

COMMISSION ON STATE MANDATES

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



March 15, 2007

Mr. Leonard Kaye
County of Los Angeles
500 West Temple Street, Room 603
Los Angeles, CA 90012

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

RE: Final Staff Analysis, Proposed Statement of Decision, and Hearing Date
Re-Districting: Senate and Congressional Districts, 02-TC-50
Senate Elections and Reapportionment Committee Instructions Issued on
September 24, 2001;
Statutes 2001, Chapter 348
County of Los Angeles, Claimant

Dear Mr. Kaye:

The final staff analysis and proposed Statement of Decision for this test claim are enclosed for your review.

Hearing

This test claim is set for hearing on **Thursday March 29, 2007**, at 9:30 a.m. in Room 126, State Capitol, Sacramento, CA. Please let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

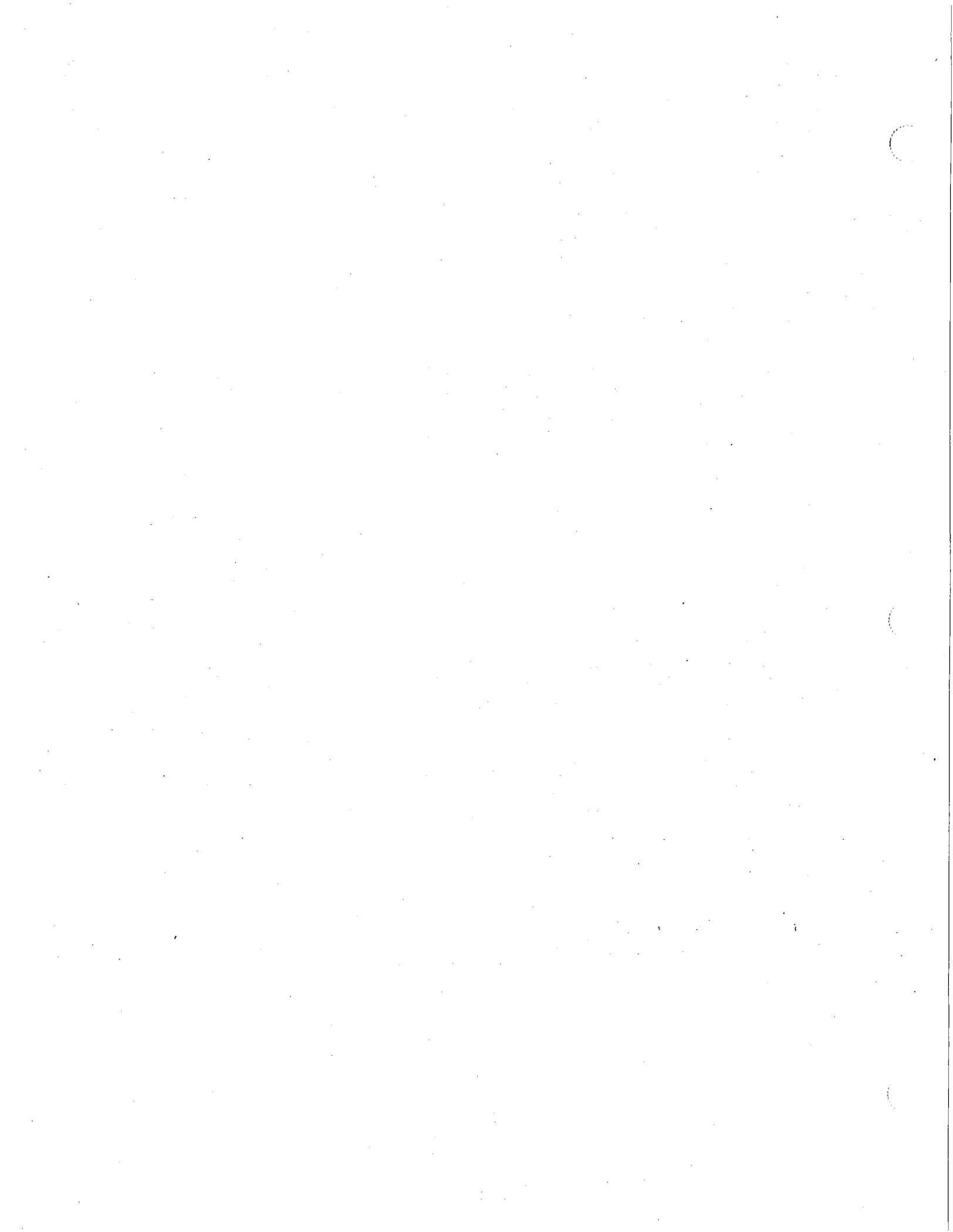
Please contact Kenny Louie at (916) 323-2611 if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

Enclosures



ITEM 7
TEST CLAIM
FINAL STAFF ANALYSIS

Elections Code, Division 21, Chapter 2 (§ 21100 et seq.), and Chapter 5 (§21400 et seq.)

Statutes 2001, Chapter 348 (AB 632)

Senate's Election and Reapportionment Committee Instructions (Dated September 24, 2001)

Redistricting: Senate and Congressional Districts (02-TC-50)
County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Background

Pursuant to article XXI of the California Constitution the Legislature enacted the test claim statute, Statutes 2001, chapter 348 (Assem. Bill No. (AB) 632) to adjust the Senate and congressional district boundary lines. The test claim statute is composed of five sections, with only the first two sections codified into the Elections Code. Sections 1 and 2 of the test claim statute adjusted the Senate and congressional boundary lines through the addition of chapter 2 (§21100 et seq.) and chapter 5, (§ 21400 et seq.) to the Elections Code, division 21. Section 3 declared that the redistricting plans as set forth in sections 1 and 2 are severable. Section 4 of the test claim statute directed county elections officials to rely on the maps prepared by the Legislature pursuant to Elections Code section 21001 to determine the Senate and congressional boundary lines if a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and, as a result, an ambiguity or dispute arises. Section 5 declares the statute shall go into immediate effect as an urgency statute.

Claimant alleges that the test claim statute constitutes a reimbursable state-mandated program, contending that it constitutes a "new program or higher level of service" resulting in costs mandated by the state. Claimant argues that the test claim statute is a new program not required under prior law because of its use of census blocks to determine district boundary lines as compared to the 1990 redistricting plan which used census tracts. Claimant contends that the test claim statute has increased the scope of claimant's work and resulted in increased costs.

The Department of Finance disagrees with claimant's test claim allegations and asserts that the test claim statute is not a reimbursable state mandate because it: (1) does not mandate a "new program or higher level of service;" and (2) does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (f).

Staff finds that sections 1, 2, 3 and 5 of the test claim statute do not constitute a reimbursable state-mandated program, as the language of those sections do not mandate any activity upon claimant. Staff finds that section 4 of the test claim statute mandates a new program or higher level of service by requiring claimant to rely on maps prepared by the Legislature pursuant to Elections Code section 21001 to determine the Senate and congressional boundary lines if a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and as a result, an ambiguity or dispute arises. However, section 4 is statutorily excluded

from a finding that it imposes costs mandated by the state pursuant to Government Code section 17556, subdivision (f). Staff finds that the section 4 activity is reasonably within the scope of article XXI of the California Constitution, which was a ballot measure approved by the California voters.

Conclusion

Staff concludes that chapter 2 (§21100 et seq.) and chapter 5 (§21400 et seq.) of division 21 of the Elections Code, as added by sections 1 and 2 of Statutes 2001, chapter 348 (AB 632), do not mandate any activities upon counties. Sections 3 and 5 of Statutes 2001, chapter 348 (AB 632) also do not mandate any activity on counties. Additionally, staff finds that section 4 of Statutes 2001, chapter 348 (AB 632) mandates a new program or higher level of service on counties; however, section 4 does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (f). Thus, Statutes 2001, chapter 348 (AB 632) does not constitute a reimbursable state-mandated program within the meaning of article XIII, subdivision (b), section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

STAFF ANALYSIS

Claimant

County of Los Angeles

Chronology

- 06/30/03 County of Los Angeles files test claim with the Commission on State Mandates (Commission)
- 07/15/03 Commission staff determines test claim is complete and requests comments
- 08/14/03 The Department of Finance files comments to test claim
- 09/04/03 County of Los Angeles submits response to Finance comments
- 02/07/07 Commission staff issues draft staff analysis
- 02/16/07 Claimant requests an extension of time for comment and a postponement of hearing
- 02/21/07 Commission denies claimant's request for an extension of time for comment and a postponement of hearing
- 02/28/07 Claimant files comments on draft staff analysis
- 03/15/07 Commission issues final staff analysis and proposed Statement of Decision

Background

This test claim addresses the methodology used for the redistricting of Senate and congressional districts. The United States Supreme Court has interpreted the right to vote, guaranteed by the Fourteenth and Fifteenth Amendments of the United States Constitution, as requiring equal legislative representation and as a result periodic redistricting.¹ The Supreme Court, however, has left each state with the discretion to choose a specific methodology to use for redistricting, declaring, "In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation."²

The Voting Rights Act (43 U.S.C. § 1971 et seq., hereafter "Act") was enacted by Congress for the primary purpose of further protecting the right to vote guaranteed by the Fourteenth and Fifteenth Amendments. The Act prohibits states and their political subdivisions from using voting qualifications, prerequisites to voting, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or membership in a "language minority group."³ In addition, the Act requires that any redistricting or other change of voting procedures in jurisdictions in which fewer than half of the residents of voting age were

¹ *Reynolds v. Sims* (1964) 377 U.S. 533 addressing state legislative districts; *Kirkpatrick v. Preisler* (1969) 394 U.S. 526 addressing congressional districts.

