

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

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

As Added or Amended by Statutes 2005, Chapter 700

Filed October 23, 2007 by

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

Case No.: 07-TC-04

*Local Agency Ethics (AB 1234)*

STATEMENT OF DECISION  
PURSUANT TO GOVERNMENT  
CODE SECTION 17500 ET SEQ.;  
TITLE 2, CALIFORNIA CODE OF  
REGULATIONS, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

*(Adopted May 25, 2012)*

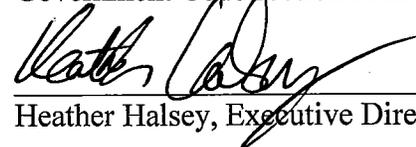
*(Served May 31, 2012)*

*(Corrected June 6, 2012)*

*(Corrected January 28, 2013)*

**CORRECTED STATEMENT OF DECISION**

On May 25, 2012, the Commission on State Mandates (Commission) adopted the statement of decision in the above-entitled matter. On June 6, 2012, a corrected statement of decision was issued to correctly state that the Commission's decision was to partially approve, not deny, the test claim. Pursuant to California Code of Regulations, title 2, section 1188.2(b), the attached corrected statement of decision of the Commission is hereby issued to correctly reference Government Code section 53235(f) instead of 53235(a).

  
Heather Halsey, Executive Director

Dated: January 28, 2013

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

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

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CHAPTER 2.5, ARTICLE 7.

*(Adopted May 25, 2012)*

*(Served May 31, 2012)*

*(Corrected June 6, 2012)*

*(Corrected January 28, 2013)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 25, 2012. Juliana Gmur appeared on behalf of claimant, City of Newport Beach. David O'Hara appeared on behalf of co-claimant, Union Sanitary District. Allan Burdick appeared on behalf of the CSAC-SB90 Service. Donna Ferebee and Randy Ward 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 sections 17500 *et seq.*, and related case law.

The Commission adopted the staff analysis to partially approve the test claim by a vote of 7-0.

On June 6, 2012, the statement of decision was corrected to remedy a mistake in the conclusion. On January 28, 2013 the statement of decision was corrected to address a typo in the findings, citing to the wrong subdivision. Reference to Government Code section 53235(a) is not correct, but should be Government Code section 53235(f).

## **Summary of the Findings**

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

The Commission finds that Government Code sections 53232.2(b), 53232.3(a), 53235(f), and 53235.2(a) impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution only on general law counties and those eligible special districts subject to the tax and spend provisions of articles XIII A and XIII B, that are required by their enabling acts to provide reimbursement of expenses to perform the following activities only:

- Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;<sup>1</sup>
- Provide expense report forms;<sup>2</sup>
- Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;<sup>3</sup>
- Maintain training records, inclusive of training date and training provider, for five years.<sup>4</sup>

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

1. They are not eligible claimants subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution; or
2. The requirements of the test claim statute are imposed on them as a result of their discretionary decision to provide compensation, salary, stipend, or reimbursement and thus, under the analysis in *Kern*,<sup>5</sup> are not mandated by the state.

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<sup>1</sup> Government Code section 53232.2(b).

<sup>2</sup> Government Code section 53232.3(a).

<sup>3</sup> Government Code section 53235(f).

<sup>4</sup> Government Code section 53235.2(a).

<sup>5</sup> *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. App.4th 727, 745 (*Kern*).

## COMMISSION FINDINGS

### Claimant

City of Newport Beach

### Co-claimant

Union Sanitary District

### Chronology

- 10/23/2007 Claimant, City of Newport Beach, filed the test claim (07-TC-4) with the Commission<sup>6</sup>
- 11/01/2007 Commission staff issued a letter deeming the test claim filing complete and requested comments from state agencies
- 12/04/2007 Department of Finance (DOF) filed comments on the test claim
- 06/13/2008 Claimant, City of Newport Beach, filed a request to add co-claimant, Union Sanitary District to the test claim<sup>7</sup>
- 03/16/2012 Commission staff issued the draft staff analysis
- 04/06/2012 DOF submitted comments on the draft staff analysis
- 04/11/2012 Co-claimant submitted comments on the draft staff analysis
- 04/26/2012 Commission staff issued a letter to the State Controller's Office requesting additional information
- 04/30/2012 The State Controller's Office (SCO) provided a response to Commission staff's request for additional information

### I. Introduction

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

Responding to reports by the State Auditor's Office, dozens of newspaper articles, and public requests regarding inappropriate uses of local tax dollars, Assemblymember Salinas introduced AB 1234 "to require local agencies to act with more transparency when they deal with issues such as compensation and travel reimbursements."<sup>8</sup> According to the Assembly analysis:

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<sup>6</sup> Based on the filing date of October 23, 2007, the potential period of reimbursement for this test claim begins on July 1, 2006.

<sup>7</sup> Exhibit C.

<sup>8</sup> Exhibit I. Assembly Committee on Local Government, floor analysis of AB 1234, as amended April 5, 2005, p.5.

The incidents that occurred in the Sacramento Suburban Water District, Otay Water District, City of Elk Grove (although they were not charged), and many others have caused a flurry of questions on how local officials are using public resources and on the ability of local officials to follow the ethical guidelines set forth in statute. Cities, counties, and special districts have all seen an increase in the misuse of public resources and the consistent failure to follow conflict of interest laws from their own public officials. As a result of these and other instances, the reputations of many local governments that have done nothing wrong have been damaged due to the actions of few "bad actors."<sup>9</sup>

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

Legislative Counsel agrees that the bill doesn't create a new state-mandated local program. The requirements for compensation, expense reimbursement procedures, and ethics training apply only to those local agencies that compensate their governing bodies. If a city reimburses its councilmembers' expenses, then the city must follow the rules set by AB 1234. But because there's no requirement to reimburse expenses, the bill is not a mandate. No compensation, no requirements, no mandate.<sup>10</sup>

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

#### **A. Provisions of AB 1234**

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

The remaining code sections pled in the claim generally grant authority to local agencies to provide compensation or reimbursement for expenses to the members of their legislative bodies and are not new.<sup>11</sup> However, as amended by Statutes 2005, Chapter 700, these sections specify that if compensation, salary, stipend or reimbursement of expenses is provided to a member of the legislative body of a local agency: “. . .the determination of whether a [member of the legislative body's] activities on any specific day are compensable shall be made pursuant to

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<sup>9</sup> *Ibid.*

<sup>10</sup> Exhibit I. Senate Local Government Committee, analysis of AB 1234 as amended June, 1, 2005, p. 7.

<sup>11</sup> See Government Code sections 25008 and 36514.5; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536, 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908, 11908.1, 11908.2, 16002, and 22407; and Water Code sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.

[Government Code] Article 2.3 (commencing with section 53232)”<sup>12</sup> and “reimbursement for these expenses is subject to [Government Code] sections 53232.2 and 53232.3.”<sup>13</sup>

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

1. Compensation

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

- A meeting of the legislative body;
- A meeting of an advisory body;
- A conference or organized educational activity conducted in compliance with subdivision (c) of section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with section 53234).<sup>14</sup>

Payment of compensation for attendance at occurrences other than those listed above is authorized only if the governing body has adopted, in a public meeting, a written policy specifying the types of occasions that constitute the performance of official duties for which a member of the legislative body may receive payment.<sup>15</sup> The requirement to adopt a policy does not apply to any local agency that pays compensation in the form of a salary to the members of its legislative body.<sup>16</sup>

2. Reimbursement for Actual and Necessary Expenses

Government Code section 53232.2 provides that when reimbursement is otherwise authorized by statute, a local agency *may* reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities described in Article 2.4 of the Government Code (commencing with section 53234).<sup>17</sup> If a local

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<sup>12</sup> Exhibit A. Government Code 36514.5, Harbors and Navigation Code section 7047; Health and Safety Code sections 4733, 4733.5, 6489, 9031, 13857 and 32103; Public Resources Code sections 5536 and 5784.15; Public Utilities Code sections 11908, 11908.2, 16002 and 22407; and Water Code sections 20201, 21166, 30507, 34741, 40355, 55305, 56031, 60143, 70078, 71255 and 74208, as added or amended by Statutes 2005, Chapter 700.

<sup>13</sup> Exhibit A. Government Code sections 25008; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 6489, 9031, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908.1, 11908.2 and 22407; and Water Code sections 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5 as added or amended by Statutes 2005, Chapter 700.

