated program to local agencies but no actual activities have been imposed by the test claim statute or executive order.[107] As of November 3, 2004, article XIII B, section 6, subdivision (c), of the California Constitution defines a "mandated new program or higher level of service" as including "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."[108]

However, while shifting of costs, in whole or in part, *from the state to a local government* can constitute a new program or higher level of service, the Sixth District Court of Appeal in *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802 held that reimbursement is not required for a cost shift *between or among local government entities or agencies*. In that case, a statute authorized counties to charge cities and other local agencies the costs of booking into county jails persons who had been arrested by employees of the cities or local agencies.[109] The City relied on *Lucia Mar's* holding that a cost-shift could impose a new program or higher level of service, but the court in *City of San Jose* distinguished the holding of *Lucia Mar*, stating:

> The flaw in City's reliance on *Lucia Mar* is that in our case the shift in funding is not from the State to the local entity but from county to city. In *Lucia Mar*, prior to the enactment of the statute in question, the program was funded and operated entirely by the state. Here, however, at the time [the test claim statute] was enacted, and indeed long before that statute, the financial and administrative responsibility associated with the operation of county jails and detention of prisoners was borne entirely by the county.[110]

As the court in *City of San Jose, supra*, makes clear, "[n]othing in article XIII B prohibits the shifting of costs between local governmental entities."[111]

Similarly, in *City of El Monte v. Commission on State Mandates* (Cal. Ct. App. 3d Dist. 2000) 83 Cal.App.4th 266, the court held that legislation directing local governments to apportion property taxes in a certain way between redevelopment agencies and schools was "merely the most recent adjustment in the historical fluidity of the fiscal relationship between local governments and schools." The court in *City of El Monte* relied on *City of San Jose*, finding that "the shift of a portion of redevelopment agency funds to local schools did not create a reimbursable state

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[107] *Lucia Mar, supra*, (1988) 44 Cal.3d 830, 836.

[108] Enacted by the voters as Proposition 1A, November 2, 2004.

[109] *City of San Jose, supra*, 45 Cal.App.4th 1802, 1806

[110] *Id*., at p. 1812.

[111] *City of San Jose, supra*, 45 Cal.App.4th 1802, 1815.

mandate."[112] Accordingly, *Grossmont Union High School Dist. v. California Department of Education* expressly provides that shifting of costs from one *local entity* to another *without an increase in service to the public* is not a reimbursable mandate.[113] The case law thus makes clear that reimbursement is required only for those costs resulting from a *new program or higher level of service mandated upon the local government entity* subject to the revenue limits of articles XIII A and XIII B, *or costs shifted from the state to the local government*.

Here, the costs alleged under sections 23332 through 23338, as amended by Statutes 1979, chapter 370, were incurred as a result of activities conducted by the Mission County Formation Review Commission. The costs incurred resulting from these activities cannot be directly reimbursable under article XIII B, section 6, because the Mission County Formation Review Commission is not subject to the tax and spend limitations of articles XIII A and XIII B.

The County of Santa Barbara, however, filed this test claim, seeking costs incurred by the county under the County Formation Law. The county argues that it incurred the costs of administering the county formation review after the defeat of the new county formation measure at the June 2006 election.[114] The county argues, therefore, that it now bears responsibility for the costs involved; it has "incurred" those costs, and is therefore an eligible claimant. But as discussed above, where costs are shifted from one local entity to another, without a corresponding state-mandated increase in service, reimbursement for the costs incurred in that shift is not required. Moreover, the statute that triggered the shift in costs between these local entities was enacted before January 1, 1975.

The Commission finds that Government Code sections 23332 through 23334, and 23336 through 23338, as amended by Statutes 1979, chapter 370, do not impose a reimbursable state-mandated program upon an eligible local government claimant, within the meaning of article XIII B, section 6.

c. Amendments to Article 4 of the County Formation Law enacted in Statutes 1979, chapter 370, and the addition of Article 4.5 of the County Formation Law by Statutes 1979, chapter 370, do not mandate a new program or higher level of service upon the county.