² *Reynolds v. Sims, supra*, 377 U.S. 533, 583.

³ Title 42 United States Code sections 1973(a), 1973b(f)(2).

registered to vote, or voted, in the Presidential elections, be cleared in advance either by the federal district court in Washington D.C., or by the United States Attorney General.⁴

In 1980, article XXI was added to the California Constitution by California voters. Article XXI requires the Legislature to adjust the boundary lines of the Senate, Assembly, Board of Equalization, and congressional districts in the year after the national decennial census is taken. Like the United States Constitution, the California Constitution does not detail a specific methodology to be used in adjusting the districts. Instead, the Legislature has the discretion to use any legal methodology of redistricting as long as it is in conformance with the following standards:

(1) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single-member district; (2) the population of all districts of a particular type shall be reasonably equal; (3) every district shall be contiguous; (4) districts of each type shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary; and (5) the geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.

The 1990 redistricting plan followed census tract lines and nested two Assembly districts within each Senate district.⁵ After the redistricting plan is enacted, the Legislature must prepare detailed maps illustrating the redistricting plan and must provide these maps to county elections officials for use in conducting elections.⁶

Prior law requires county elections officials to establish election precinct boundaries so that the precinct boundaries do not cross the boundary of any Senate, Assembly, Board of Equalization, or congressional district.⁷ Also, the number of voters per precinct may not exceed 1,250.⁸ Additionally, the person in charge of elections for any county, city and county, city, or district is required to provide ballots for any elections within his or her jurisdiction.⁹

Pursuant to article XXI of the California Constitution, the test claim statute, Statutes 2001, chapter 348 (AB 632), adjusted the Senate and congressional boundary lines through the addition of chapter 2 (§ 21100 et seq.) and chapter 5, (§ 21400 et seq.) to Elections Code, division 21.¹⁰

⁴ Title 42 United States Code section 1973c.

⁵ The 1990 redistricting plan was developed by special masters and approved by the California Supreme Court, due to the failure of the Legislature and the Governor to adopt congressional, legislative and State Board of Equalization apportionment plans for the 1992 primary and general elections.

⁶ Elections Code section 21001, subdivision (a).

⁷ Elections Code sections 12220 and 12222, subdivision (a), as added by Statutes 1994, chapter 920, section 2 (SB 1547).

⁸ Elections Code section 12223, as amended by Statutes 2001, chapter 904, section 2 (SB 1547).

⁹ Elections Code section 13000, as added by Statutes 1994, chapter 920, section 2 (SB 1547).

¹⁰ Although not controlling, the Legislative Counsel's Digest also notes that the test claim statute was enacted pursuant to the California Constitution.

In addition, the test claim statute requires county elections officials to rely on the maps prepared by the Legislature pursuant to Elections Code section 21001 to determine the Senate and congressional boundary lines if “a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and, as a result, an ambiguity or dispute arises...”¹¹

Unlike the 1990 redistricting plan, the test claim statute did not follow census tract lines. Instead, the test claim statute followed census blocks which split census tracts in the formation of the Senate and congressional districts.¹² Additionally, the test claim statute in conjunction with Statutes 2001, chapter 349 (Sen. Bill No. (SB) 802), which readjusted the Assembly and Board of Equalization districts, did not nest two Assembly districts within each Senate district.¹³ Claimant contends that the Legislature’s use of census blocks and the decision not to nest two Assembly districts within each Senate district has resulted in a significant increase in work related to establishing election precinct boundaries and other election related activities.

Prior to the enactment of the test claim statute, claimant received a letter dated September 24, 2001, from Senator Perata in his role as the Chair of the Senate Committee on Elections and Reapportionment.¹⁴ The letter has been pled as, “State Senate’s Election and Reapportionment Committee Instructions Issued on September 24, 2001” (hereafter Senator Perata’s Letter). Senator Perata’s Letter was written so that claimant would be “afforded the maximum amount of time for preparation and implementation of the new districts.” Although Senator Perata’s Letter included the metes and bounds report, tract and block-level descriptions and maps for the Senate and congressional districts, claimant did not include these documents in the test claim.

Claimant’s Position

Claimant, County of Los Angeles, contends that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant asserts the test claim statute mandates a new program or higher level of service, and as a result, claimant seeks reimbursement for the following costs and activities associated with implementing the test claim statute:

- redistricting costs;
- ballot printing costs; and
- initiation of a Precinct Reduction Program.

Claimant argues that redistricting pursuant to the test claim statute is a new program or higher level of service because it “...was a much more complex project than under prior law.”¹⁵ Use of census blocks and failure to nest Assembly districts in Senate districts resulted in “...substantial

¹¹ Statutes 2001, chapter 348 (AB 632), section 4.

¹² Census tracts are made up of census blocks.

¹³ Statutes 2001, chapter 349 (SB 802), was not pled in the test claim.

¹⁴ Statutes 2001, chapter 348 (AB 632) enacted on September 27, 2001.

¹⁵ Test Claim, bates p. 106.

work in redrawing precinct boundaries within each of 700 of the County's 2,054 census tracts."¹⁶ This increased work resulted in increased costs as compared to prior redistricting years.

In addition to increased redistricting activities and costs, claimant asserts that as a result of implementing the test claim statute, "an additional 171 unique ballot groups (a unique set of candidates and propositions dependent upon geographic area and political district boundaries)"¹⁷ was required. The increase in ballot groups "resulted in soaring sample ballot booklet printing costs."¹⁸ Thus, claimant contends that the increased number of ballot groups required more ballots to be printed constituting a new program which resulted in increased costs.

Claimant also asserts that the test claim statute coupled with the first Primary Election in March instead of June required the creation of new and unnecessary precincts. Consequently, claimant initiated a Precinct Reduction Program to lessen ongoing costs that would be incurred with the maintenance of the unnecessary precincts.

On February 28, 2007, the Commission received claimant's comments in rebuttal to the draft staff analysis. Claimant's comments will be addressed, as appropriate in the analysis below.

Department of Finance's Position

The Department of Finance (Finance) filed comments dated August 14, 2003 addressing claimant's test claim allegations. Finance disagrees with claimant's test claim allegations and asserts that the test claim statute is not a reimbursable state mandate because the test claim statute: (1) does not mandate a "new program or higher level of service," and (2) does not impose "costs mandated by the state" pursuant to Government Code section 17556, subdivision (f).

Government Code section 17556, subdivision (f) provides that the Commission shall not find costs mandated by the state if "[t]he statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election." Finance cites Article XXI of the California Constitution which was added through a ballot measure approved by voters in the June 3, 1980 primary election. Article XXI requires the Legislature to adjust the boundary lines of the Senate, Assembly, Congressional, and Board of Equalization districts in the year after the national census is taken. Finance argues that the test claim statute is necessary to implement Article XXI, concluding, "...although [the test claim statute] may result in additional costs to local entities, those costs are not reimbursable because this implements a voter-approved ballot measure which has existed in law for more than 23 years."

Additionally, Finance asserts that the test claim statute does not mandate a "new program or higher level of service." Finance states:

Since the requirement to adjust the boundary lines of the various districts after each census was added to the California Constitution in 1980, local agencies have been constitutionally performing these duties on a regular basis for the past 3 decades. Furthermore, the 1849 version of the California Constitution (see

¹⁶ Test Claim, bates p. 107.