<sup>14</sup> Exhibit A. Government Code section 53232.1(a), emphasis added.

<sup>15</sup> Exhibit A. Government Code section 53232.1.

<sup>16</sup> Exhibit A. Government Code section 53232.1(c).

<sup>17</sup> Exhibit A. Government Code section 53232.2(a), emphasis added. Note that section 53232.2 (g) provides that this section shall not supersede any other laws establishing reimbursement rates for local agencies.

agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then the governing body must adhere to the following requirements:

- a) Adopt a written policy, in a public meeting, specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses. This policy may also specify the reasonable reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses or it shall use the Internal Revenue Service rates for reimbursement of travel, meals, lodging, and other actual and necessary expenses as established in Publication 463, or any successor publication.
- b) If the lodging is in connection with a conference or organized educational activity including the ethics training required by Article 2.4, lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, if lodging at the group rate is available to the member of a legislative body at the time of booking. If the group rate is not available, the member shall use comparable lodging that is consistent with the requirements of Government Code sections 53232.2(c) and (e).
- c) Members of the legislative body shall use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.
- d) All expenses that do not fall within the adopted travel reimbursement policy or the Internal Revenue Service reimbursable rates shall be approved by the governing body, in a public meeting before the expense is incurred, except as provided in subdivision (d).<sup>18</sup>

### 3. Expense Reporting Requirements

If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms to be filed by the members of the legislative body.<sup>19</sup> Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel.<sup>20</sup> Expense reports are public records subject to disclosure under the California Public Records Act<sup>21</sup> and they must meet the following requirements:

- a) Document that expenses meet the existing policy, adopted pursuant to section 53232.2, for expenditure of public resources;<sup>22</sup>
- b) Be submitted by the member of the legislative body within a reasonable time after incurring the expense, as determined by the legislative body, and be accompanied by the receipts documenting each expense.<sup>23</sup>

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<sup>18</sup> Exhibit A. Government Code section 53232.2.

<sup>19</sup> Exhibit A. Government Code section 53232.3(a).

<sup>20</sup> *Ibid.*

<sup>21</sup> Exhibit A. Government Code section 53232.3(e).

<sup>22</sup> Exhibit A. Government Code section 53232.3(b).

<sup>23</sup> Exhibit A. Government Code section 53232.3(c).

Members of a legislative body are required to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.<sup>24</sup>

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

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

- a) The loss of reimbursement privileges.
- b) Restitution to the local agency.
- c) Civil penalties for misuse of public resources pursuant to section 8314.
- d) Prosecution for misuse of public resources, pursuant to section 424 of the Penal Code.<sup>25</sup>

5. Ethics Training

If a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties, then all of that local agencies' "local agency officials" shall receive training in ethics.<sup>26</sup> A "local agency official" means the following.

- a) Any member of a local agency legislative body or any elected local agency official who receives any type of compensation, salary, or stipend or reimbursement for actual and necessary expenses incurred in the performance of official duties; and
- b) Any employee designated by a local agency legislative body to receive the training specified under this article.<sup>27</sup>

Local agency officials in local agency service as of January 1, 2006, except for officials whose term of office ended before January 1, 2007, were required to receive their initial ethics training before January 1, 2007.<sup>28</sup> Each local agency official who commences service with a local agency on or after January 1, 2006, is required to receive their initial ethics training no later than one year from the first day of service with the local agency.<sup>29</sup> After their initial ethics training, each local agency official is required to receive at least two hours of training in general ethics principles and ethics laws relevant to his or her public service at least once every two years.<sup>30</sup> A local agency official who serves more than one local agency is required to receive ethics training

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<sup>24</sup> Exhibit A. Government Code section 53232.3(d).

<sup>25</sup> Exhibit A. Government Code section 53232.4.

<sup>26</sup> Exhibit A. Government Code section 53235(a).

<sup>27</sup> Exhibit A. Government Code section 53234(c).

<sup>28</sup> Exhibit A. Government Code section 53235.1(a).

<sup>29</sup> Exhibit A. Government Code section 53235.1(b).

<sup>30</sup> Exhibit A. Government Code sections 53235(b) and 53235.1(a) and (b).

once every two years without regard to the number of local agencies with which he or she serves.<sup>31</sup>

If any entity develops curricula to satisfy the requirements of this section, then the Fair Political Practices Commission and the Attorney General shall be consulted regarding the sufficiency and accuracy of any proposed course content. When reviewing any proposed course content the Fair Political Practices Commission and the Attorney General shall not preclude an entity from also including local ethics policies in the curricula.<sup>32</sup> A local agency or an association of local agencies may offer one or more training courses or sets of self-study materials with tests, to meet the requirements of this section. These courses may be taken at home, in-person, or online.<sup>33</sup> Providers of training courses are required to provide participants with proof of participation to meet the requirements of section 53235.2.<sup>34</sup> Local agencies are required to provide information on available ethics training to their local officials at least once annually.<sup>35</sup>

#### 6. Record Keeping Requirements

A local agency that requires its local agency officials to complete the ethical training prescribed by the test-claim statute is required to maintain records for at least five years after local officials receive the training. These records are public records subject to disclosure under the California Public Records Act.<sup>36</sup> The records must indicate both of the following:

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

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

AB 1234 amended the enabling acts of many local agencies with regard to their grants of authority to provide compensation, salary, or stipend to state the following: “The determination of whether a director's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.”<sup>37</sup> Article 2.3 generally specifies: the types of occurrences that are compensable if a local agency does not adopt a compensation policy; the requirements for a compensation policy if the district adopts one; the types of occurrences that are reimbursable if a

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<sup>31</sup> Exhibit A. Government Code section 53235.1(c).

<sup>32</sup> Exhibit A. Government Code section 53235(c).

<sup>33</sup> Exhibit A. Government Code section 53235(d).

<sup>34</sup> Exhibit A. Government Code section 53235(e).

<sup>35</sup> Exhibit A. Government Code section 53235(f).

<sup>36</sup> Exhibit A. Government Code section 53235.2(a).

<sup>37</sup> Exhibit A. See Government Code 36514.5, Harbors and Navigation Code section 7047; Health and Safety Code sections 4733, 4733.5, 6489, 9031, 13857 and 32103; Public Resources Code sections 5536 and 5784.15; Public Utilities Code sections 11908, 11908.2, 16002 and 22407; and Water Code sections 20201, 21166, 30507, 34741, 40355, 55305, 56031, 60143, 70078, 71255 and 74208, as added or amended by Statutes 2005, Chapter 700.

district does not adopt a reimbursement policy; the requirements for a reimbursement policy if the district adopts one; the requirement to provide reimbursement forms, if reimbursement is provided; and, the penalties that may apply in the case of misuse of public resources or falsifying expense reports.

AB 1234 also amended the enabling acts of several local agencies with regard to their grants of authority to provide reimbursement to specify the following: "Reimbursement for these expenses is subject to sections 53232.2 and 53232.3 of the Government Code."<sup>38</sup> Government Code sections 53232.2 and 53232.3 are contained in Article 2.3 and generally provide for the types of occurrences that are reimbursable if a district does not adopt a reimbursement policy; the requirements for a reimbursement policy if the district adopts one; and the requirement to provide reimbursement forms, if reimbursement is provided to the members of the agency's legislative body.

## **B. Local Agencies Affected by Test Claim Statute**

The requirements listed above are imposed on those local agencies that provide any type of compensation, salary, or stipend to a member of a legislative body, or that provide reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties. For purposes of the test claim statute, a "local agency" means a "city, county, city and county, charter city, charter county, charter city and county, or special district."<sup>39</sup>

### **1. Counties**

The legal provisions for the government of California counties are contained in the California Constitution and the California Government Code.<sup>40</sup> A county is the largest political subdivision of the state having corporate powers.<sup>41</sup> California has 58 counties.

#### **a. General Law Counties versus Charter Counties**

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

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<sup>38</sup> Exhibit A. See Government Code sections 25008; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 6489, 9031, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908.1, 11908.2 and 22407; and Water Code sections 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5 as added or amended by Statutes 2005, Chapter 700.

<sup>39</sup> Exhibit A. Government Code section 53232.