Finally, Statutes 1979, chapter 370 enacted a number of changes to sections 23350 through 23373, addressing the conduct of an election to determine whether to form the proposed county, and added sections 23374.1 through 23374.19, providing for a separate election, to occur after the voters approve the formation of a new county, to select county officers and the location of a county seat.

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[112] City of El Monte, supra, at p. 280.

[113] *Grossmont Union High School Dist. v. California Department of Education* (Cal. Ct. App. 3d Dist. 2008) 169 Cal.App.4th 869

[114] Exhibit C, Claimant's Rebuttal to DOF Comments, p. 2.

Section 23350, as enacted in 1974, required the board of supervisors of each affected county, upon receiving the determinations of a review commission, to order and give proclamation of an election to be held not less than 74 days after receipt of the commission's determinations. Statutes 1977, chapter 1175 amended section 23350 to provide that an election on the county formation measure "may be consolidated with either the next statewide primary election or statewide general election."[115] Statutes 1979, chapter 370 amended section 23350 again to delete the language "or general election," and thus provide that a county formation measure should only be included in a statewide primary election.[116] None of these amendments mandates a new program or higher level of service on the county. The current section merely provides, instead of holding the election at the next "established election date in the principal county," that the election shall take place at the "next statewide primary or general election date." This is, at most, a clarifying change, and therefore the amendments do not mandate a new program or higher level of service beyond that imposed by the 1974 enactment. Section 23350, as amended by Statutes 1977, chapter 1175, Statutes 1979, chapter 370, Statutes 1984, chapter 226, and Statutes 1985, chapter 702, is denied.

Statutes 1979, chapter 370 enacted a non-substantive, technical change to section 23351 and, therefore, does not mandate a new program or higher level of service on the county.[117]

Statutes 1979, chapter 370 amended section 23352 to provide that if the election to determine whether to create the proposed county is successful, an election to select county officers shall be held in the approved county at the next general election date, as provide in Article 4.5 (commending with section 23374.1). As discussed below, there are no actual or estimated costs alleged in this test claim resulting from the amendment to section 23352, or from the addition of sections 23374.1 through 23374.19; the second election provided for was not required, because the first election failed to approve the new county. Section 23352 could be argued to result in a state-mandated increased level of service, to the extent that a second election must be held if the first is successful, but there is no showing of any costs mandated by the state by any county in this test claim, and therefore section 23352, as amended, must be denied.[118]

Statutes 1979, chapter 370 amended section 23354 to provide that registration and transfers of registration shall be made and shall close in the manner provided for by law for registration and

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[115] Government Code section 23350 (Stats. 1974, ch. 1392; Stats. 1977, ch. 1175).

[116] Government Code section 23350 (Stats. 1974, ch. 1392; Stats. 1977, ch. 1175; Stats. 1979, ch. 370).

[117] Government Code section 23351 (Stats. 1974, ch. 1392; amended by Stats. 1979, chapter 370) [The 1979 amendment added the words "provided for pursuant to this article," modifying the "proclamation and notice of election."].

[118] Government Code section 23352 (Stats. 1974, ch. 1392; amended by Stats. 1979, chapter 370; Stats. 1985, ch. 702). If, in the future, section 23352 is implemented and a second election is conducted, a new test claim can be filed within 12 months of incurring increased costs as a result of the statute. (Gov. Code, § 17551(c).)

transfers of registration for a primary election; the former section stated the manner provided for a general election. There are no state-mandated requirements imposed upon local government from the plain language of these amendments. Section 23354, as amended by Statutes 1979, chapter 370, is denied.

Statutes 1979 amended section 23355, regarding the contents of the ballot. The former section provided as follows:

> Ballots at the election shall contain the words:
>
> (a) "For the new county of (giving name of proposed county) Yes," and "For the new county of (giving name of proposed county) No." Each voter shall stamp a cross (+) opposite the words "Yes," or "No."
>
> (b) "For as county seat (name of county seat as determined by commission) Yes" and "For (name of county seat as determined by commission) as county seat No." Each voter shall stamp a cross (+) opposite the words "Yes," or "No."

