

ITEM 2

APPEAL OF EXECUTIVE DIRECTOR'S DECISION TO DISALLOW TEST CLAIM AMENDMENT

TO ADD: Government Code Section 56326.5, Statutes 1991, Chapter 439 (AB 748); Government Code Sections 56001, 56029, 56036, 56046, 56067, 56069, 56100, 56101, 56107, 56123, 56124, 56133, 56150, 56154, 56156, 56157, 56159, 56300, 56301, 56325, 56326.5, 56329, 56332, 56375, 56375.3, 56375.5, 56377, 56380, 56381, 56381.6, 56383, 56384, 56386, 56425, 56425.5, 56429, 56430, 56434, 56653, 56654, 56658, 56660, 56662, 56663, 56664, 56665, 56666, 56667, 56668, 56668.3, 56668.5, 56700.1, 56700.4, 56705, 56706, 56708, 56710, 56720, 56730, 56737, 56738, 56742.5, 56743, 56744, 56745, 56751, 56752, 56753, 56753.5, 56754, 56755, 56756, 56757, 56758, 56759, 56760, 56764, 56800, 56801, 56803, 56810, 56811, 56812, 56815, 56820, 56820.5, 56820.7, 56821, 56821.1, 56821.3, 56821.5, 56821.7, 56822, 56822.3, 56822.5, 56823, 56824, 56824.1, 56824.3, 56824.5, 56824.7, 56826, 56827, 56828, 56829, 56830, 56831, 56833, 56834, 56835, 56840, 56843, 56844, 56846, 56847, 56848, 56853, 56854, 56855, 56857, 56859, 56860, 56861, 56862, 56863, 56864, 56864.1, 56876, 56880, 56881, 56882, 56885.5, 56886, 56886.3, 56889, 56895, 56897, 57000, 57001, 57002, 57008, 57025, 57026, 57050, 57052, 57075, 57075.5, 57077, 57078, 57078.5, 57080, 57081, 57100, 57102, 57103, 57105, 57106, 57107, 57108, 57109, 57113, 57114, 57115, 57116, 57117, 57118, 57119, 57120, 57125, 57129, 57144, 57145, 57150, 57176, 57167.1, 57177, 57177.5, 57179, 57200, 57201, 57302, 57384, 57402, 57404, Statutes 2000, Chapter 761 (AB 2838); Government Code Section 56381, Statutes 2002, Chapter 493 (AB 1948); LAFCO Municipal Services Review Guidelines, and LAFCO Municipal Services Review Guidelines Appendices (07-TC-02)

TO: *Local Agency Formation Commission (LAFCO)* Test Claim Government Code Sections 56001, 56326.5, 56381, 56381.6, 56425, 56426.5, 56430, Statutes 1991, Chapter 438 (AB 748); Statutes 2000, Chapter 761 (AB 2838); Statutes 2002, Chapter 493 (AB 1948) LAFCO Municipal Services Review Guidelines (Final Draft, October 3, 2002, Governor's Office of Planning and Research), LAFCO Municipal Services Review Guidelines Appendices (Final Draft, October 3, 2002, Governor's Office of Planning and Research) (02-TC-23)

Sacramento, Metropolitan Fire District, Claimant and Appellant

EXECUTIVE SUMMARY

This is an appeal of the Executive Director's decision of February 15, 2008, to disallow a test claim amendment to the *Local Agency Formation Commission (LAFCO)* test claim, 02-TC-23. The test claim amendment was disallowed, pursuant to Government Code section 17553,

subdivision (c), and section 1183, subdivision (g), of the Commission's regulations because a complete test claim amendment was not timely received by the Commission.

The proposed test claim amendment was filed on September 25, 2007, and alleges 178 code sections *in addition* to the statutes and alleged executive orders pled in the original *LAFCO* test claim. The proposed amendment was severed from the original *LAFCO* test claim and a separate Statement of Decision was adopted and issued on the original *LAFCO* test claim in September 2007.

The proposed test claim amendment filed on September 25, 2007, was deemed incomplete, and the claimant was given an additional 30 days to file a complete test claim amendment. Additional documents were filed on December 28, 2007, in an attempt to perfect the test claim amendment filing. On February 15, 2008, the Executive Director issued a letter disallowing the proposed test claim amendment because the documents filed as part of the proposed test claim amendment were not complete.

When determining whether the proposed amendment was complete, the Executive Director reviewed the filings in accordance with the current version of Government Code section 17553. The current version was amended by Assembly Bill 2856, effective January 1, 2005, to require test claims and test claim amendments to include the following information supported by declarations signed under penalty of perjury:

- the actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;
- the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

For the reasons stated in the analysis, staff finds that the proposed test claim amendment does not satisfy these requirements, and a completed test claim amendment has not been filed within the time requirements provided in Government Code section 17553 and section 1183 of the Commission's regulations.