<sup>40</sup> Exhibit I. California Constitution, article XI, section 1(a). See also Government Code section 23000 *et seq.*.

<sup>41</sup> Exhibit I. California Constitution, article XI, section 1(a). See also Government Code section 23002 ("The several existing counties of the State and such other counties as are hereafter organized are legal subdivisions of the State").

elected), compensation, terms, and removal of all county officers; for the powers and duties of all officers; and for consolidation and segregation of county offices.<sup>42</sup> There are currently 44 general law counties and 14 charter counties. They are as follows:

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

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

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

Article 11, section 1(b) of the California Constitution provides that the governing body of each general law county, “shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum.” Article 11, section 4(b) of the California Constitution requires that charter counties provide in their charters for “the compensation, terms, and removal of members of the governing body.” If a county charter has provided for the Legislature to prescribe the salary of the governing body, such compensation is now required to “be prescribed by the governing body by ordinance.”<sup>43</sup> Therefore, counties have the discretion to determine what salaries, if any, to provide their supervisors and must do so in their charters or by ordinance.

Additionally, the Government Code provides that members of general law county boards of supervisors “shall be allowed their actual expenses in going to, attendance upon, and returning from state association meetings and their actual and necessary traveling expenses when traveling outside their counties on official business.”<sup>44</sup> Charter counties, on the other hand, have authority to determine reimbursement of expenses for the members of their governing bodies without regard to state statutes.<sup>45</sup> Therefore, general law counties are required to reimburse the actual and necessary expenses of their supervisors, while charter counties have discretion to determine whether or not to do so.

## 2. Cities

The legal provisions for the government of California cities are contained in the California Constitution and the California Government Code.<sup>46</sup> As of July 1, 2011 there were 482 cities in California: 120 charter cities and 362 general law cities.

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<sup>42</sup> California Constitution, article XI, section 4.

<sup>43</sup> California Constitution, article 11, section 4(b).

<sup>44</sup> Government Code section 25008.

<sup>45</sup> California Constitution, article XI, section 1(b).

<sup>46</sup> California Constitution, article XI and Government Code sections 34000 *et seq.*

a. Charter Cities versus General Law Cities

The California Constitution gives cities the power to become charter cities.<sup>47</sup> The benefit of becoming a charter city is that charter cities have supreme authority over “municipal affairs.”<sup>48</sup> In other words, a charter city’s law concerning a municipal affair will trump a state law governing the same topic.<sup>49</sup> A city charter, in effect a city’s constitution, need not set out every municipal affair the city would like to govern. With few exceptions, so long as the charter contains a declaration that the city intends to avail itself of the full power provided by the California Constitution, any city ordinance that regulates a municipal affair will govern over a general law of the state.<sup>50</sup> Cities that have not adopted a charter are general law cities. General law cities are bound by the state’s general law, even with respect to municipal affairs.

b. Compensation and Reimbursement of Expenses for Members of the City Council<sup>51</sup>

The salary of council members of general law cities is controlled by Government Code section 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary or may decrease the salary approved by the city council.<sup>52</sup> City council members in general law cities “may be reimbursed for actual and necessary expenses incurred in the performance of official duties.”<sup>53</sup> However, general law cities are not required to provide reimbursement; the ultimate decision is made by the council itself.<sup>54</sup> Any amounts paid by a city to reimburse a council member for actual and necessary expenses pursuant to section 36514.5 shall not be included for purposes of determining salary.<sup>55</sup>

The California Constitution grants plenary authority to charter cities to provide for compensation and reimbursement of expenses of officers and employees.<sup>56</sup> In the absence of express provisions in the charter, the courts presume that members are not entitled to compensation.<sup>57</sup>

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<sup>47</sup> California Constitution, article XI, section 3(a).

<sup>48</sup> California Constitution, article XI, section 5(a).

<sup>49</sup> *Johnson v. Bradley* (1992) 4 Cal.4th 389, 399.

<sup>50</sup> One exception to this rule, for example, is that a charter city is bound by the Public Contract Code unless the city’s charter expressly exempts the city from the Code’s provisions or a city ordinance conflicts with a provision in the Code. (Cal. Pub. Cont. Code § 1100.7.)

<sup>51</sup> Note that “Elected officials not subject to civil service laws, e.g., elected mayors, council members, and sheriffs” are exempt from the federal Fair Labor Standards Act. (Exhibit I. 29 CFR § 553.11(a).

<sup>52</sup> Government Code section 36516(b).

<sup>53</sup> Government Code section 36514.5.

<sup>54</sup> Exhibit I. 65 Ops.Cal.Atty.Gen. 523 (1982).

<sup>55</sup> Government Code section 36516(e).

<sup>56</sup> Exhibit I. California Constitution article XI, section 5(b).

<sup>57</sup> Exhibit I. *Woods v. Potter* (1908) 8 Cal.App. 41, 43.

Therefore whether and how much compensation and reimbursement is provided to the members of their legislative bodies is at the city's discretion.

### 3. Special Districts

A special district is “an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries and in areas outside district boundaries when authorized by the [local agency formation] commission pursuant to [Government Code] section 56133].”<sup>58</sup> Special districts include county service areas, but exclude the state, counties, cities, school districts, community college districts, assessment districts, special assessment districts, improvement districts, Mello-Roos community facilities districts, permanent road divisions, air pollution control districts, air quality maintenance districts, and, zones of special districts.<sup>59</sup> There are between roughly 3,294 and 4,776 special districts in California, depending upon whose definition is applied.<sup>60</sup> Approximately 610 of those special districts are subject to the appropriations limit set forth in article XIII B, section 4 of the California Constitution,<sup>61</sup> and are thus eligible claimants for purposes of mandate reimbursement under article XIII B, section 6 of the California Constitution. Those approximately 610 districts that are subject to the appropriations limit will be referred to as “eligible districts” in this analysis. Eligible district in this context means that the district is eligible to bring a mandates claim. However, it may or may not be eligible to claim reimbursement under any given program, depending on whether the Commission has found that program imposes a reimbursable state-mandated program on special districts.

#### a) Principal Act versus Special Act Special Districts

Special districts operate either under a principal act or a special act. A principal act is a generic statute which applies to all special districts of that type. For example, the Community Services District Law governs all 325 community services districts. There are about 50 principal act statutes which local voters can use to create and govern special districts.<sup>62</sup> On the other hand, districts which are regional in nature, have unusual governing board requirements, provide unique services, or need special financing, result in special act districts. Examples of districts formed under special acts include the Embarcadero Municipal Improvement District (Santa Barbara County), the Humboldt Bay Harbor, Recreation, and Conservation District, and the Shasta-Tehama County Watermaster District. There are about 125 special act districts.<sup>63</sup> All

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<sup>58</sup> Government Code section 56036(a).

<sup>59</sup> *Ibid.*

<sup>60</sup> The Senate Local Government Committee asserts that there are approximately 3,294 while the State Controller asserts there are 4,776. (See Sen. Loc. Gov., *What's So Special About Special Districts?* (Fourth Edition), October 2010, p. 4.) However, for the Commission's purposes, we are only concerned with those, approximately 610 districts subject to the tax and spend restrictions of the California Constitution.

<sup>61</sup> Exhibit I. State Controller, *Special Districts Annual Report*, December 13, 2011, Table 1.

<sup>62</sup> Senate Local Government Committee, *What's So Special About Special Districts?* (Fourth Edition), October 2010, p. 5.

<sup>63</sup> Senate Local Government Committee, *What's So Special About Special Districts?* (Fourth Edition), October 2010, p. 5.

principal acts are codified state laws, whereas most special acts are not codified. For a list of special acts, see Appendix A in the State Controller's Special Districts Annual Report.<sup>64</sup>

b) Enterprise Versus Non-enterprise Districts.

Just over a quarter of the special districts are enterprise districts. Enterprise districts deliver services that are run like business enterprises in that they charge their customers fees for services. For example, a hospital district generally charges room fees paid by patients, not the district's other residents. Generally, enterprise districts are not subject to the tax and spend restrictions of article XIII of the California Constitution and so are not eligible to receive mandate reimbursement. Nearly all of the water, wastewater, and hospital districts are enterprise districts which charge rates or fees for their services and do not receive any "proceeds of taxes" or tax revenues. Reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from "proceeds of taxes," or tax revenues.<sup>65</sup> Since enterprise districts are usually not funded by proceeds of taxes, they are generally exempt from article XIII B's spending limit. However, there are a few enterprise districts which operate with a mix of tax and fee revenues; Alpaugh Irrigation District and Canebrake County Water District, for example.<sup>66</sup> These districts are subject to the tax and spend limitations of articles XIII A and XIII B, and are thus eligible claimants for mandates purposes.