¹⁷ *ibid.*

¹⁸ *ibid.*

Articles IV and XII) provided for the re-evaluation of districts as needed. Since this activity has been occurring in the State for more than 150 years, the duties cited in this claim do not qualify as a new program or higher level of service.¹⁹

Finance further contends that the test claim statute does not impose “costs mandated by the state,” and instead argues that the claimant incurred costs at its own discretion. The California Constitution does not detail a specific methodology to define the new boundaries, and therefore gives the Legislature the discretion to choose any legal method for redistricting. In light of the Legislature’s discretion to choose any legal methodology to conduct redistricting, Finance argues that a county which assumes the Legislature will use a particular methodology incurs the costs of that assumption at the county’s own discretion.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution²⁰ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²¹ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”²² A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.²³ In addition, the required activity or task must be new, constituting a “new program,” and it must create a “higher level of service” over the previously required level of service.²⁴

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

¹⁹ Finance comments to the test claim filed August 14, 2003, bates p. 625.

²⁰ California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

²¹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²³ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988), 44 Cal.3d 830, 835-836 (*Lucia Mar*).

policy, but does not apply generally to all residents and entities in the state.²⁵ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.²⁶ A “higher level of service” occurs when there is “an increase in the actual level or quality of governmental services provided.”²⁷

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁸

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 6.²⁹ 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.”³⁰

The analysis addresses the following issues:

1. Does Senator Perata’s Letter qualify as an “executive order,” as defined by Government Code section 17516, subject to article XIII B, section 6?
2. Does Statutes 2001, Chapter 348 (AB 632) mandate a new program or higher level of service subject to article XIII B section 6 of the California Constitution?
3. Does Section 4 of Statutes 2001, chapter 348 (AB 632), impose “costs mandated by the state” on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556?

Issue 1: Is Senator Perata’s Letter within the Commission’s jurisdiction and subject to article XIII B, section 6?

Claimant pled Senator Perata’s Letter as part of the “test claim legislation” and argues that it constitutes a reimbursable state mandate. However, before discussing whether Senator Perata’s Letter constitutes a reimbursable state mandate, it must be determined if the Commission has jurisdiction over Senator Perata’s Letter.

²⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

²⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

²⁸ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

²⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

³⁰ *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Pursuant to Government Code section 17551, the Commission hears and decides claims for reimbursement of costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as increased costs incurred as a result of an enacted statute or an issued executive order which mandates a new program or higher level of service. An “executive order” is defined as any order, plan, requirement, rule, or regulation issued by: (1) the Governor; (2) any officer or official serving at the pleasure of the Governor; or (3) any agency, department, board, or commission of state government.³¹

Senator Perata’s Letter was addressed to Conny McCormack, claimant’s Registrar of Voters, to advise claimant that the test claim statute had been adopted by the Legislature and was awaiting signature by the Governor. Senator Perata’s Letter also provided claimant with the metes and bounds report, tract and block-level descriptions and maps for the Senate and congressional districts to afford claimant “...the maximum amount of time for preparation and implementation of the new districts.”³²

Senator Perata’s Letter does not constitute an enacted statute or an issued executive order from the executive branch of the government. Rather, Senator Perata’s Letter was issued by Senator Perata, in his role as the Chair of the Senate Committee on Elections and Reapportionment, to provide information to claimant “so that [claimant] may begin preparing to implement the new boundaries should the Governor sign the [test claim statute].”³³ As a result, Senator Perata’s Letter is not within the Commission’s jurisdiction and is not subject to article XIII B, section 6. Any reference hereafter to the test claim statute will exclude Senator Perata’s Letter.

Issue 2: Does Statutes 2001, chapter 348 (AB 632) mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution?

To be subject to article XIII B, section 6 of the California Constitution, a test claim must: (1) mandate a new activity upon the claimant, that (2) constitutes a new program or higher level of service.

In order for test claim statutes to impose a reimbursable, state-mandated, program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental entities. If the statutory language does not mandate or require the claimant to perform a task, then article XIII B, section 6, does not apply.

In statutory construction cases, our fundamental task is to ascertain the intent of lawmakers so as to effectuate the purpose of the statute...If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.]³⁴

The test claim statute is composed of five sections, with only the first two sections codified into the Elections Code. Sections 1 and 2 of the test claim statute add chapter 2 (§21100 et seq.) and chapter 5 (§21400 et seq.) to division 21 of the Elections Code which set forth the Legislature’s

³¹ Government Code section 17516.

³² Senator Perata’s Letter, Test Claim, Exhibit 4, bates p. 174.

³³ *ibid.*

³⁴ *Whitcomb v. California Employment Commission* (1994) 24 Cal.2d 753, 757.

redistricting plan for the Senate and congressional districts. Elections Code, division 21, chapter 2 begins by stating, "This chapter sets forth the Senate districts."³⁵ The remaining sections of chapter 2 set forth the Senate districts by census blocks. Chapter 5 of division 21 of the Elections Code sets forth the congressional districts in the same manner.

The language of Sections 1 and 2 of the test claim statute do not mention any acts that counties must take. Rather, sections 1 and 2 merely set forth the Legislature's redistricting plans by census block description. Thus, the plain meaning of Sections 1 and 2 of the test claim statute do not mandate any activity upon counties.

Sections 3 and 5 of the test claim statute also do not mandate any activities upon counties. Section 3 of the test claim statute provides:

The redistricting plans enacted by this act are severable. If any Senate or congressional redistricting plan or its application is held invalid, that invalidity shall not affect other plans or applications that can be given effect without the invalid plan or application.

Section 5 of the test claim statute provides in relevant part:

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect.

The language of sections 3 and 5 do not mention counties or any acts that counties must take. Rather, section 3 merely makes the individual redistricting plans set forth in chapters 1 and 2 of the test claim statute severable, and section 5 makes the test claim statute an urgency statute as defined by article IV of the California Constitution. Thus, the plain meaning of sections 3 and 5 of the test claim statute do not mandate any activity upon counties.

In claimant's February 28, 2007 response to the draft staff analysis, claimant asserts that the test claim statute mandates activities upon counties by implication. Claimant references a "Legislative Blueprint" consisting of various code sections used to implement the redistricting process. Claimant cites the existing Elections Code sections 12220, 12221, 12222, 12223, 12262, and 21001, that relate to county redistricting and elections duties, as examples of the "Legislative Blueprint." Claimant contends that because of the existing "Legislative Blueprint," "it was unnecessary for the Legislature to add thousands of obvious and repetitive imperatives to the test claim statute...imperatives that explicitly command that each county election official shall use their designated census block descriptions."³⁶ Thus, claimant appears to argue that sections 1 and 2 of the test claim statute, in conjunction with the "Legislative Blueprint," mandate activities upon the county election officials.

Staff clarifies that claimant did not properly plead Elections Code sections 12220, 12221, 12222, 12223, 12262, and 21001, or any other part of a "Legislative Blueprint" as part of the test claim statute. Rather, claimant pled Statutes 2001, Chapter 348 (AB 632), which includes only sections 21100 et seq., and 21400 et seq. of the Elections Code. Staff's analysis cannot be based on un-pled or improperly pled statutes. Nor can staff interpret the test claim statute to mandate

³⁵ Elections Code section 21100.

³⁶ Claimant response, dated February 28, 2007, bates p. 825, original emphasis.

activities upon a claimant based on unstated or implied requirements of a statute where the terms of the statute are unambiguous.³⁷ Thus, as discussed above, the language of sections 1 and 2 of the test claim statute do not mandate any activity upon counties.

Even if claimant pled Elections Code sections 12220, 12221, 12222, 12223, 12262, and/or 21001 as part of the test claim, sections 1 and 2 of the test claim statute still would not mandate a new program or higher level of service. Claimant contends that in light of the "Legislative Blueprint" a new "program" is imposed upon counties because the Legislature used a different methodology to establish Senate and congressional districts as compared to the prior reapportionment.³⁸ However, regardless of what methodology the Legislature used to establish Senate and congressional districts, the duties and activities of counties remained the same. More specifically, even without the enactment of the test claim statute county elections officials are required by existing law to establish voting precinct boundaries, and print and provide ballots to voters.³⁹ These preexisting duties in regard to redistricting are acknowledged by claimant's remark that "the re-districting process has been performed by Los Angeles County for decades..."⁴⁰ Also, although the costs associated with these preexisting duties may have increased, as argued by the claimant, increased costs cannot be equated with a new program or higher level of service.⁴¹

In addition, claimant states:

[W]hile Article 21 of the California Constitution requires the legislature to adjust the boundary lines in conformance with specified standards every year following a national census, it is erroneous to assume that prior standards were employed in implementing the test claim statute.⁴²

Claimant's statement appears to suggest that the test claim statute fails to conform with the specified standards of article XXI of the California Constitution. Staff notes that the Commission must treat the test claim statute as a valid statute (Cal. Const., art. III, § 3.5). Thus, treating the test claim statute as valid, a change in methodology used by the Legislature to establish Senate and congressional districts does not mandate new program or higher level of service upon claimant.