Statutes 1979, chapter 370 amended section 23355 to delete subdivision (b), above, and provided in new section 23374.5 that the county seat should be determined at the subsequent election for county officers, if the county formation measure is approved. Section 23355, as amended by Statutes 1979, chapter 370, imposes a lesser requirement upon county election officials, and thus, does not mandate a higher level of service. Section 23355, as amended in 1979, is therefore denied.

Statutes 1979, chapter 370 also amended section 23359, which provides the contents of the ballot pamphlets that shall be mailed to electors. The 1979 amendments removed the requirement to include on the ballot pamphlets, for the first election on the issue whether to form the new county, the names of persons nominated to fill county offices if the proposed county is created. There is no new program or higher level of service to the public mandated by providing fewer elements on the ballot pamphlet. Section 23359, as amended by Statutes 1979, chapter 370, is denied.

Statutes 1979, chapter 370 amended section 23363 to provide that election officers appointed by the affected county or counties must reside in the affected county and in the boundaries of the proposed new county. This amendment only limits who may be appointed, and does not mandate a new program or higher level of service to the public. Section 23363, as amended by Statutes 1979, chapter 370, is denied.

Statutes 1979, chapter 370 made a non-substantive, technical change to section 23368, substituting “the proposition,” for “each of the propositions,” in recognition of the fact that the election called for under sections 23350-23374 addresses now only the issue of whether the proposed county should be formed. Section 23368, as amended by Statutes 1979, chapter 370, does not mandate a new program or higher level of services and, therefore, is denied.

Statutes 1979, chapter 370 amended section 23369, providing for a declaration of the results of the election. The former section provided:

> If upon a canvass of the total votes cast in all the affected counties at the election, it appears that within each affected county more than 50 percent of the total number of all votes cast in such affected county, and more than 50 percent of the total number of all votes cast in the proposed county, are in favor of creation of the proposed county, the board of supervisors of the principal county, by resolution, shall:
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> (a) Declare the results of the election and that the proposed county shall be deemed created pursuant to the general laws of this state as a county under the name of (naming it), upon the 9lst day after the election on creation of the proposed county was held. On the day the proposed county is deemed created, it shall be responsible for and discharge all the duties, powers and functions of a county as required by law, except as provided in this chapter.
>
> (b) Declare the results of the election in the county seat. If more than 50 percent of the total number of all votes cast within each affected county are in favor of the county seat, such location shall be the county seat until removed in the manner provided by law. Where the proposed county seat is not affirmed by the voters, the board of supervisors of the consolidated county shall designate a temporary county seat until removed in the manner provided by law.
>
> (c) Name the persons receiving the highest number of votes cast for the several offices to be filled at the election and declare those persons duly elected to the respective officers and that they shall enter upon the duties of their offices upon the date which the proposed county shall be deemed legally created as provided in subdivision (a), and prescribe the amount of the bonds such elected officers shall provide upon taking office.
>
> (d) State the effective date or dates upon which the various service responsibilities and functions for the proposed county shall be transferred from each affected county to the proposed county. Such date or dates shall be established in accordance with the terms and conditions established by the commission and in such a manner as to provide for the orderly and expeditious transition of responsibilities and functions but shall in no event exceed two fiscal years from the date on which the proposed county shall be deemed legally created as provided in subdivision (a).

Statutes 1979, chapter 370 amended section 23369, again as a part of bifurcating the election on the county formation measure and the selection of county officers of the proposed county, as follows:

> If upon a canvass of the total votes cast in all the affected counties at the election, it appears that within each affected county more than 50 percent of the total number of all votes cast in such affected county, and more than 50 percent of the total number of all votes cast in the proposed county, are in favor of creation of

the proposed county, the board of supervisors of the principal county, by resolution, shall:

(a) Declare the results of the election and that the proposed county shall not be deemed created until the election of its officers at the next general election. At such time as the officers of the county are elected and qualified, the proposed county is deemed created, and it shall be responsible for and discharge all the duties, powers and functions of a county as required by law, except as provided in this chapter.