Conversely, non-enterprise districts provide services which have been deemed by some to not easily lend themselves to fees.<sup>67</sup> It has been argued, for example, that fire protection services and mosquito abatement programs benefit the entire community, not just individual residents.<sup>68</sup> Non-enterprise districts rely overwhelmingly on property tax revenues and parcel taxes to pay their operational expenses, and are thus subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution. Therefore, non-enterprise districts are generally eligible claimants for state-mandates. Services commonly provided by non-enterprise districts include cemetery, fire protection, library, and police services. Although non-enterprise districts rely primarily on non-fee revenue, certain services, such as a recreation and park district's swimming pool or soccer programs, can generate some fee revenue. Therefore, depending upon the program at issue in a test claim, there may be an exception to the subvention requirement because the district has fee authority that is sufficient to pay the costs of the state-mandated new program.<sup>69</sup>

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<sup>64</sup> Appendix I. State Controller, *Special Districts Annual Report*, December 13, 2011, Appendix A.

<sup>65</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

<sup>66</sup> Appendix I. State Controller, *Special Districts Annual Report*, December 13, 2011.

<sup>67</sup> See Senate Local Government, *What's So Special About Special Districts?* (Fourth Edition), October 2010, p. 6.

<sup>68</sup> *Ibid.*

<sup>69</sup> Government Code 17556(d).

c) Governing Boards

Special district governing boards can vary with the size and type of the district. Most districts have five-member governing boards. Other governing boards vary from three to 11 or more members. Because of its special legislation, the Metropolitan Water District of Southern California has 37 board members.<sup>70</sup>

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

The compensation and reimbursement of members of the legislative bodies of special districts is generally controlled by the district's principal act or special act, also known as their enabling act.<sup>71</sup> Most districts' enabling acts give them authority to provide a salary, stipend or other compensation and to authorize payment of expenses, but do not require the payment of salary, stipend, compensation or expenses. For example, a recreation and park district "*may* provide, by ordinance or resolution, that each of its members may receive compensation in an amount not to exceed one hundred dollars (\$100) for attending each meeting of the board."<sup>72</sup> In addition, members of the board of directors *may receive* their actual and necessary traveling and incidental expenses incurred while on official business.<sup>73</sup> Public Resources Code section 15 specifies that "'shall' is mandatory and 'may' is permissive." The plain language of these provisions authorizes, but does not require, the payment of compensation and reimbursement of actual and necessary traveling expenses of board members of recreation and park districts.

However, some special districts are required to provide reimbursement of expenses to the members of their legislative bodies. For example, members of Harbor Districts "*shall* be allowed any actual and necessary expenses incurred in the performance of their duties."<sup>74</sup> The plain language of this section requires that the harbor district reimburse the members of their legislative bodies for "actual and necessary expenses incurred in the performance of their duties"<sup>75</sup>

Finally, though there are many examples in statute of the word "shall" used in conjunction with a member's right to receive compensation, salary or stipend, the compensation the member "shall receive" is only that which the legislative body, by ordinance, provides. For example, section 16002 of the Public Utilities Code provides that "each member of the board *shall receive*

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<sup>70</sup> Senate Local Government, What's So Special About Special Districts? (Fourth Edition), October 2010, p. 7.

<sup>71</sup> Appendix A. See, e.g. Harbors and Navigation Code section 6060 (harbor districts), Harbors and Navigation Code section 7047 (small craft harbor districts), Health and Safety Code section 2030 (mosquito abatement and vector control districts), Health and Safety Code section 2851 (pest abatement districts), Health and Safety Code section 4733 (county sanitation districts), Health and Safety Code section 6489 (sanitation districts).

<sup>72</sup> Appendix A. Public Resources Code section 5784.15(a).

<sup>73</sup> Appendix A. Public Resources Code section 5784.15(c), emphasis added.

<sup>74</sup> Appendix A. Harbors and Navigation Code section 6060.

<sup>75</sup> See also Harbors and Navigation Code section 16 ("shall" is mandatory and "may" is permissive).

*the compensation that the board by ordinance provides, not exceeding four thousand eight hundred dollars (\$4,800) a year.”* Based on the plain language of the code sections pled, only if the board by ordinance provides shall each member receive the compensation. Thus, it is within the discretion of the board to provide for compensation by ordinance (or not) and to set the amount, not to exceed four thousand eight hundred dollars a year.

### **C. Procedural History**

Claimant, City of Newport Beach submitted this test claim to the Commission on October 23, 2007. Based on the filing date of October 23, 2007, the potential period of reimbursement for this test claim begins on July 1, 2006.<sup>76</sup>

Co-claimant, Union Sanitary District, filed a similar test claim (07-TC-01) on some of the code sections added by the test claim statute with the Commission on September 17, 2007.<sup>77</sup> That test claim was dismissed on October 18, 2007 pursuant to the Commission’s regulations (Cal. Code Regs, tit. 2, § 1183(i)) on the basis that the Commission does not have jurisdiction to hear claims brought by Union Sanitary District since that district is not eligible to receive reimbursement under article XIII B, section 6 of the California Constitution.<sup>78</sup> More specifically, the test claim was dismissed because reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from “proceeds of taxes,” or tax revenues.<sup>79</sup> Since Union Sanitary District is not funded by proceeds of taxes, and is exempt from article XIII B’s spending limit, staff found that it is not a local agency eligible to claim reimbursement under article XIII B, section 6 of the California Constitution.

The dismissal letter sent to co-claimant, Union Sanitary District provided information on how to appeal the decision to dismiss the test claim.<sup>80</sup> Co-claimant, Union Sanitary District, filed an appeal from the notice of dismissal of 07-TC-01 with the Commission. However, on August 19, 2008, Claimant, City of Newport Beach notified the Commission that it was adding Union Sanitary District to this test claim as co-claimant for Government Code sections 53232-53235.2. When Union Sanitary District was added as co-claimant to this test claim, its appeal of the notice of dismissal of 07-TC-01 was dropped and it was agreed that the Commission would address the issues relating to special districts in this test claim.

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<sup>76</sup> Government Code section 17557(e).

<sup>77</sup> Appendix A. Government Code sections 53234 and 53235.2 as added by Statutes 2005, chapter 700.

<sup>78</sup> Appendix I. See Dismissal Letter dated October 18, 2007.

<sup>79</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

<sup>80</sup> *Id.*, p. 3.

## II. Positions of the Parties and Interested Parties

### A. Claimants' Position

Claimants allege that the test claim statute imposes a state-mandated new program on local agencies, and that the required activities are new and subject to reimbursement under article XIII B, section 6 of the California Constitution.<sup>81</sup>

In its comments on the draft staff analysis, co-claimant argues that it is an eligible claimant because it operates primarily on proceeds of taxes and is subject to the tax and spend limitations of the California Constitution. In support of this assertion, co-claimant has attached Property Tax Remittance Advice letters for the County of Alameda Auditor-Controller. One of the letters, dated December, 20, 2006, shows a "December Advance" of \$15,126,733.75 under the 1% Tax column. Co-claimant also argues that based on Proposition 218 and the *Big-Horn* case, its charges are actually special taxes and therefore it is an eligible claimant. Co-claimant further states that Health and Safety Code section 6489 requires the district to provide compensation to the members of its legislative body thus triggering the requirements of the test claim statute. Finally, co-claimant states that it was required to prepare an ethics training course in 2006 because no free course was offered by the state at that time.