Therefore, staff finds that sections 1, 2, 3, and 5 of the test claim statute, Statutes 2001, Chapter 348 (AB 632), do not mandate a new program or higher level of service.

³⁷ *Whitcomb v. California Employment Commission*, *supra*, 24 Cal.2d 753, 757.

³⁸ Unlike the 1990 redistricting plan, the test claim statute did not follow census tract lines. Instead, the test claim statute followed census blocks which split census tracts in the formation of the Senate and congressional districts.

³⁹ Elections Code sections 12220 et seq.; and 13000. As added by Statutes 1994, chapter 920, section 2 (SB 1547).

⁴⁰ Claimant response to Department of Finance's August 14, 2003 comments, dated September 4, 2003, Declaration of Kathleen D. Connors, bates p. 632.

⁴¹ *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484; *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 735.

⁴² Claimant response, dated February 28, 2007, bates p.831.

Section 4 of the test claim statute provides:

In the event that a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and, as a result, an ambiguity or dispute arises regarding the location of a boundary line, the Secretary of State and the elections official of each county shall rely on the detailed maps prepared by the committees of the legislature pursuant to Section 21001 of the Elections Code to determine the boundary line.

Under the plain meaning of section 4, in cases of ambiguity regarding the location of district boundary lines county election officials are required to rely on the detailed maps prepared by the Legislature pursuant to Elections Code section 21001. Therefore, the plain meaning of section 4 of the test claim statute does mandate an activity upon counties.

Thus, staff finds only section 4 of the test claim statute mandates an activity upon counties. Pursuant to section 4, counties must rely on maps prepared pursuant to Elections Code section 21001 if an ambiguity arises in regard to district boundary lines. As a result, the remaining discussion will focus on section 4.

The courts have held that legislation mandates a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution when the requirements are new in comparison with the pre-existing scheme and the requirements were intended to provide an enhanced service to the public.⁴³ To make this determination, section 4 must initially be compared with the legal requirements in effect immediately prior to its enactment.⁴⁴

After the enactment of the test claim statute, section 4 required county elections officials to rely on the detailed maps prepared by the committees of the Legislature pursuant to Elections Code section 21001 to determine the district boundary lines if ambiguities arose due to a census tract or census block not being listed, being listed more than once, or being only partially accounted for. It is necessary to clear any district line ambiguities because county elections officials are required to establish election precinct boundaries so that the precinct boundaries do not cross the boundary of any Senate, Assembly, Board of Equalization, or congressional district.⁴⁵ Also, the number of voters per precinct may not exceed 1,250.⁴⁶

Prior to the enactment of the test claim statute; however, county elections officials were not required to rely on the maps prepared pursuant to Elections Code section 21001 to resolve ambiguities in district boundary lines. Rather, prior law did not specify any source that county elections officials were required to rely on if ambiguities arose in regard to district boundary lines. Thus, the section 4 requirement is new as compared to the pre-existing scheme.

⁴³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

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

⁴⁵ Elections Code sections 12220 and 12222, subdivision (a). As added in Statutes 1994, chapter 920, section 2 (SB 1547).

⁴⁶ Elections Code section 12223 as amended by Statutes 2001, chapter 904, section 2 (SB 1547).

Staff notes that the maps prepared pursuant to Elections Code section 21001 were already used by elections officials for election purposes. Elections Code section 21001, states in relevant part, "The maps shall be provided to ... the county elections officials for use in their administrative functions involved in the conduct of elections..."⁴⁷ However, pursuant to Government Code section 17565, "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Thus, even if county elections officials were relying on the maps prepared pursuant to Elections Code section 21001 to establish election precinct boundaries under prior law, the county elections officials were not required to do so prior to the enactment of the test claim statute.

Section 4 must also be intended to provide an enhanced service to the public. Here, counties are directed to rely on the maps prepared pursuant to Elections Code section 21001 if an ambiguity arises regarding district boundary lines. Requiring county elections officials to rely on these maps helps clear district boundary line ambiguities in a uniform manner, which allows county elections officials to establish election precincts more precisely, ensuring equal representation for voters by preventing vote dilution. Thus, staff finds that section 4 of the test claim statute provides a service to the public.

Therefore, the section 4 requirement, to rely on the maps prepared pursuant to Elections Code section 21001 if an ambiguity arises in regard to district boundary lines, constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Staff notes that any potential reimbursable costs for implementation of section 4 of the test claim statute must have occurred between the time of enactment of the test claim statute (September 27, 2001) and the final date at which county elections officials were required to have precinct boundaries established (December 7, 2001).⁴⁸

Issue 3: Does Section 4 of Statutes 2001, chapter 348 (AB 632), impose "costs mandated by the state" on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556?

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.⁴⁹ In addition, no statutory exceptions listed in Government Code section 17556 can apply.

Government Code section 17514 defines "cost mandated by the state" as follows:

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or

⁴⁷ Elections Code section 21001, as amended in Statutes 2000, chapter 1081, section 23 (SB1823).

⁴⁸ Elections Code section 12262 provides in relevant part, "Jurisdictional boundary changes occurring less than 88 days before an election shall not be effective for purposes of that election." Thus, precinct boundaries must have been established on December 7, 2001 which is 88 days before the March 5, 2002 primary election.

⁴⁹ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

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

Staff notes that claimant has not alleged any costs to comply with section 4 of the test claim statute. In addition, staff finds that section 4 is subject to the statutory exception in Government Code section 17556, subdivision (f).

In claimant's February 28, 2007 response to the draft staff analysis, claimant misinterprets the statutory exception defined by Government Code section 17556, subdivision (f), stating, "the funding disclaimer only applies to activities '*reasonably necessary*' in implementing a ballot initiative."⁵⁰ However, Government Code section 17556, subdivision (f), provides:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any test claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

... (f) The statute or executive order imposes duties that are *necessary to implement, reasonably within the scope of, or expressly included in*, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters. (emphasis added.)

Thus, according to the plain language of Government Code section 17556, subdivision (f), it is necessary to determine if the test claim statute imposes duties that are "necessary to implement, reasonably within the scope of, or expressly included in" a ballot initiative.

In June 1980, California voters approved Proposition 6 adding article XXI to the California Constitution. Article XXI provides in relevant part:

In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts...

The Legislature enacted the test claim statute to adjust the boundary lines of the Senate and congressional districts to implement article XXI. Section 4 of the test claim statute requires county elections officials to rely on detailed maps, made by the committees of the Legislature, if ambiguities regarding the district boundary lines arise. Therefore, section 4 is necessary to implement or reasonably within the scope of article XXI because it aids in the redistricting process required by article XXI. Staff notes that although the test claim statute was enacted after the enactment of Proposition 6, pursuant to the plain language of Government Code section 17556, subdivision (f), "This subdivision applies regardless of whether the statute...was enacted or adopted...after the date on which the ballot measure was approved by voters."

Thus, pursuant to the plain language of Government Code section 17556, subdivision (f), staff finds that section 4 of the test claim statute does not impose "costs mandated by the state."