(b) State the effective date or dates upon which the various service responsibilities and functions for the proposed county shall be transferred from each affected county to the proposed county. Such date or dates shall be established in accordance with the terms and conditions established by the commission and in such a manner as to provide for the orderly and expeditious transition of responsibilities and functions but shall in no event exceed two fiscal years from the date on which the proposed county shall be deemed legally created as provided in subdivision (a)[119]

Removing subdivisions (b) and (c) from the 1974 statute, and amending subdivision (a) to provide that the new county will not be deemed created until county officers are elected and qualified does not mandate a new program or higher level of service upon local government. The amendments in fact impose fewer requirements upon local government than under prior law. Section 23369, as amended by Statutes 1979, chapter 370, is denied.

Finally, Statutes 1979, chapter 370 added sections 23374.1 through 23374.19, which provide for a second election process to take place after a proposed county is approved by the voters in a first election, in order to select a county seat for the approved county, and officers for the approved county. The subsequent election is to be conducted in a manner substantially similar to the first, according to these sections. These sections might be argued to impose a new program or higher level of service upon local government because a second election occurs if the voters approve the formation of a new county, but there is no evidence of increased costs mandated by the state on any county in this test claim for the second election. In this case, the second election process was not necessary to undertake, the first election having failed to approve the new county. The Commission finds that there is no evidence of increased costs mandated by the state resulting from sections 23374.1 through 23374.19; and, thus, these sections are therefore denied.

(6) Amendments enacted by Statutes 1984, chapter 226 do not impose any state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6.

Statutes 1984, chapter 226 amended sections 23350 and 23351, temporarily shortening the time frame between receipt of the review commission's determinations and report and the election on the county formation measure, in order that the County of El Dorado could conduct a vote on a

[119] Government Code section 23369 (as amended by Stats. 1979, ch. 370).

county formation measure without adhering to statutory timelines;[120] those provisions were allowed to sunset as of January 1, 1985, before the period of reimbursement for this claim, and as a result are not in issue in this test claim.

However, Statutes 1984, chapter 226 also amended section 23332, which, as discussed above, provides for the determinations that must be made by a review commission.[121] Aside from a number of technical, non-substantive changes, Statutes 1984, chapter 226 added to section 23332(f) the requirement that the five supervisorial districts that a review commission must determine "shall be established in a manner which results in a population in each district which is as equal as possible to the population in each of the other districts within the county." This requirement is imposed upon a review commission, and not the county itself. As discussed above, where the requirements of the test claim statutes are imposed upon a review commission, which is not an eligible claimant, the county cannot claim reimbursement for costs incurred through a shift from one local government entity to another because no new program or higher level of service is mandated by the shift. Moreover, section 23343, which causes the shift in liability from the review commission to the county (either the new county or the principal county) was enacted in Statutes 1974, chapter 1392, and never amended, and is therefore itself outside the constitutional subvention requirement, as established above. Section 23332, as amended by Statutes 1984, chapter 226, is denied.

(7) Amendments enacted by Statutes 1985, chapter 702 do not impose any state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6.

Statutes 1985, chapter 702 added a definition of the word "contiguous" to section 23301. No new state-mandated requirements are imposed by this change. Section 23301, as amended by Statutes 1985, chapter 702, is denied.

Statutes 1985, chapter 702 amended section 23332 to clarify that the county officers of the approved county would be elected at a separate election conducted pursuant to Article 4.5 (added in Statutes 1979, chapter 370, as discussed above), and that the review commission must name which offices shall be filled at that subsequent election and which may be filled by appointment; and amended section 23332 to add subdivision (k) to the determinations to be made by a review commission. Subdivision (k) requires that a review commission determine an appropriations limit for the proposed county in accordance with section 4 of Article XIII B of the California Constitution. As discussed above, new requirements placed on a review commission are not reimbursable, because a review commission is not an eligible claimant, and costs shifted from one local government entity to another do not mandate a new program or higher level of service on the county within the meaning of article XIII B, section 6. And, as discussed above, section 23343, which requires the shift of liability for these costs from the review commission to either the new or the principal county, depending on the outcome of the election, was enacted in

[120] Statutes 1984, chapter 226, section 5.

[121] Government Code section 23332(a-j) (Stats. 1974, ch. 1392).