### B. Department of Finance's Position

DOF states that portions of the test claim are not reimbursable state mandates because the local agency's decision to compensate and/or reimburse their members is optional.<sup>82</sup> Specifically, DOF makes the following arguments:

- Government Code section 53232.1(a) and (b) do not impose state mandated requirements due to the section's permissive language. Subdivision (a) says that "[w]hen compensation is otherwise authorized by statute, a local agency may pay compensation to members of a legislative body..." and subdivision (b) provides that "[a] local agency may pay compensation for attendance at occurrences not specified in subdivision (a)." The activities are required only if the local agency chooses to compensate the members of its governing board. Further, section 53232.1 does not apply to local agencies that elect to pay compensation in the form of a salary.<sup>83</sup> Pursuant to Article XI, section 1 and section 5, of the California Constitution, the local agencies shall prescribe by ordinance the compensation of its members, but the ordinance must be subject to referendum. Therefore, this section does not impose a state mandate on local agencies within the meaning of article XIII B, section 6 of the California Constitution because the local agency has discretion to compensate its local governing members.<sup>84</sup>
- Section 53232.2 (a) is not a state mandate because the language is permissive. The language of the subdivision is: "When reimbursement is otherwise authorized by statute, a local agency may reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities

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<sup>81</sup> Appendix A. Claimant, test claim p. 9.

<sup>82</sup> Exhibit B. DOF, comments on the test claim, p. 1.

<sup>83</sup> Appendix A. Government Code section 53232.1(c).

<sup>84</sup> *Ibid.*

described in Article 2.4 (commencing with section 53234)."<sup>85</sup> A local agency, therefore, has discretion to reimburse its members.

- The new activities of the test claim statute may be reimbursable for counties. Section 25008 of the Government Code requires the counties to reimburse their local governing members. "Members shall be allowed their actual expenses in going to, attendance upon, and returning from state association meetings and their actual and necessary traveling expenses when traveling outside their counties on official business." However, section 36514.5 of the Government Code provides discretionary language for cities to reimburse their governing members. "City council members may be reimbursed for actual and necessary expenses incurred in the performance of official duties."<sup>86</sup>
- The activities of the following sections are optional and not reimbursable due to the permissive language and the cities' discretionary authority.
  - Subdivision (b) of section 53232.2 is not a reimbursable mandate because it follows from subdivision (a), which authorizes local agencies to reimburse members of a legislative body. The new activity to adopt written policy under subdivision (b) is not reimbursable since subdivision (a) is permissive. It is a downstream activity that is a consequence of the underlying discretionary act of local agencies to reimburse their governing members.
  - Subdivision (a) of section 53232.3 is not a reimbursable mandate because it is an optional activity. The language of the subdivision is "If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms..." The new activity to provide an expense report is only required if the local agency has chosen to reimburse its governing members. Pursuant to section 36514.5 of the Government Code, the cities have discretion to reimburse members. Further, subdivisions (b) through (e) are not reimbursable state mandates since they are required as a result of subdivision (a), which may be an optional activity as a consequence of the underlying discretionary decision of the cities to reimburse their members.
  - Section 53235(a) requires that "if a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member..., then all local agency officials shall receive training in ethics..." This activity is discretionary pursuant to the permissive language of the test claim statute and local agencies' Constitutional authority to compensate. Pursuant to article II, sections 1 and 5, of the California Constitution, the local agencies shall prescribe by ordinance the compensation of its members, but the ordinance must be subject to referendum. Further, subdivisions (b) through (f) are not reimbursable mandates since they are required as a result of subdivision (a), which may be an optional activity as a consequence of the underlying decision to compensate and/or reimburse members.

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<sup>85</sup> Exhibit B. DOF, comments on the test claim, p. 2.

<sup>86</sup> Exhibit B. DOF, comments on the test claim, p. 2.

- Section 53235.1 is not a reimbursable mandate since the requirement to provide ethics training in section 53235(a) is optional. This section establishes the effective dates for local members to begin their bi-annual ethics training schedule. This activity is a consequence of the local agency's discretionary authority to compensate or reimburse its members.<sup>87</sup>

DOF also notes that the courts have held that the increased costs associated with the downstream activities of an underlying discretionary action are not reimbursable. In *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. App. 4th 727, 745 (*Kern*) the court affirmed that where participation in the underlying program is voluntary, the resulting new attached requirements do not constitute a reimbursable state mandate.<sup>88</sup>

DOF filed comments concurring with the draft staff analysis.<sup>89</sup>

### III. Discussion

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

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

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>90</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>91</sup>

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.<sup>92</sup>
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.<sup>93</sup>

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<sup>87</sup> Exhibit B. DOF, comments on the test claim, p.p. 2-3.

<sup>88</sup> Exhibit B. DOF, comments on the test claim, p. 3.

<sup>89</sup> Exhibit E. DOF, comments on the draft staff analysis.

<sup>90</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>91</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>92</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>93</sup> *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

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.<sup>94</sup>
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>95</sup>

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.<sup>96</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>97</sup> 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.”<sup>98</sup>

**Issue 1: Special Districts that are not Subject to the Tax and Spend Restrictions of Article XIII of the California Constitution are not Eligible for Reimbursement under Article XIII B, Section 6 of the California Constitution.**

Reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from “proceeds of taxes,” or tax revenues.<sup>99</sup>

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

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<sup>94</sup> *San Diego Unified, supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>95</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>96</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code section 17551 and 17552.

<sup>97</sup> *County of San Diego, supra*, 15 Cal.4th 68, 109.

<sup>98</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>99</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

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

Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per \$100 of assessed value; *or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.* (Emphasis added.)

Thus, article XIII B, section 6 does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments.<sup>100</sup> The courts have concluded that although article XIII B, section 6 does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of the provision demonstrates that it applies only to costs recovered solely from tax revenues.<sup>101</sup> A local agency cannot accept the benefits of an exemption from article XIII B’s spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.<sup>102</sup>

In this case, co-claimant asserts that it is subject to the tax and spend limitations of the Constitution and, thus, may claim reimbursement under article XIII B, section 6. For the reasons below, the Commission finds that co-claimant, and other special districts that do not receive revenue in the form of “proceeds of taxes” and are not subject to the tax and spend limitations of the California Constitution, are not eligible to claim reimbursement under article XIII B, section 6 of the California Constitution.

To help determine the issue, the State Controller’s Office (SCO) issues an annual report on special districts that identifies those special districts that collect tax revenue and are subject to the spending limitations of article XIII B. On December 13, 2011, SCO issued its *Special Districts Annual Report* for fiscal year 2009-2010. The report shows that approximately 610, or roughly seven percent of all special districts, are subject to the appropriations limit of article XIII B, thus making them eligible claimants for mandates purposes. Special districts have a statutory duty to submit annual reports to the SCO pursuant to Government Code section 12463.<sup>103</sup> The report is required to contain, among other things:

- (a) The aggregate amount of taxes levied and assessed against the taxable property in the local agency, which became due and payable during the next preceding fiscal year.
- (b) The aggregate amount of taxes levied and assessed against this property collected by or for the local agency during the fiscal year. ...

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<sup>100</sup> *County of Fresno, supra*, 53 Cal.3d at p. 487.

<sup>101</sup> *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.

<sup>102</sup> *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

<sup>103</sup> Exhibit I. Government Code section 12463.

(e) The assessed valuation of all of the taxable property in the local agency as set forth on the assessment roll of the local agency equalized for the fiscal year, or, if the officers of the county in which the city or district is situated have collected for the city or district the general taxes levied by the city or district for the fiscal year, the assessed valuation of all taxable property.<sup>104</sup>

If an officer of the district willfully and knowingly rendered a false report to the Controller, that officer would be guilty of a misdemeanor.<sup>105</sup> The report submitted by the special districts contains the data upon which the SCO bases its *Special Districts Annual Report*.

The SCO's most recent *Special Districts Annual Report* shows, on page 293, that the revenues and expenditures of Union Sanitary District in fiscal year 2009-2010 were not subject to the appropriations limit of article XIII B of the California Constitution and that Union Sanitary District did not collect any tax revenues.<sup>106</sup> Co-claimant, Union Sanitary District, however, submitted comments on the draft staff analysis stating that it is an eligible claimant because it operates primarily on proceeds of taxes and is subject to the tax and spend limitations of the Constitution. It states that it is "not an enterprise district which can be run like a business, it has strict limitations on income imposed as a result of Proposition 218." In support of these assertions, co-claimant has attached Property Tax Remittance Advice letters from the County of Alameda Auditor-Controller. One of the letters, dated December, 20, 2006, shows a "December Advance" of \$15,126,733.75 under the 1% Tax column. Thus, co-claimant's assertion conflicts with the SCO report on special districts. The Remittance Advice letters submitted by co-claimant do not explain the conflict. Nor has co-claimant explained or provided the basis of the facts identified on the form, or filed other direct evidence to support its assertion that its revenue is considered "proceeds of taxes."<sup>107</sup>

Moreover, the Commission has before it public records that can be officially noticed by the Commission, which reasonably explains the tax column on the Remittance Advice Letters, and shows that co-claimant's revenue is not tax revenue. These records directly contradict co-claimant's assertion.<sup>108</sup>

Co-claimant's Sewer Service Charge Ordinance 31.34, Section 5(a) (Collection of Charges on Tax Roll) provides the following:

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<sup>104</sup> Exhibit I. Government Code section 53892.