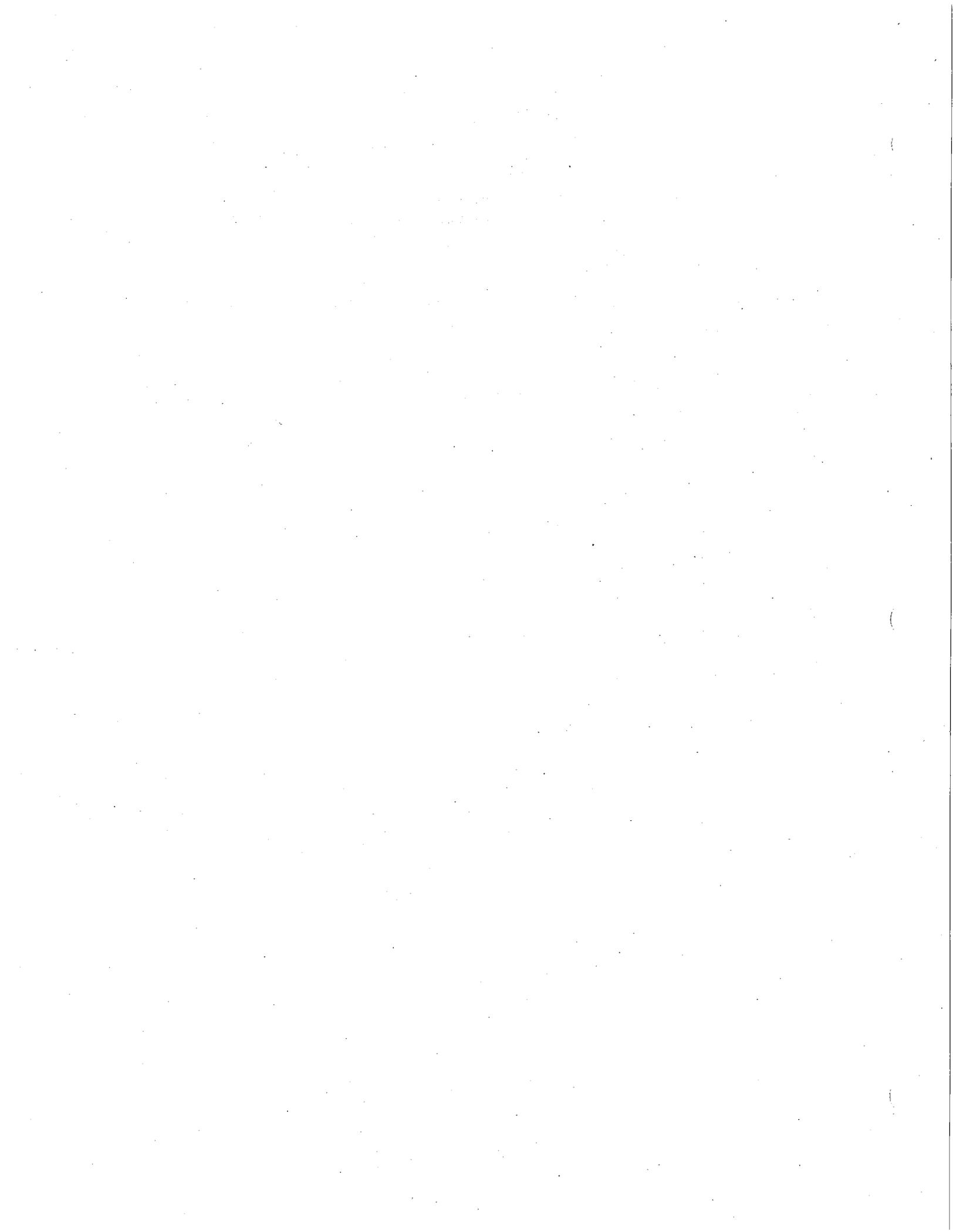
⁵⁰ Claimant response, dated February 28, 2007, bates p. 831, emphasis added.

Conclusion

Staff concludes that chapter 2 (§21100 et seq.) and chapter 5 (§21400 et seq.) of division 21 of the Elections Code, as added by sections 1 and 2 of Statutes 2001, chapter 348 (AB 632), do not mandate any activities upon counties. Sections 3 and 5 of Statutes 2001, chapter 348 (AB 632) also do not mandate any activity on counties. Additionally, staff finds that section 4 of Statutes 2001, chapter 348 (AB 632) mandates a new program or higher level of service on counties, however, section 4 does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (f). Thus, Statutes 2001, chapter 348 (AB 632) does not constitute a reimbursable state-mandated program within the meaning of article XIII, subdivision (b), section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.



ITEM 8
TEST CLAIM
PROPOSED STATEMENT OF DECISION

Elections Code, Division 21, Chapter 2 (§ 21100 et seq.), and Chapter 5 (§21400 et seq.)
Statutes 2001, Chapter 348 (AB 632)

Senate's Election and Reapportionment Committee Instructions (Dated September 24, 2001)

Redistricting: Senate and Congressional Districts (02-TC-50)
County of Los Angeles, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates (Commission) is whether the Proposed Statement of Decision accurately reflects any decision made by the Commission at the March 29, 2007 hearing on the above named test claim.¹

Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission's vote on item 7 modifies the staff analysis, staff recommends that the motion to adopt the proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a proposed Statement of Decision be continued to the April 2007 Commission hearing.

¹ California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Elections Code, Division 21, Chapter 2 (§ 21100 et seq.), and Chapter 5 (§21400 et seq.), Statutes 2001, Chapter 348 (AB 632), and

Senate's Election and Reapportionment Committee Instructions (Dated September 24, 2001)

Filed on June 30, 2003,
By County of Los Angeles, Claimant.

Case No.: 02-TC-50

Redistricting: Senate and Congressional Districts

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

(Proposed for Adoption on March 29, 2007)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on March 29, 2007. [Witness list will be included in the final Statement of Decision.]

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

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision] to deny this test claim.

Summary of Findings

This test claim was filed on June 30, 2003, by the County of Los Angeles on statutes that set forth the Senate and congressional districts. Pursuant to article XXI of the California Constitution the Legislature enacted the test claim statute, Statutes 2001, chapter 348 (Assem. Bill No. (AB) 632) to adjust the Senate and congressional district boundary lines. The test claim statute is composed of five sections, with only the first two sections codified into the Elections Code. Sections 1 and 2 of the test claim statute adjusted the Senate and congressional boundary lines through the addition of chapter 2 (§21100 et seq.) and chapter 5, (§ 21400 et seq.) to the Elections Code, division 21. Section 3 declared that the redistricting plans as set forth in sections 1 and 2 are severable. Section 4 of the test claim statute directed county elections officials to rely on the maps prepared by the Legislature pursuant to Elections Code section 21001 to determine the Senate and congressional boundary lines if a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and, as a result, an ambiguity or dispute arises. Section 5 declares the statute shall go into immediate effect as an urgency statute.

The Commission finds that sections 1, 2, 3 and 5 of the test claim statute do not constitute a reimbursable state-mandated program, as the language of those sections do not mandate any activity upon claimant. The Commission finds that section 4 of the test claim statute mandates a new program or higher level of service by requiring claimant to rely on maps prepared by the Legislature pursuant to Elections Code section 21001 to determine the Senate and congressional boundary lines if a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and as a result, an ambiguity or dispute arises. However, section 4 is statutorily excluded from a finding that it imposes costs mandated by the state pursuant to Government Code section 17556, subdivision (f). The Commission finds that the section 4 activity is necessary to implement or reasonably within the scope of article XXI of the California Constitution, which was a ballot measure approved by the California voters.

In addition, on September 24, 2001, the claimant received a letter from Senator Perata in his role as the Chair of the Senate Committee on Elections and Reapportionment. The letter has been pled as, "State Senate's Election and Reapportionment Committee Instructions Issued on September 24, 2001." The Commission finds that the letter does not constitute an enacted statute or an issued executive order from the executive branch of the government, and thus is not within the Commission's jurisdiction and not subject to article XIII B, section 6.

The Commission concludes that Statutes 2001, chapter 348 (AB 632) does not constitute a reimbursable state-mandated program within the meaning of article XIII, subdivision (b), section 6 of the California Constitution.

BACKGROUND

This test claim addresses the methodology used for the redistricting of Senate and congressional districts. The United States Supreme Court has interpreted the right to vote, guaranteed by the Fourteenth and Fifteenth Amendments of the United States Constitution, as requiring equal legislative representation and as a result periodic redistricting.² The Supreme Court, however, has left each state with the discretion to choose a specific methodology to use for redistricting, declaring, "In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation."³

The Voting Rights Act (43 U.S.C. § 1971 et seq., hereafter "Act") was enacted by Congress for the primary purpose of further protecting the right to vote guaranteed by the Fourteenth and Fifteenth Amendments. The Act prohibits states and their political subdivisions from using voting qualifications, prerequisites to voting, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or membership in a "language minority group."⁴ In addition, the Act requires that any redistricting or other change of voting procedures in jurisdictions in which fewer than half of the residents of voting age were

² *Reynolds v. Sims* (1964) 377 U.S. 533 addressing state legislative districts; *Kirkpatrick v. Preisler* (1969) 394 U.S. 526 addressing congressional districts.

³ *Reynolds v. Sims, supra*, 377 U.S. 533, 583.