Statutes 1974, chapter 1392, and never amended, and therefore must itself be denied. Section 23332, as amended by Statutes 1985, chapter 702, is denied.

Statutes 1985, chapter 702 amended section 23340 to provide that all officers and employees of *any state agency, board or commission* shall cooperate with the commission; the prior section, enacted in 1974, required the cooperation of officers and employees of any affected county. There are no new state-mandated requirements imposed upon local government by the 1985 amendment. Section 23340, as amended by Statutes 1985, chapter 702, is denied.

Statutes 1985, chapter 702 amended section 23342 to provide that a review commission "may impose additional terms and conditions as it deems necessary to ensure an efficient and effective transition. All terms and conditions shall be final and binding in each affected county and the proposed county should the proposed county be legally established as provided in this chapter." This statute authorizes, but does not require, a local government to impose mandated costs upon another entity of local government. Section 23342, as amended in 1985, does not impose any state-mandated requirements on local government.

Statutes 1985, chapter 702 amended sections 23350, 23352, 23369, and 23374.1 to provide that an election to determine whether to form the new county, and the subsequent election to choose a county seat and select county officials for the approved county, may take place at either the next statewide primary or the next statewide general election. There might, arguably, be new requirements imposed upon local government by these changes; a successful vote on a new county formation measure would trigger a second election. But here, the claimant has not has not filed any evidence of any county incurring increased costs mandated by the state pursuant to this bifurcated election process, because the first phase was defeated. Sections 23350, 23352, 23369, and 23374.1, as amended by Statutes 1985, chapter 702, are denied.

(8) Amendments to the County Formation Law imposed by Statutes 1980, chapter 676, Statutes 1981, chapter 1114, Statutes 1986, chapter 248, Statutes 1994, chapter 923, Statutes 2002, chapter 784, and Statutes 2004, chapter 227 do not impose reimbursable state-mandated costs within the meaning of article XIII B, section 6.

Statutes 1980, chapter 676 amended section 23353, correcting a typographical error in which the word "or" was used where "of" was meant, and adding modifying language to clarify the contents of the notice of election: for example, where the prior section stated that a "notice of election shall ¶…¶ [a] statement that only one argument for and one argument against shall be selected and printed in the ballot…" the amended section added the word "include" before "a statement." The same change was made in each of the subdivisions (h-j). There are no new state-mandated requirements imposed upon local government by the amended section.

Statutes 1981, chapter 1114 amended sections of the County Formation Law addressing the form of ballots and the qualifications of electors.[122] Section 23354 was amended to replace "registered electors" with "voters," and to provide that voters would be eligible to vote if registered in the county "29 days" prior to the election, rather than "30 days" prior. An identical

[122] Government Code sections 23354-23355; 23374.4-23374.5 (Stats. 1981, ch. 1114).

change is effected in section 23374.4. There are no new state-mandated requirements imposed upon local government by these amendments; the amended sections only define who is eligible to vote in the election on the county formation measure, and the in election on the proposed county seat and officials for the approved county.

Sections 23355 and 23374.5 were amended with respect to the form of the ballot. Prior section 23355 provided as follows:

> Ballots at the election shall contain the words:
>
> "For the new county of (giving name of proposed county) Yes," and "For the new county of (giving name of proposed county) No " Each voter shall stamp a cross (+) opposite the words "Yes," or "No"

As amended by Statutes 1981, chapter 1114, section 23355 provided:

> Ballots at the election shall contain the statement:
>
> "For the new county of (giving name of proposed county). Opposite the statement, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his or her vote shall be counted in favor of the adoption. If he or she stamps a cross (+) in the voting square after the printed word "No," his or her vote shall be counted against the adoption.

A nearly identical amendment was made to section 23374.5. These amendments are not substantive, but only clarify the effect of a voter's mark on the ballot, and alter the language of the ballot somewhat. There is no new program or higher level of service mandated by slight alterations to the ballot language. Sections 23354, 23355, 23374.4, and 23374.5, as amended by Statutes 1981, chapter 1114, are denied.