<sup>105</sup> Exhibit I. Government Code section 53894.

<sup>106</sup> Exhibit I. The State Controller's *Special Districts Annual Report*, dated December 13, 2011.

<sup>107</sup> Substantial evidence in the record is required to support a finding of fact. (Gov. Code, § 17559; Cal. Code Regs., tit. 2, § 1187.5.) Moreover, the claimant has the burden of proof on the issue of whether it is entitled to reimbursement under article XIII B, section 6 of the California Constitution. (Evid. Code, § 500; *Cornell v. Reilly* (1954) 127 Cal.App.2d 178, holding that the party asserting the affirmative in an administrative proceeding has the burden of proof.)

<sup>108</sup> California Code of Regulations, title 2, section 1187.5, which states that "Official notice may be taken in the manner and of such information as is described [under the Administrative Procedures Act] in Government Code section 11515.

Pursuant to the provisions of Division 5, Part 3, Chapter 6, Article 4, of the Health and Safety Code of the State of California, and subject to the exceptions hereinafter set forth, the District hereby elects as an alternative procedure for the collection of sewer service charges prescribed or imposed by the provisions of this ordinance to have all such sewer service charges for each fiscal year commencing with fiscal year 1974-1975, *collected on the tax roll in the same manner, by the same persons, and at the same time as, and together with and not separately, from general taxes.*<sup>109</sup>

Union Sanitary District's website corroborates the district's ordinance and explains to its ratepayers and the public on its website that:

Annual Sewer Service Charges are placed on your Alameda County property tax statement. The charges appear on the tax statement as a line next to our phone number 477-7500 and are listed as "Union Sewer Svc." *Sewer Service Charges are not a property tax and are not related to the assessed value of a property. They represent a charge for a service provided, similar to your phone and P.G. & E. bills. We simply include the yearly charges on the property tax statement to save the administrative cost of generating and mailing our own invoices. . . .*<sup>110</sup>

Additionally, Union Sanitary District's website states that the district receives revenue from four primary sources; "Sewer service charges, capacity fees, other minor operating revenues such as permits, inspections and outside work that we perform in cooperation with other municipalities, and interest earnings on reserve funds."<sup>111</sup> Its revenue is not funded through "proceeds of taxes," or property taxes.

Similarly, co-claimant's 2010-2011 report to the SCO states that it has no general or special tax revenues.<sup>112</sup> Co-claimant reported that of its fee and charge revenues used to fund its annual operating expenses of \$46,773,152, nearly 12 percent or \$5,574,250 was for "Administration and General."<sup>113</sup> "Administration and General" would include the cost of co-claimants activities required by the test claim statute, which are administrative in nature.

The State Controller's *Special Districts Annual Report* is admissible to prove whether a district is subject to the appropriations limit of article XIII B of the California Constitution because it is properly the subject of judicial notice under Evidence Code section 452(c), which permits courts to take judicial notice of the official acts of state administrative agencies and by extension,

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<sup>109</sup> Exhibit I. Union Sanitary District, Sewer Service Charge Ordinance 31.34 (Collection of Charges on the Tax Roll), Section 5(a). Emphasis added.

<sup>110</sup> Exhibit I. Union Sanitary District Web Site: [www.unionsanitary.com/sewerService.htm](http://www.unionsanitary.com/sewerService.htm), accessed May 10, 2012.

<sup>111</sup> Exhibit I. <http://www.unionsanitary.com/financialinfo.htm>.

<sup>112</sup> Exhibit H. Union Sanitary District (Alameda) Special District Financial Transactions Report, Fiscal Year 2011, p. 1

<sup>113</sup> *Ibid.*

California Code of Regulations, title 2, section 1187.5(c), which makes it admissible to support a finding in Commission proceedings.<sup>114</sup>

Thus, the Commission finds that Union Sanitary District does not operate on proceeds of taxes, is not subject to the appropriations limitation of article XIII B, and is not an eligible claimant for mandate reimbursement.

Co-claimant's final argument - that Proposition 218 in effect makes its charges special taxes - need not be addressed here. Proposition 218 generally requires property related taxes and fees to be voted on by the rate payers or the electorate and specifically excludes sewer service from the definition of "property related fee". The Commission's jurisdiction, however, is limited to determinations regarding whether a local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by article XIII B, section 6 of the California Constitution.<sup>115</sup> Whether or not a fee or charge becomes a special tax under Proposition 218 is a question of fact that must be determined by the courts. Co-claimant has submitted no evidence that a court has determined that Union Sanitary District's sewer service charges are, in fact, special taxes; it has not reported any tax revenues to the SCO; nor has it submitted evidence that its rate payers have approved a special tax which would be used to fund the activities required by the test claim statute. Therefore, the evidence in the record does not support claimant's assertions that its charges have been determined to be "proceeds of taxes."

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

However, there are roughly between 3,294 and 4,776 special districts in California, depending upon whose definition is applied.<sup>116</sup> Of that total, there are approximately 610 special districts that are reportedly subject to the appropriations limit set forth in article XIII B, section 4 of the California Constitution.<sup>117</sup> Those special districts that are subject to the tax and spend provisions of articles XIII A and XIII B of the California Constitution may be eligible to claim reimbursement under article XIII B, section 6.

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<sup>114</sup> California Code of Regulations, title 2, section 1187.5(c); See also *Pearson v. State Social Welfare Board* (1960) 54 Cal.2d 184, p. 210.

<sup>115</sup> Government Code section 17551.

<sup>116</sup> The Senate Local Government Committee asserts that there are approximately 329,000 while the State Controller asserts there are 4,776. (See Sen. Loc. Gov., *What's So Special About Special Districts?* (Fourth Edition), October 2010, p. 4.)

<sup>117</sup> Exhibit I. State Controller, *Special Districts Annual Report*, December 13, 2011, Table 1.

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

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

- Providing compensation for attendance to meetings;<sup>118</sup>
- Reimbursing expenses and adopting a written policy manual on compensation;<sup>119</sup>
- Developing expense forms to document reimbursements;<sup>120</sup>
- Requiring two hours of ethics training to local members every two years;<sup>121</sup>
- Disseminating information on available training at least once a year;<sup>122</sup>
- Maintaining training records, inclusive of training date and training provider/entity, for five years.<sup>123</sup>

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

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

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

The following code sections pled in the claim generally grant authority to local agencies to provide compensation or reimbursement for expenses to the members of their legislative bodies and are not new: Government Code sections 25008 and 36514.5; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536, 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908, 11908.1,

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<sup>118</sup> Exhibit A. Claimant, test claim p. 4, citing Government Code section 53232.1.

<sup>119</sup> *Ibid*, citing Government Code section 53232.2.

<sup>120</sup> *Ibid*, citing Government Code section 53232.3.

<sup>121</sup> Exhibit A. Claimant, test claim p. 6, citing Government Code sections 53235 and 53235.1.

<sup>122</sup> *Ibid*, citing Government Code section 53235.

<sup>123</sup> *Ibid*, citing Government Code section 53235.2.

11908.2, 16002, and 22407; and Water Code sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5. However, as amended by Statutes 2005, Chapter 700, these sections specify that if compensation, salary, or stipend is provided to a member of the legislative body of a local agency: “. . .the determination of whether a [member of the legislative body’s] activities on any specific day are compensable shall be made pursuant to [Government Code] Article 2.3 (commencing with section 53232)”<sup>124</sup> and if reimbursement of expenses is provided: “reimbursement for these expenses is subject to [Government Code] sections 53232.2 and 53232.3.”<sup>125</sup>

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

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

Government Code section 53232.1 authorizes compensation for certain specified occurrences. It also authorizes compensation for occurrences that are not specified in statute, “if the governing body has adopted, in a public meeting, a written policy specifying the other types of occasions that constitute the performance of official duties for which a member of the legislative body may receive payment.” Agencies that pay compensation in the form of salary are exempt from the requirement to adopt a policy.<sup>126</sup> The Commission finds that the plain language of this section authorizes, but does not require local agencies to provide compensation for occurrences that are not specified. Because there is no requirement to provide compensation, the Commission finds that this section does not require local agencies to perform any activities.