⁴ Title 42 United States Code sections 1973(a), 1973b(f)(2).

registered to vote, or voted, in the Presidential elections, be cleared in advance either by the federal district court in Washington D.C., or by the United States Attorney General.⁵

In 1980, article XXI was added to the California Constitution by California voters. Article XXI requires the Legislature to adjust the boundary lines of the Senate, Assembly, Board of Equalization, and congressional districts in the year after the national decennial census is taken. Like the United States Constitution, the California Constitution does not detail a specific methodology to be used in adjusting the districts. Instead, the Legislature has the discretion to use any legal methodology of redistricting as long as it is in conformance with the following standards:

(1) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single-member district; (2) the population of all districts of a particular type shall be reasonably equal; (3) every district shall be contiguous; (4) districts of each type shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary; and (5) the geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.

The 1990 redistricting plan followed census tract lines and nested two Assembly districts within each Senate district.⁶ After the redistricting plan is enacted, the Legislature must prepare detailed maps illustrating the redistricting plan and must provide these maps to county elections officials for use in conducting elections.⁷

Prior law requires county elections officials to establish election precinct boundaries so that the precinct boundaries do not cross the boundary of any Senate, Assembly, Board of Equalization, or congressional district.⁸ Also, the number of voters per precinct may not exceed 1,250.⁹ Additionally, the person in charge of elections for any county, city and county, city, or district is required to provide ballots for any elections within his or her jurisdiction.¹⁰

Pursuant to article XXI of the California Constitution, the test claim statute, Statutes 2001, chapter 348 (AB 632), adjusted the Senate and congressional boundary lines through the addition of chapter 2 (§ 21100 et seq.) and chapter 5, (§ 21400 et seq.) to Elections Code, division 21.¹¹

⁵ Title 42 United States Code section 1973c.

⁶ The 1990 redistricting plan was developed by special masters and approved by the California Supreme Court, due to the failure of the Legislature and the Governor to adopt congressional, legislative and State Board of Equalization apportionment plans for the 1992 primary and general elections.

⁷ Elections Code section 21001, subdivision (a).

⁸ Elections Code sections 12220 and 12222, subdivision (a), as added by Statutes 1994, chapter 920, section 2 (SB 1547).

⁹ Elections Code section 12223, as amended by Statutes 2001, chapter 904, section 2 (SB 1547).

¹⁰ Elections Code section 13000, as added by Statutes 1994, chapter 920, section 2 (SB 1547).

¹¹ Although not controlling, the Legislative Counsel's Digest also notes that the test claim statute was enacted pursuant to the California Constitution.

In addition, the test claim statute requires county elections officials to rely on the maps prepared by the Legislature pursuant to Elections Code section 21001 to determine the Senate and congressional boundary lines if “a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and, as a result, an ambiguity or dispute arises. . . .”¹²

Unlike the 1990 redistricting plan, the test claim statute did not follow census tract lines. Instead, the test claim statute followed census blocks which split census tracts in the formation of the Senate and congressional districts.¹³ Additionally, the test claim statute in conjunction with Statutes 2001, chapter 349 (Sen. Bill No. (SB) 802), which readjusted the Assembly and Board of Equalization districts, did not nest two Assembly districts within each Senate district.¹⁴ Claimant contends that the Legislature’s use of census blocks and the decision not to nest two Assembly districts within each Senate district has resulted in a significant increase in work related to establishing election precinct boundaries and other election related activities.

Prior to the enactment of the test claim statute, claimant received a letter dated September 24, 2001, from Senator Perata in his role as the Chair of the Senate Committee on Elections and Reapportionment.¹⁵ The letter has been pled as, “State Senate’s Election and Reapportionment Committee Instructions Issued on September 24, 2001” (hereafter Senator Perata’s Letter). Senator Perata’s Letter was written so that claimant would be “afforded the maximum amount of time for preparation and implementation of the new districts.” Although Senator Perata’s Letter included the metes and bounds report, tract and block-level descriptions and maps for the Senate and congressional districts, claimant did not include these documents in the test claim.

Claimant’s Position

Claimant, County of Los Angeles, contends that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant asserts the test claim statute mandates a new program or higher level of service, and as a result, claimant seeks reimbursement for the following costs and activities associated with implementing the test claim statute:

- redistricting costs;
- ballot printing costs; and
- initiation of a Precinct Reduction Program.

Claimant argues that redistricting pursuant to the test claim statute is a new program or higher level of service because it “...was a much more complex project than under prior law.”¹⁶ Use of census blocks and failure to nest Assembly districts in Senate districts resulted in “...substantial

¹² Statutes 2001, chapter 348 (AB 632), section 4.

¹³ Census tracts are made up of census blocks.

¹⁴ Statutes 2001, chapter 349 (SB 802), was not pled in the test claim.

¹⁵ Statutes 2001, chapter 348 (AB 632) enacted on September 27, 2001.

¹⁶ Test Claim, p. 106. (Item 7, March 29, 2007 Commission Hearing).

work in redrawing precinct boundaries within each of 700 of the County's 2,054 census tracts."¹⁷ This increased work resulted in increased costs as compared to prior redistricting years.

In addition to increased redistricting activities and costs, claimant asserts that as a result of implementing the test claim statute, "an additional 171 unique ballot groups (a unique set of candidates and propositions dependent upon geographic area and political district boundaries)"¹⁸ was required. The increase in ballot groups "resulted in soaring sample ballot booklet printing costs."¹⁹ Thus, claimant contends that the increased number of ballot groups required more ballots to be printed constituting a new program which resulted in increased costs.

Claimant also asserts that the test claim statute coupled with the first Primary Election in March instead of June required the creation of new and unnecessary precincts. Consequently, claimant initiated a Precinct Reduction Program to lessen ongoing costs that would be incurred with the maintenance of the unnecessary precincts.

On February 28, 2007, the Commission received claimant's comments in rebuttal to the draft staff analysis. Claimant's comments will be addressed, as appropriate in the analysis below.

Department of Finance's Position

The Department of Finance (Finance) filed comments dated August 14, 2003 addressing claimant's test claim allegations. Finance disagrees with claimant's test claim allegations and asserts that the test claim statute is not a reimbursable state mandate because the test claim statute: (1) does not mandate a "new program or higher level of service," and (2) does not impose "costs mandated by the state" pursuant to Government Code section 17556, subdivision (f).

Government Code section 17556, subdivision (f) provides that the Commission shall not find costs mandated by the state if "[t]he statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election." Finance cites Article XXI of the California Constitution which was added through a ballot measure approved by voters in the June 3, 1980 primary election. Article XXI requires the Legislature to adjust the boundary lines of the Senate, Assembly, Congressional, and Board of Equalization districts in the year after the national census is taken. Finance argues that the test claim statute is necessary to implement Article XXI, concluding, "...although [the test claim statute] may result in additional costs to local entities, those costs are not reimbursable because this implements a voter-approved ballot measure which has existed in law for more than 23 years."

Additionally, Finance asserts that the test claim statute does not mandate a "new program or higher level of service." Finance states:

Since the requirement to adjust the boundary lines of the various districts after each census was added to the California Constitution in 1980, local agencies have been constitutionally performing these duties on a regular basis for the past 3 decades. Furthermore, the 1849 version of the California Constitution (see

¹⁷ Test Claim, p. 107. (Item 7, March 29, 2007 Commission Hearing).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

Articles IV and XII) provided for the re-evaluation of districts as needed. Since this activity has been occurring in the State for more than 150 years, the duties cited in this claim do not qualify as a new program or higher level of service.²⁰

Finance further contends that the test claim statute does not impose “costs mandated by the state,” and instead argues that the claimant incurred costs at its own discretion. The California Constitution does not detail a specific methodology to define the new boundaries, and therefore gives the Legislature the discretion to choose any legal method for redistricting. In light of the Legislature’s discretion to choose any legal methodology to conduct redistricting, Finance argues that a county which assumes the Legislature will use a particular methodology incurs the costs of that assumption at the county’s own discretion.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution²¹ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²² “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”²³ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.²⁴ In addition, the required activity or task must be new, constituting a “new program,” and it must create a “higher level of service” over the previously required level of service.²⁵

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

²⁰ Finance comments to the test claim filed August 14, 2003, p. 625. (Item 7, March 29, 2007 Commission Hearing).

²¹ California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

²² *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁴ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988), 44 Cal.3d 830, 835-836 (*Lucia Mar*).

policy, but does not apply generally to all residents and entities in the state.²⁶ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.²⁷ A “higher level of service” occurs when there is “an increase in the actual level or quality of governmental services provided.”²⁸

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁹

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 6.³⁰ 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.”³¹

The analysis addresses the following issues:

1. Does Senator Perata’s Letter qualify as an “executive order,” as defined by Government Code section 17516, subject to article XIII B, section 6?
2. Does Statutes 2001, Chapter 348 (AB 632) mandate a new program or higher level of service subject to article XIII B section 6 of the California Constitution?
3. Does Section 4 of Statutes 2001, chapter 348 (AB 632), impose “costs mandated by the state” on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556?