Statutes 1986, chapter 248 amended section23358 to replace the phrase "such board" and "such council" with "the board" and "the council," and corrected the mis-labeling of subdivision (d) to subdivision (c), where there was no subdivision (c) in the prior version of the statute. Section 23358, as amended by Statutes 1986, chapter 248, does not impose any new mandated requirements on local government and is therefore denied.

Statutes 1994, chapter 923 substituted the term "elections official" for "clerk" in several sections.[123] There are no new mandated requirements imposed by this change, and therefore sections 23353, 23359, 23365, 23374.3 and 23374.13, as amended by Statutes 1994, chapter 923, are denied.

Statutes 2002, chapter 784 amended section 23396 to provide that the "Trial Court Employment Protection and Governance Act" applies to the selection and appointment of superior court employees in a proposed county, where the prior section had provided that a presiding judge "may appoint officer, attaches, and other employees as are necessary." This amendment is not

[123] Government Code sections 23353; 23359; 23365; 23374.3 & 23374.13.

alleged to impose any increased costs in this test claim, because the proposed county was never approved and formed, and therefore no new superior court was established. There is no evidence that section 23396 imposes any state-mandated activities that result in increased costs mandated by the state and, therefore, section 23396, as amended by Statutes 2002, chapter 784, is denied.

Statutes 2004, chapter 227 amended section 23344 to provide that a county formation review commission may borrow up to $400,000 from the state controller to meet its expenses until the costs have been "determined pursuant to Section 23343." As discussed above, section 23344 provides authority for a review commission to borrow funds for its operating expenses; it does not require a commission to borrow such funds. Moreover, the funds borrowed, and any interest owed, are transferred to the county by way of section 23343, which, as discussed above, was enacted in Statutes 1974, chapter 1392, and never amended, and therefore is not subject to the subvention requirement of article XIII B, section 6. Section 23344, as amended by Statutes 2004, chapter 227, is denied.

(9) The Governor's executive order, dated May 10, 2004, implementing the test claim statutes by appointing the members of the commission and charging them in accordance with Government Code sections 23331-23344, does not impose a state-mandated new program or higher level of service on the county.

As discussed above, the claimant alleges that the Governor's executive order appointing the five members of the Mission County Formation Review Commission imposed reimbursable state-mandated costs upon the county. While in a strictly causative sense it is true that the county would not have incurred the costs alleged here *but for* the appointment of the Mission County Formation Review Commission, reimbursement for those costs is not required under article XIII B, section 6, however, because all activities that the Governor's order imposed were directed to the review commission, rather than the county, and all other activities conducted and costs incurred by the county arise from 1974 statutes that pre-date the constitutional subvention requirement. Both of these elements of the analysis are discussed at length above, and will be only summarized here to the extent necessary to apply the rule to the facts.

An executive order is defined in Government Code section 17516 as "any order, plan, requirement, rule, or regulation issued by…The Governor…"[124] And Government Code section 17514 defines "costs mandated by the state" to include:

> …[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, 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, which mandates 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.[125]

[124] Government Code section 17516 (Stats. 1984, ch. 1459; Stats. 2010, ch. 288 (SB 1169)).

[125] Government Code section 17514 (Stats. 1984, ch. 1459).

Based on the plain language of section 17514, an executive order is only reimbursable when it satisfies two conditions: it implements a statute enacted on or after January 1, 1975, and it mandates a new program or higher level of service, as compared with prior law.

Here, the alleged executive order states as follows:

> Governor Arnold Schwarzenegger today announced the appointment of John "Jack" Boysen, June Christensen; Dick Frank; Harriet Miller and Ted Tedesco to the Mission County Formation Commission.
>
> ¶…¶
>
> The Mission County Formation Commission is charged with completing a comprehensive assessment and report for the community regarding the impact of the proposed Santa Barbara County split on the region. The Commission is comprised of two residents from the proposed new County, two residents from the affected County, and one member from outside both areas. The Commission will explore the fiscal impacts and economic viability of a split, make determinations, provide a forum for public input, propose new supervisorial districts and a new county seat along with other significant findings. The Commission will also determine the conditions for formation that will go on the ballot and apply should the voters choose to create a new County. The Commission's purpose is for fact-finding and reporting only; it does not offer a recommendation for or against formation. Within 180 days of appointment by the Governor, the Commission will transmit its report in writing to the Santa Barbara County Board of Supervisors, or, upon the Governor's approval, the Commission may be granted an additional 180 days to submit its final report.[126]