Appellant, Sacramento Metropolitan Fire District contends that the proposed amendment should be deemed complete and that the Executive Director should have applied the requirements of Government Code section 17553, as they existed in 2003 when the original *LAFCO* test claim was filed. Appellant further argues that the record on the original *LAFCO* test claim should be used here as evidence to show that the claimant incurred actual increased costs.

Staff finds that the appellant's arguments are not consistent with the law. Government Code section 17553 and section 1183 of the Commission's regulations, as these provisions existed when the proposed test claim amendment was filed in 2007, is the law that must be applied to determine if the test claim amendment is complete.

Furthermore, the Commission cannot use the record of the original *LAFCO* test claim to support the alleged costs incurred as a result of the proposed test claim amendment because the test claim amendment pleads an additional 178 Government Code statutes that were *not* pled in the original test claim. The claimant has not complied with the requirements of Government Code section 17553 with respect to these additional statutes.

Government Code section 17553 and section 1183 of the Commission's regulations only provide potential claimants 30 calendar days from the date that an incomplete test claim amendment was returned to perfect the filing. The claimant has been given 30 days, after it was notified that its first filing was incomplete, to file a completed test claim amendment. The second document filed on December 28, 2007, still does not satisfy the filing requirements for test claim amendments. Since the law does not give the Commission jurisdiction to accept another filing to perfect the requirements of Government Code section 17553, the Executive Director, pursuant to the authority provided in Government Code section 17553, subdivision (c), properly disallowed the proposed test claim amendment.

Conclusion and Staff Recommendation

Accordingly, staff recommends that the Commission deny the appeal and uphold the Executive Director's decision to disallow the proposed test claim amendment to the original *LAFCO* test claim (02-TC-23).

STAFF ANALYSIS

Claimant and Appellant

Sacramento Metropolitan Fire District

Chronology

- 05/29/03 Sacramento Metropolitan Fire District files *Local Agency Formation Commission (LAFCO)* test claim (02-TC-23) with Commission
- 06/28/07 Draft staff analysis issued on the *LAFCO* test claim (02-TC-23)
- 08/09/07 Sacramento Metropolitan Fire District files comments on draft staff analysis on the *LAFCO* test claim (02-TC-23)
- 09/17/07 Final staff analysis on *LAFCO* test claim (02-TC-23) issued; hearing set for September 27, 2007
- 09/25/07 Sacramento Metropolitan Fire District files test claim amendment to *LAFCO* test claim (02-TC-23), pleading additional statutes for consideration by the Commission
- 09/26/07 Commission's Executive Director severs proposed test claim amendment from original *LAFCO* test claim (02-TC-23) pursuant to Government Code section 17530 to prevent a delay in the hearing of 02-TC-23
- 09/27/07 Commission heard *LAFCO* test claim (02-TC-23) and adopted Statement of Decision, partially approving the claim with a reimbursement period beginning July 1, 2001
- 10/03/07 Statement of Decision on *LAFCO* test claim (02-TC-23) issued
- 11/30/07 Test claim amendment was returned as incomplete
- 12/28/07 Sacramento Metropolitan Fire District files "corrected" test claim amendment
- 02/15/08 Commission's Executive Director disallows test claim amendment and returns filing because a completed test claim amendment was not timely received
- 02/25/08 Sacramento Metropolitan Fire District files appeal of the Executive Director's decision to disallow test claim amendment

Background

This is an appeal of the Executive Director's decision to disallow a test claim amendment to the *Local Agency Formation Commission (LAFCO)* test claim, 02-TC-23.¹ The test claim amendment was disallowed, pursuant to Government Code section 17553, subdivision (c), and section 1183, subdivision (g), of the Commission's regulations because a complete test claim amendment was not timely received by the Commission. The relevant facts of this appeal follow.

Government Code section 17553 and section 1183 of the Commission's regulations govern the procedures and requirements for filing test claims and test claim amendments. A test claim

¹ Exhibit F.

amendment occurs whenever a claimant adds new allegations based on new statutes or executive orders to an existing test claim. The addition or substitution of parties and supporting declarations based on the original statutes or executive orders alleged in an existing test claim is not an “amendment.”² An amendment to a test claim that has been deemed complete and is timely filed gets the benefit of the period of reimbursement of the existing test claim as long as the proposed amendment substantially relates to the original test claim.³