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<sup>124</sup> See Exhibit A. Government Code 36514.5, Harbors and Navigation Code section 7047; Health and Safety Code sections 4733, 4733.5, 6489, 9031, 13857 and 32103; Public Resources Code sections 5536 and 5784.15; Public Utilities Code sections 11908, 11908.2, 16002 and 22407; and Water Code sections 20201, 21166, 30507, 34741, 40355, 55305, 56031, 60143, 70078, 71255 and 74208, as added or amended by Statutes 2005, chapter 700.

<sup>125</sup> See Exhibit A. Government Code section 25008; Harbors and Navigation Code sections 6060 and 7047; Health and Safety Code sections 2030, 2851, 4733, 6489, 9031, 13866, and 32103; Military and Veterans Code section 1197; Public Resources Code sections 5536.5, 5784.15, and 9303; Public Utilities Code sections 11908.1, 11908.2 and 22407; and Water Code sections 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5 as added or amended by Statutes 2005, chapter 700.

<sup>126</sup> Exhibit A. Government Code 53232.1(c).

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

Co-claimant argues, in its comments on the draft staff analysis that it was required to prepare course material for ethics training because there was no free on-line course in 2006. The Commission disagrees. The plain language of Government Code section 53235.1 does not require local agencies to perform any activities. Rather, it provides a training timetable and specifies frequency requirements imposed on local agency officials if the local agency provides compensation or reimbursement of expenses. This section provides that if the local agency provides compensation or reimbursement of expenses then “*each local agency official* in local agency service as of . . . shall receive the training. . . .” Thus the training requirement is imposed on the local agency officials themselves, and not on the local agency. Note, however, that members of local legislative bodies have many options for meeting this requirement including the free online ethics training course developed by the Institute for Local Government and the Fair Political Practices Commission (FPPC), which can be found on the FPPC’s web site at <http://www.fppc.ca.gov/index.php?id=477>. This free training course has been online since October 2006.<sup>127</sup>

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

**B. The Activities Required by Government Code Sections 53232.2(b), 53232.3(a), 53235(f), and 53235.2(a) are State-Mandated for those Local Agencies That are Required by Statute to Provide Reimbursement for Expenses.**

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

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

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

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<sup>127</sup> Exhibit I. Institute for Local Government, email to Assembly Local Government Committee, dated October 23, 2006 (stating that it went on line the prior week).

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

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

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

Government Code section 53235.2(a) provides: “*A local agency that requires* its local agency officials to complete the ethical training prescribed by this article shall maintain records...” A local agency in effect “requires” the members of its legislative body to receive ethics training by providing compensation, salary, stipend, or reimbursement to the members of the legislative body.<sup>128</sup> Therefore, the activity of maintaining the records of such training is likewise triggered by providing compensation, salary, stipend, or reimbursement to the members of the legislative body.

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

- Provides any type of compensation, salary, or stipend to a member of a legislative body, or
- Provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.

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<sup>128</sup> See discussion under Government Code section 53235(a), above.

2. Local Agencies Are Not Required to Provide Compensation, Salary or Stipend to a Member of a Legislative Body.

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

Article 11, section 1(b) of the California Constitution provides that the governing body of each general law county, “shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum.” Article 11, section 4(b) of the California Constitution requires that charter counties provide in their charters for “the compensation, terms, and removal of members of the governing body.” If a county charter has provided for the Legislature to prescribe the salary of the governing body, such compensation is now required to “be prescribed by the governing body by ordinance.”<sup>129</sup> Therefore, counties have the discretion to determine what salaries, if any, to provide their supervisors and must do so in their charters or by ordinance. Thus, the Commission finds that counties are not required to provide compensation, salary or stipend to the members of their legislative bodies.

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

The salary of council members of general law cities is controlled by Government Code section 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary or may decrease the salary approved by the city council.<sup>130</sup>

The California Constitution grants plenary authority to charter cities to provide for compensation and reimbursement of expenses of officers and employees.<sup>131</sup> In the absence of express provisions in the charter, the courts presume that members are not entitled to compensation.<sup>132</sup>

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

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

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

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<sup>129</sup> California Constitution, article XI, section 4(b).

<sup>130</sup> Government Code section 36516(b).

<sup>131</sup> California Constitution article XI, section 5(b).

<sup>132</sup> Exhibit I. *Woods v. Potter* (1908) 8 Cal.App. 41, 43.

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

On the other hand, a recreation and park district “*may* provide, by ordinance or resolution, that each of its members *may* receive compensation in an amount not to exceed one hundred dollars (\$100) for attending each meeting of the board.”<sup>133</sup> Section 15 of the Public Resources Code provides “‘shall’ is mandatory and ‘may’ is permissive.” The Commission finds that the plain language of this provision authorizes, but does not require, the payment of compensation to members of the legislative body of recreation and park districts. This language is typical of many principal acts.

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

Co-claimant, in its comments on the test claim statute argues that it is required, pursuant to Health and Safety Code section 6489, to compensate the members of its legislative body. However, as with the example for public utility districts above, the board adopts the ordinance determining what its compensation shall be and the statute sets the ceiling, not the floor for such compensation. This is evident from the “not to exceed” language in the code section.

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

3. General Law Counties and Some Eligible Special Districts Are Required to Provide Reimbursement for Actual and Necessary Expenses to Members of Their Legislative Bodies and, thus are mandated by the state to comply with Government Code sections 53232.2(b) , 53232.3(a), 53235(f), and 53235.2(a).

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

City council members in general law cities “*may* be reimbursed for actual and necessary expenses incurred in the performance of official duties.”<sup>134</sup> Government Code section 14 provides that “‘shall’ is mandatory and ‘may’ is permissive.” General law cities are not required

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<sup>133</sup> Exhibit A. Public Resources Code section 5784.15(a).

<sup>134</sup> Exhibit A. Government Code section 36514.5.

to provide reimbursement; the ultimate decision is made by the council itself.<sup>135</sup> The California Constitution grants plenary authority to charter cities to provide for reimbursement of expenses of officers and employees.<sup>136</sup> Reimbursement for expenses is subject to sections 53232.2 and 53232.3.<sup>137</sup> Thus, the Commission finds that both general law and charter cities have discretion regarding whether or not to pay such expenses.

- b. Charter counties are not required to provide reimbursement of expenses to the members of their legislative bodies, however, general law counties are required to provide reimbursement for actual and necessary traveling expenses incurred by the members of their legislative bodies, in going to, attendance upon, and returning from state association meetings and when traveling outside their counties on official business.

The Government Code provides that members of general law county boards of supervisors “*shall* be allowed their actual expenses in going to, attendance upon, and returning from state association meetings and their actual and necessary traveling expenses when traveling outside their counties on official business.”<sup>138</sup> Charter counties, on the other hand, have plenary authority to determine reimbursement of expenses for the members of their governing bodies without regard to state statutes.<sup>139</sup> Therefore, the Commission finds that only general law counties are required to reimburse the actual and necessary traveling expenses of their supervisors in these circumstances while charter counties have discretion to determine whether or not to do so.

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

Most special districts’ principal acts provide authority for, but do not require, reimbursement of the expenses of members of the district’s legislative body. For example, members of the legislative body of a recreation and park district “...*may receive* their actual and necessary traveling and incidental expenses incurred while on official business.”<sup>140</sup> The Commission finds that the plain language of this provision authorizes, but does not require, the reimbursement of actual and necessary traveling expenses of board members of recreation and park districts.

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

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<sup>135</sup> Exhibit I. 65 Ops. Cal. Atty. Gen.523 (1982).

<sup>136</sup> Exhibit I. California Constitution article XI, section 5(b).

<sup>137</sup> Exhibit A. Government Code sections 25008 and 36514.5.

<sup>138</sup> Exhibit A. Government Code section 25008.

<sup>139</sup> Exhibit I. California Constitution, article XI, section 1(b).