The bulk of the County Formation Law, as discussed, is beyond the constitutional subvention requirement, having been enacted in Statutes 1974, chapter 1392. The executive order, therefore, implements a statute that, with respect to the majority of its substantive requirements, pre-dates the constitutional subvention requirement of article XIII B, section 6. The provisions that have been substantively amended on or after January 1, 1975, as discussed, do not impose reimbursable state-mandated new programs or higher levels of service upon any eligible claimant, and therefore the executive order, to the extent that it implements those amendments, also does not impose a reimbursable state mandate.

Moreover, the executive order, to the extent that it directly imposes any requirements at all, implements only the provisions of the test claim statute addressing the requirements of a review commission. As discussed at length above, a review commission is not an eligible claimant, and

[126] Exhibit A, Test Claim, Governor's Press Release, dated May 10, 2004.

therefore any costs incurred by a review commission, despite having been shifted to the county pursuant to Government Code section 23343 as enacted in 1974, are not reimbursable.[127]

Finally, the executive order, as quoted above, does not impose any independent requirements beyond those imposed by the test claim statutes. As shown throughout this analysis, none of the requirements of the test claim statutes are properly reimbursable, and therefore the executive order cannot impose a reimbursable state mandate by virtue of implementing statutes which themselves are not subject to reimbursement within the meaning of article XIII B, section 6.

The Commission finds the Governor's 2004 executive order does not impose a reimbursable state-mandated new program or higher level of service upon the county.

D. Legislative Findings and Declarations Made When Enacting the County Formation Law, and Policy Arguments in Favor of Reimbursement, are Not Relevant to the Legal Determination Whether the Statutes and Alleged Executive Order Impose a Reimbursable State-Mandated Program Under Article XIII B, Section 6 of the California Constitution.

The claimant asserts that the Commission should approve the test claim because "[t]he Legislature clearly stated when it enacted the County Formation Law that the State must reimburse the counties for the costs of complying with the act."[128] The claimant points out[129] that the Legislature stated in the uncodified text of the County Formation Law that:

> There are no state-mandated local costs in this act that require reimbursement under section 2231 of the Revenue and Taxation Code because there are no duties, obligations, or responsibilities imposed upon local entities in 1974-75 by this act. However, there are state-mandated local costs in this act in 1975-76 and subsequent years that require reimbursement under section 2231 of the Revenue and Taxation Code which can be handled in the regular budget process.[130]

The Legislature's findings and declaration on this matter may be dispensed with on two grounds. First, the reimbursement regime in effect at the time the Legislature stated its finding relied upon a statutory reimbursement requirement in the Revenue and Taxation Code, which was more broadly applicable than the constitutional reimbursement regime that replaced it.[131] The

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[127] Government Code section 23343 (Stats. 1974, ch. 1392); *City of San Jose, supra,* 45 Cal.App.4th 1802, at p. 1815 ["Nothing in article XIII B prohibits the shifting of costs between local governmental entities."].

[128] Exhibit A, Test Claim p. 5.

[129] See Exhibit A, Test Claim p. 5; Exhibit C, Claimant's Rebuttal to DOF Comments, pp. 1-2.

[130] Statutes 1974, chapter 1392 section 3.

[131] Revenue and Taxation Code section 2231 (Statutes 1973, chapter 358, § 3, p. 783); Article XIII B, section 6 was adopted November 1979; Government Code section 17500 et seq. (Statutes 1984, chapter 1459 § 1).