Issue 1: Is Senator Perata’s Letter within the Commission’s jurisdiction and subject to article XIII B, section 6?

Claimant pled Senator Perata’s Letter as part of the “test claim legislation” and argues that it constitutes a reimbursable state mandate. However, before discussing whether Senator Perata’s Letter constitutes a reimbursable state mandate, it must be determined if the Commission has jurisdiction over Senator Perata’s Letter.

²⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

²⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

²⁹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

³⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

³¹ *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Pursuant to Government Code section 17551, the Commission hears and decides claims for reimbursement of costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as increased costs incurred as a result of an enacted statute or an issued executive order which mandates a new program or higher level of service. An “executive order” is defined as any order, plan, requirement, rule, or regulation issued by: (1) the Governor; (2) any officer or official serving at the pleasure of the Governor; or (3) any agency, department, board, or commission of state government.³²

Senator Perata’s Letter was addressed to Conny McCormack, claimant’s Registrar of Voters, to advise claimant that the test claim statute had been adopted by the Legislature and was awaiting signature by the Governor. Senator Perata’s Letter also provided claimant with the metes and bounds report, tract and block-level descriptions and maps for the Senate and congressional districts to afford claimant “...the maximum amount of time for preparation and implementation of the new districts.”³³

Senator Perata’s Letter does not constitute an enacted statute or an issued executive order from the executive branch of the government. Rather, Senator Perata’s Letter was issued by Senator Perata, in his role as the Chair of the Senate Committee on Elections and Reapportionment, to provide information to claimant “so that [claimant] may begin preparing to implement the new boundaries should the Governor sign the [test claim statute].”³⁴ As a result, Senator Perata’s Letter is not within the Commission’s jurisdiction and is not subject to article XIII B, section 6. Any reference hereafter to the test claim statute will exclude Senator Perata’s Letter.

Issue 2: Does Statutes 2001, chapter 348 (AB 632) mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution?

To be subject to article XIII B, section 6 of the California Constitution, a test claim must: (1) mandate a new activity upon the claimant, that (2) constitutes a new program or higher level of service.

In order for test claim statutes to impose a reimbursable, state-mandated, program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental entities. If the statutory language does not mandate or require the claimant to perform a task, then article XIII B, section 6, does not apply.

In statutory construction cases, our fundamental task is to ascertain the intent of lawmakers so as to effectuate the purpose of the statute...If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.]³⁵

The test claim statute is composed of five sections, with only the first two sections codified into the Elections Code. Sections 1 and 2 of the test claim statute add chapter 2 (§21100 et seq.) and

³² Government Code section 17516.

³³ Senator Perata’s Letter, Test Claim, Exhibit 4, p. 174. (Item 7, March 29, 2007 Commission Hearing).

³⁴ *Ibid.*

³⁵ *Whitcomb v. California Employment Commission* (1994) 24 Cal.2d 753, 757.

chapter 5 (§21400 et seq.) to division 21 of the Elections Code which set forth the Legislature's redistricting plan for the Senate and congressional districts. Elections Code, division 21, chapter 2 begins by stating, "This chapter sets forth the Senate districts."³⁶ The remaining sections of chapter 2 set forth the Senate districts by census blocks. Chapter 5 of division 21 of the Elections Code sets forth the congressional districts in the same manner.

The language of Sections 1 and 2 of the test claim statute do not mention any acts that counties must take. Rather, sections 1 and 2 merely set forth the Legislature's redistricting plans by census block description. Thus, the plain meaning of Sections 1 and 2 of the test claim statute do not mandate any activity upon counties.

Sections 3 and 5 of the test claim statute also do not mandate any activities upon counties. Section 3 of the test claim statute provides:

The redistricting plans enacted by this act are severable. If any Senate or congressional redistricting plan or its application is held invalid, that invalidity shall not affect other plans or applications that can be given effect without the invalid plan or application.

Section 5 of the test claim statute provides in relevant part:

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect.

The language of sections 3 and 5 do not mention counties or any acts that counties must take. Rather, section 3 merely makes the individual redistricting plans set forth in chapters 1 and 2 of the test claim statute severable, and section 5 makes the test claim statute an urgency statute as defined by article IV of the California Constitution. Thus, the plain meaning of sections 3 and 5 of the test claim statute do not mandate any activity upon counties.

In claimant's February 28, 2007 response to the draft staff analysis, claimant asserts that the test claim statute mandates activities upon counties by implication. Claimant references a "Legislative Blueprint" consisting of various code sections used to implement the redistricting process. Claimant cites the existing Elections Code sections 12220, 12221, 12222, 12223, 12262, and 21001, that relate to county redistricting and elections duties, as examples of the "Legislative Blueprint." Claimant contends that because of the existing "Legislative Blueprint," "it was unnecessary for the Legislature to add thousands of obvious and repetitive imperatives to the test claim statute...imperatives that explicitly command that each county election official shall use their designated census block descriptions."³⁷ Thus, claimant appears to argue that sections 1 and 2 of the test claim statute, in conjunction with the "Legislative Blueprint," mandate activities upon the county election officials.

To clarify, claimant did not properly plead Elections Code sections 12220, 12221, 12222, 12223, 12262, and 21001, or any other part of a "Legislative Blueprint" as part of the test claim. Rather, claimant pled Statutes 2001, Chapter 348 (AB 632), which includes only sections 21100 et seq.,

³⁶ Elections Code section 21100.

³⁷ Claimant response, dated February 28, 2007, p. 825, original emphasis. (Item 7, March 29, 2007 Commission Hearing).

and 21400 et seq. of the Elections Code. The Commission's decision cannot be based on un-pled or improperly pled statutes. Nor can the Commission find the test claim statute to mandate activities upon a claimant based on unstated or implied requirements of a statute where the terms of the statute are unambiguous.³⁸ Thus, as discussed above, the language of sections 1 and 2 of the test claim statute do not mandate any activity upon counties.

Even if claimant pled Elections Code sections 12220, 12221, 12222, 12223, 12262, and/or 21001 as part of the test claim, sections 1 and 2 of the test claim statute still would not mandate a new program or higher level of service. Claimant contends that in light of the "Legislative Blueprint" a new "program" is imposed upon counties because the Legislature used a different methodology to establish Senate and congressional districts as compared to the prior reapportionment.³⁹ However, regardless of what methodology the Legislature used to establish Senate and congressional districts, the duties and activities of counties remained the same. More specifically, even without the enactment of the test claim statute county elections officials are required by existing law to establish voting precinct boundaries, and print and provide ballots to voters.⁴⁰ These preexisting duties in regard to redistricting are acknowledged by claimant's remark that "the re-districting process has been performed by Los Angeles County for decades..."⁴¹ Also, although the costs associated with these preexisting duties may have increased, as argued by the claimant, increased costs cannot be equated with a new program or higher level of service.⁴²

In addition, claimant states:

[W]hile Article 21 of the California Constitution requires the legislature to adjust the boundary lines in conformance with specified standards every year following a national census, it is erroneous to assume that prior standards were employed in implementing the test claim statute.⁴³

Claimant's statement appears to suggest that the test claim statute fails to conform with the specified standards of article XXI of the California Constitution. The Commission must treat the test claim statute as a valid statute (Cal. Const., art. III, § 3.5). Thus, treating the test claim

³⁸ *Whitcomb v. California Employment Commission, supra*, 24 Cal.2d 753, 757.

³⁹ Unlike the 1990 redistricting plan, the test claim statute did not follow census tract lines. Instead, the test claim statute followed census blocks which split census tracts in the formation of the Senate and congressional districts.

⁴⁰ Elections Code sections 12220 et seq.; and 13000. As added by Statutes 1994, chapter 920, section 2 (SB 1547).

⁴¹ Claimant response to Department of Finance's August 14, 2003 comments, dated September 4, 2003, Declaration of Kathleen D. Connors, p. 632. (Item 7, March 29, 2007 Commission Hearing).

⁴² *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484; *Kern High School Dist., supra*, 30 Cal.4th 727, 735.

⁴³ Claimant response, dated February 28, 2007, p. 831. (Item 7, March 29, 2007 Commission Hearing).

statute as valid, a change in methodology used by the Legislature to establish Senate and congressional districts does not mandate new program or higher level of service upon claimant.

Therefore, the Commission finds that sections 1, 2, 3, and 5 of the test claim statute, Statutes 2001, Chapter 348 (AB 632), do not mandate a new program or higher level of service.