<sup>140</sup> Exhibit A. Public Resources Code section 5784.15(c), emphasis added.

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

- Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;<sup>141</sup>
- Provide expense report forms;<sup>142</sup>
- Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;<sup>143</sup>
- Maintain training records, inclusive of training date and training provider, for five years.<sup>144</sup>

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

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term “state mandate” as it appears in article XIII B, section 6 of the California Constitution. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings.<sup>145</sup>

When analyzing the term “state mandate,” the court reviewed the ballot materials for article XIII B, which provided that “a state mandate comprises something that a local government entity is required or forced to do.”<sup>146</sup> The ballot summary by the Legislative Analyst further defined “state mandates” as “requirements imposed on local governments by legislation or executive orders.”<sup>147</sup> The court also reviewed and affirmed the holding of *City of Merced*,<sup>148</sup> determining

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<sup>141</sup> Exhibit A. Government Code section 53232.2(b).

<sup>142</sup> Exhibit A. Government Code section 53232.3(a).

<sup>143</sup> Exhibit A. Government Code section 53235(f).

<sup>144</sup> Exhibit A. Government Code section 53235.2(a).

<sup>145</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

<sup>146</sup> *Kern High School Dist.*, *supra*, at p. 737.

<sup>147</sup> *Ibid.*

that, when analyzing state-mandate claims, the underlying program must be reviewed to determine if the claimant's participation in the underlying program is voluntary or legally compelled.<sup>149</sup> The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.<sup>150</sup> (Emphasis in the original.)

Thus, the Supreme Court held as follows:

[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled*. [Emphasis added.]<sup>151</sup>

Based on the plain language of the statutes creating the underlying education programs in *Kern*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws. Rather, the districts elected to participate in the school site council programs to receive funding associated with the programs.<sup>152</sup>

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

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<sup>148</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

<sup>149</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Id.* at p. 731.

<sup>152</sup> *Id.* at pp. 744-745.

**C. Government Code Sections 53232.2(b), 53232.3(a), 53235(f), and 53235.2(a) Impose a New Program on General Law Counties and Those Eligible Special Districts That are Required by Their Enabling Act to Provide Reimbursement of Expenses.**

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>153</sup> To determine if the program is new or imposes a higher level of service, the test claim statute must be compared with the legal requirements in effect immediately before the enactment.<sup>154</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>155</sup>

With regard to claimants’ alleged activity of requiring reimbursement of expenses, the test claim statute does not require reimbursement. Rather, the test claim statute added requirements for those local agencies that provide reimbursement, whether or not they are required to do so. General law counties were required to reimburse the members of their legislative bodies under the law in effect immediately prior to the enactment of the test claim statute.<sup>156</sup> With regard to those eligible special districts that are required to provide reimbursement to the members of their legislative bodies, the test claim statute did not add this requirement to their special acts or principal acts. They also were required reimburse the members of their legislative bodies under the law in effect immediately prior to the enactment of the test claim statute.<sup>157</sup> Therefore, the Commission finds that the requirement for general law counties and certain eligible special districts to reimburse the members of their legislative bodies is not new, and not eligible for reimbursement pursuant to article XIII B, section 6.

However, the required activities that were added by the test claim statute are new and were not required prior to the enactment of AB 1234. Moreover, these requirements apply only to local agencies and are thus unique to government. Finally, these activities provide an enhanced service to the public. Specifically, the requirements of the test claim statute provide accountability to tax, fee and rate payers by requiring “local agencies to act with more transparency when they deal with issues such as compensation and travel reimbursements.”<sup>158</sup> Therefore, the Commission finds that the test claim statute, by requiring the following activities, imposes a new program on general law counties and those eligible special districts that are required by their enabling act to provide reimbursement of expenses:

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<sup>153</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*,

<sup>154</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

<sup>155</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

<sup>156</sup> See Government Code section 25008 as enacted by Statutes 1947, chapter 424.

<sup>157</sup> See e.g. Harbors and Navigation Code section 6060 as amended by Statutes 1991, chapter 978.

<sup>158</sup> Exhibit I. Assembly Committee on Local Government, floor analysis, as amended April 5, 2005, p.5.

- Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;<sup>159</sup>
- Provide expense report forms;<sup>160</sup>
- Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;<sup>161</sup>
- Maintain training records, inclusive of training date and training provider, for five years.<sup>162</sup>

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

The final issue is whether the state-mandated activities impose costs mandated by the state,<sup>163</sup> and whether any statutory exceptions listed in Government Code section 17556 apply to the test claim. Government Code section 17514 defines “costs mandated by the state” as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.” Government Code section 17564 requires reimbursement claims to exceed \$1,000 to be eligible for reimbursement.

Claimant states that it had costs of \$5,000 for all of the activities claimed, as of the filing date and estimates that it will have continuing costs of approximately \$1,000 per year.<sup>164</sup> Claimant also asserts that none of the exceptions to finding a reimbursable state-mandated program under Government Code section 17556 apply here.<sup>165</sup> Additionally, claimant states that other similarly situated local agencies have incurred costs ranging from \$300 to \$20,468 as of the time of filing.<sup>166</sup> Claimant projects that annual state-wide costs for all local agencies would be \$3 million for the first year of compliance, not accounting for factors that may cause a reduction in costs, such as a single member serving on various boards but only needing to be trained once and obligating the costs of a single agency, or the inability for small jurisdictions to meet the minimum filing amount.<sup>167</sup> However, given that the Commission finds that the test claim statute does not impose a state-mandated program on most local agencies and that the most costly activities claimed, the compensation and reimbursement of members of local agency legislative

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<sup>159</sup> Exhibit A. Government Code section 53232.2(b).

<sup>160</sup> Exhibit A. Government Code section 53232.3(a).

<sup>161</sup> Exhibit A. Government Code section 53235(f).

<sup>162</sup> Exhibit A. Government Code section 53235.2(a).

<sup>163</sup> *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

<sup>164</sup> Exhibit A. Test Claim, p.p. 8 and 9.

<sup>165</sup> Exhibit A. Test Claim, p. 7.

<sup>166</sup> Exhibit A. Test Claim, p. 9.

<sup>167</sup> *Ibid.*

bodies, are not required by the test claim statute, these costs will likely be significantly lower than projected by claimant. Nonetheless, the Commission finds that the activities that are mandated by the statute are new and do result in increased costs for general law counties and some eligible special districts.

There has been no suggestion by any of the parties or interested parties, and there is no evidence before the Commission, that any exception to Government Code section 17556 applies to this test claim. Therefore, the Commission finds that none of the exceptions in Government Code section 17556 apply here.

Accordingly, the Commission finds that Government Code sections 53232.2(b), 53232.3(a), 53235(f), and 53235.2(a) impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

#### **IV. CONCLUSION**

The Commission finds that Government Code sections 53232.2(b), 53232.3(a), 53235(f), and 53235.2(a) impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on general law counties and those eligible special districts subject to the tax and spend provisions of Articles XIII A and XIII B, that are required by their enabling act to provide reimbursement of expenses to perform the following activities only:

- Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;<sup>168</sup>
- Provide expense report forms;<sup>169</sup>
- Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;<sup>170</sup>
- Maintain training records, inclusive of training date and training provider, for five years.<sup>171</sup>

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

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<sup>168</sup> Exhibit A. Government Code section 53232.2(b).

<sup>169</sup> Exhibit A. Government Code section 53232.3(a).

<sup>170</sup> Exhibit A. Government Code section 53235(f).

<sup>171</sup> Exhibit A. Government Code section 53235.2(a).

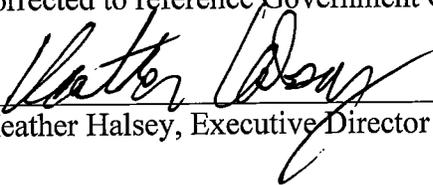
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**RE: Corrected Statement of Decision**

*Local Agency Ethics (AB 1234)*, 07-TC-04  
Government Code Sections 25008  
Statutes 2005, Chapter 700  
City of Newport Beach and Union Sanitary District, Co-Claimants

On May 25, 2012, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter. On June 6, 2012, the statement of decision was corrected to remedy a mistake in the conclusion. On January 28, 2013, the statement of decision was corrected to reference Government Code section 53235(f) instead of 53235(a).

  
Heather Halsey, Executive Director

Dated: January 28, 2013