California Supreme Court stated in *County of Los Angeles*, *supra*, that it considered the earlier language to provide a broader definition of "costs."[132] Former Revenue and Taxation Code section 2231, as it read at the time the County Formation Law was enacted in 1974, provided, in pertinent part:

> (a) The state shall pay to each local agency and each school district an amount to reimburse the local agency or the school district for the full costs, which are mandated by acts enacted after January 1, 1973, of any new state-mandated program or any increased level of service of an existing mandated program.
>
> ¶…¶
>
> (e) "Increased level of service" means any requirement mandated by state law or executive regulation after January 1, 1973, which makes necessary expanded or additional costs to a local agency or a school district.[133]

Given that the broader definition of "costs" was repealed and replaced, (twice; once in 1975,[134] and again in 1984)[135] it is presumed that the Legislature intended the new language to control.[136]

Secondly, whether a statute requires reimbursement is a question of law, to be decided by the Commission, or the courts on review, and "legislative disclaimers, findings, and budget control language are not determinative."[137] Thus the question of reimbursement must be evaluated in this test claim by the Commission, exclusively, pursuant to article XIII B, section 6 of the California Constitution, on the basis of the statutes and case law that guide Commission

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[132] *County of Los Angeles*, *supra*, (1987) 43 Cal.3d 46, 53-54. [citing repeal and revision of Revenue and Taxation Code section 2231 (Stats. 1973, ch. 358 § 3); repealed and re-enacted as Revenue and Taxation Code section 2231 (Stats. 1975, ch. 486 § 7)].

[133] Former Revenue and Taxation Code section 2231 (Stats. 1973, ch. 358).

[134] Former Revenue and Taxation Code section 2231(Stats. 1973, ch. 358); Repealed and replaced, Statutes 1975, chapter 486.

[135] Former Revenue and Taxation Code section 2231 (Stats. 1975, ch. 486) was superseded by Government Code section 17514 (Stats. 1984, ch. 1459).

[136] See Government Code section 9605 (Stats. 1974, ch. 544 § 9) [presumption that an amendment is made to change a law]. See also *County of Los Angeles v. State of California*, *supra*, (1987) 43 Cal.3d 46, at p. 55.

[137] *County of Los Angeles v. Commission on State Mandates*, (Cal. Ct. App. 2d Dist. 2003) 110 Cal.App.4th 1176, 1186; 1194. See also, Government Code section 17552, which states that "This chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution."

decisions generally, and without regard for the expression of the Legislature in the 1974 statute.[138]

The claimant also argues that "the State should approve the subvention of funds for public policy reasons." The claimant argues that the County Formation Law required the county to "form a Commission, make determinations, and hold an election to support the public's participation in determining the form of county government that would best serve them." But public policy is not a sufficient ground upon which to approve a test claim.

In *City of San Jose*, court of appeal stated:

> We appreciate that as a practical result of the authorization under section 29550, City is required to bear costs it did not formerly bear. We cannot, however, read a mandate into language which is plainly discretionary….Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the legislature can serve to invalidate particular legislation. Under these principles, there is no basis for applying section 6 as an equitable remedy to cure perceived unfairness resulting from political decisions on funding priorities.[139]

Thus, in *City of San Jose*, the court made clear that reimbursement must be limited to the terms of article XIII B, section 6, and not applied to correct an unfair apportionment of financial responsibility, or to satisfy public policy.

IV. Conclusion

Based on the foregoing, the Commission concludes that Government Code section 23300 et seq., as enacted in Statutes 1974, chapter 1392, sections 2 and 3, and amended by Statutes 1975, chapter 1247; Statutes 1976, chapter 1143; Statutes 1977, chapter 1175; Statutes 1978, chapter 465; Statutes 1979, chapter 370; Statutes 1980, chapter 676; Statutes 1981, chapter 1114; Statutes 1984, chapter 226; Statutes 1985, chapter 702; Statutes 1986, chapter 248; Statutes 1994, chapter 923; Statutes 2002, chapter 784; and Statutes 2004, chapter 227; and the Governor's 2004 Press Release, dated May 10, 2004, appointing the Mission County Formation Review Commission do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

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[138] *Kinlaw*, *supra*, 53 Cal.3d 482, 487; Government Code section 17551 and 17552.

[139] *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th 1802, 1817.

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RE: **Adopted Statement of Decision**

County Formation Cost Recovery, 06-TC-02
Government Code Sections 23300 et al.
County of Santa Barbara, Claimant

On April 19, 2013, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter.

Dated: April 25, 2013

Heather Halsey, Executive Director