Section 4 of the test claim statute provides:

In the event that a census tract or census block is not listed, is listed more than once, or is only partially accounted for, and, as a result, an ambiguity or dispute arises regarding the location of a boundary line, the Secretary of State and the elections official of each county shall rely on the detailed maps prepared by the committees of the legislature pursuant to Section 21001 of the Elections Code to determine the boundary line.

Under the plain meaning of section 4, in cases of ambiguity regarding the location of district boundary lines county election officials are required to rely on the detailed maps prepared by the Legislature pursuant to Elections Code section 21001. Therefore, the plain meaning of section 4 of the test claim statute does mandate an activity upon counties.

Thus, the Commission finds only section 4 of the test claim statute mandates an activity upon counties. Pursuant to section 4, counties must rely on maps prepared pursuant to Elections Code section 21001 if an ambiguity arises in regard to district boundary lines. As a result, the remaining discussion will focus on section 4.

The courts have held that legislation mandates a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution when the requirements are new in comparison with the pre-existing scheme and the requirements were intended to provide an enhanced service to the public.⁴⁴ To make this determination, section 4 must initially be compared with the legal requirements in effect immediately prior to its enactment.⁴⁵

After the enactment of the test claim statute, section 4 required county elections officials to rely on the detailed maps prepared by the committees of the Legislature pursuant to Elections Code section 21001 to determine the district boundary lines if ambiguities arose due to a census tract or census block not being listed, being listed more than once, or being only partially accounted for. It is necessary to clear any district line ambiguities because county elections officials are required to establish election precinct boundaries so that the precinct boundaries do not cross the boundary of any Senate, Assembly, Board of Equalization, or congressional district.⁴⁶ Also, the number of voters per precinct may not exceed 1,250.⁴⁷

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

⁴⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

⁴⁶ Elections Code sections 12220 and 12222, subdivision (a). As added in Statutes 1994, chapter 920, section 2 (SB 1547).

⁴⁷ Elections Code section 12223 as amended by Statutes 2001, chapter 904, section 2 (SB 1547).

Prior to the enactment of the test claim statute; however, county elections officials were not required to rely on the maps prepared pursuant to Elections Code section 21001 to resolve ambiguities in district boundary lines. Rather, prior law did not specify any source that county elections officials were required to rely on if ambiguities arose in regard to district boundary lines. Thus, the section 4 requirement is new as compared to the pre-existing scheme.

It is noted that the maps prepared pursuant to Elections Code section 21001 were already used by elections officials for election purposes. Elections Code section 21001, states in relevant part, "The maps shall be provided to ... the county elections officials for use in their administrative functions involved in the conduct of elections..."⁴⁸ However, pursuant to Government Code section 17565, "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Thus, even if county elections officials were relying on the maps prepared pursuant to Elections Code section 21001 to establish election precinct boundaries under prior law, the county elections officials were not required to do so prior to the enactment of the test claim statute.

Section 4 must also be intended to provide an enhanced service to the public. Here, counties are directed to rely on the maps prepared pursuant to Elections Code section 21001 if an ambiguity arises regarding district boundary lines. Requiring county elections officials to rely on these maps helps clear district boundary line ambiguities in a uniform manner, which allows county elections officials to establish election precincts more precisely, ensuring equal representation for voters by preventing vote dilution. Thus, the Commission finds that section 4 of the test claim statute provides a service to the public.

Therefore, the section 4 requirement, to rely on the maps prepared pursuant to Elections Code section 21001 if an ambiguity arises in regard to district boundary lines, constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

It should be noted that any potential reimbursable costs for implementation of section 4 of the test claim statute must have occurred between the time of enactment of the test claim statute (September 27, 2001) and the final date at which county elections officials were required to have precinct boundaries established (December 7, 2001).⁴⁹

Issue 3: Does Section 4 of Statutes 2001, chapter 348 (AB 632), impose "costs mandated by the state" on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556?

⁴⁸ Elections Code section 21001, as amended in Statutes 2000, chapter 1081, section 23 (SB1823).

⁴⁹ Elections Code section 12262 provides in relevant part, "Jurisdictional boundary changes occurring less than 88 days before an election shall not be effective for purposes of that election." Thus, precinct boundaries must have been established on December 7, 2001 which is 88 days before the March 5, 2002 primary election.

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.⁵⁰ In addition, no statutory exceptions listed in Government Code section 17556 can apply. Government Code section 17514 defines “cost mandated by the state” as follows:

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

It is noted that claimant has not alleged any costs to comply with section 4 of the test claim statute. In addition, the Commission finds that section 4 is subject to the statutory exception in Government Code section 17556, subdivision (f).

In claimant’s February 28, 2007 response to the draft staff analysis, claimant misinterprets the statutory exception defined by Government Code section 17556, subdivision (f), stating, “the funding disclaimer only applies to activities ‘*reasonably necessary*’ in implementing a ballot initiative.”⁵¹ However, Government Code section 17556, subdivision (f), provides:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any test claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

... (f) The statute or executive order imposes duties that are *necessary to implement, reasonably within the scope of, or expressly included in*, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters. (emphasis added.)

Thus, according to the plain language of Government Code section 17556, subdivision (f), it is necessary to determine if the test claim statute imposes duties that are “necessary to implement, reasonably within the scope of, or expressly included in” a ballot initiative.

In June 1980, California voters approved Proposition 6 adding article XXI to the California Constitution. Article XXI provides in relevant part:

In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts...

The Legislature enacted the test claim statute to adjust the boundary lines of the Senate and congressional districts to implement article XXI. Section 4 of the test claim statute requires county elections officials to rely on detailed maps, made by the committees of the Legislature, if ambiguities regarding the district boundary lines arise. Therefore, section 4 is necessary to

⁵⁰ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

⁵¹ Claimant response, dated February 28, 2007, p. 831, emphasis added. (Item 7, March 29, 2007 Commission Hearing).

implement or reasonably within the scope of article XXI because it aids in the redistricting process required by article XXI. It is noted that although the test claim statute was enacted after the enactment of Proposition 6, pursuant to the plain language of Government Code section 17556, subdivision (f), "This subdivision applies regardless of whether the statute...was enacted or adopted...after the date on which the ballot measure was approved by voters."

Thus, pursuant to the plain language of Government Code section 17556, subdivision (f), the Commission finds that section 4 of the test claim statute does not impose "costs mandated by the state."

CONCLUSION

The Commission concludes that chapter 2 (§21100 et seq.) and chapter 5 (§21400 et seq.) of division 21 of the Elections Code, as added by sections 1 and 2 of Statutes 2001, chapter 348 (AB 632), do not mandate any activities upon counties. Sections 3 and 5 of Statutes 2001, chapter 348 (AB 632) also do not mandate any activity on counties. Additionally, the Commission finds that section 4 of Statutes 2001, chapter 348 (AB 632) mandates a new program or higher level of service on counties; however, section 4 does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (f). Thus, Statutes 2001, chapter 348 (AB 632) does not constitute a reimbursable state-mandated program within the meaning of article XIII, subdivision (b), section 6 of the California Constitution.

Commission on State Mandates

Original List Date: 7/9/2003 Mailing Information: Final Staff Analysis
Last Updated: 2/9/2007
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Claim Number: 02-TC-50
Issue: Re-Districting: Senate and Congressional Districts

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Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Tel: (916) 323-5849
Fax: (916) 327-0832

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

Claimant
Tel: (213) 974-8564
Fax: (213) 617-8106

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

Tel: (916) 368-9244
Fax: (916) 368-5723

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Ms. Pam Stone
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102
Fax: (916) 485-0111

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256
Fax: (916) 323-6527

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

Tel: (949) 644-3127
Fax: (949) 644-3339

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

Tel: (916) 677-4233
Fax: (916) 677-2283

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Tel: (909) 386-8850
Fax: (909) 386-8830

The Honorable Don Perata
California State Senate (E-22)
California State Capitol
P.O. Box 942848
Sacramento, CA 94248-0001

Tel: (916) 445-6577
Fax:

Ms. Donna Ferebee
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Chief Consultant
Assembly Elections and Redistricting Committee
California State Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 942849-0051

Tel:
Fax:

Ms. Diane Cummins
Office of Senator Don Perata (E-22)
California State Senate

Tel: (916) 327-9178
Fax:

State Capitol, Room 412
Sacramento, CA 95814

Mr. Michael Cohen
Legislative Analyst's Office (B-29)
925 L Street, Suite 1000
Sacramento, CA 95814

Tel: (916) 319-8310

Fax: (916) 324-4281