After the receipt of a test claim amendment, Commission staff is required to notify the claimant if the amendment is complete or incomplete. Test claim amendments are considered incomplete if the filing does not meet the requirements in Government Code section 17553 and section 1183 of the Commission’s regulations.⁴ Under these circumstances, the proposed test claim amendment is returned to the claimant, and the claimant has 30 calendar days from the date the incomplete amendment is returned to file a completed test claim amendment.⁵ If a completed test claim amendment is not received within 30 calendar days, the executive director may disallow the original test claim filing date.⁶ A new test claim may be filed on the same statute or executive order claimed in the test claim amendment, with a new period of reimbursement based on the filing date of the new test claim, *if* the filing falls within the statute of limitations provided for in Government Code section 17551.⁷

In this case, Sacramento Metropolitan Fire District filed a test claim in 2003 addressing statutory changes to *Local Agency Formation Commissions (LAFCO)*, 02-TC-23. On September 25, 2007, after the final staff analysis was issued, and two days before the matter was set for hearing, the claimant filed a proposed amendment to the test claim. The proposed amendment added **178** Government Code sections to the existing test claim.⁸ On September 26, 2007, the Commission’s Executive Director, pursuant to the duty provided in Government Code section 17530 to expedite all matters before the Commission, severed the proposed amendment from the existing test claim so that the existing test claim, with findings made on behalf of independent special districts, could be heard by the Commission.⁹ On September 27, 2007, the Commission heard the *LAFCO* test claim (02-TC-23) and adopted a statement of decision, partially approving the claim for independent special districts. The summary of findings in the statement of decision for 02-TC-23 states the following:

This test claim addresses changes to Local Agency Formation Commissions (“LAFCOs”), which are statutorily-created local administrative bodies that make determinations regarding formation and development of local agencies. The test

² California Code of Regulations, title 2, section 1181.1, subdivision (b).

³ Government Code section 17557, subdivision (e).

⁴ California Code of Regulations, title 2, section 1183, subdivision (g).

⁵ Government Code section 17557, subdivision (d); California Code of Regulations, title 2, section 1183, subdivision (g).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Exhibit A.

⁹ Exhibit B.

claim statutes modify representation on the Sacramento County LAFCO, mechanisms for funding LAFCO operations when independent special districts are represented, and the process for LAFCOs to adopt and update the “sphere of influence” for each local agency within all California counties. The claimant is an independent special district, thus the findings of this test claim apply to independent special districts only and *not* LAFCOs or other local government agencies. Furthermore, only those independent special districts that are subject to the tax and spend limitations of article XIII A and article XIII B are eligible claimants.

The Commission finds that only one of the alleged test claim statutes – Government Code section 56425, subdivision (h)(1) (subsequently renumbered to subdivision (i)(1)) – constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6, and Government Code section 17514. That section requires independent special districts to file written statements with the LAFCO, specifying the functions or classes of service provided by those districts, for the following time periods and types of spheres of influence:

- July 1, 2001 through December 31, 2001 – when a LAFCO adopts or updates any sphere of influence or sphere of influence that includes a special district.
- On and after January 1, 2002 – when a LAFCO adopts or updates a sphere of influence for a special district.

The Commission concludes that Government Code section 56001 declares legislative findings and is helpful to interpret the test claim statutes, but does not mandate any activities. The Commission further concludes that Government Code sections 56326.5, 56381, 56381.6, 56425 (except subdivision (h)(1), subsequently renumbered to subdivision (i)(1)), 56426.5, and 56430, and the Municipal Service Review Guidelines and Appendices developed by the Governor’s Office of Planning and Research, as pled, along with any other test claim statutes, alleged executive orders, guidelines and allegations not specifically approved above, do not mandate a new program or higher level of service subject to article XIII B, section 6.¹⁰

On November 30, 2007, the proposed test claim amendment was returned as incomplete because it did not include a written narrative, a statement of statewide estimated costs, and declarations from the claimant authenticating all documentary evidence, as required under Government Code section 17553 and section 1183 of the Commission’s regulations. To correct these omissions and to preserve the original test claim period of reimbursement, a complete test claim amendment was required to be filed no later than December 30, 2007.¹¹

On December 28, 2007, Sacramento Metropolitan Fire District filed a “corrected” test claim amendment in an attempt to complete the filing. This filing was determined to not comply with

¹⁰ Exhibit L.

¹¹ Exhibit C.

the filing requirements of Government Code section 17553 and section 1183 of the Commission's regulations and, thus, deemed incomplete. On February 15, 2008, the Executive Director issued a letter disallowing the test claim amendment, stating the following reasons:

On December 28, 2007, Sacramento Metropolitan Fire District filed a "corrected" test claim amendment in an attempt to complete the filing. A written narrative detailing a description of the activities required under prior law, the activities required under the statutes or executive orders alleged to contain or impact a mandate, and allegations of an increased level of service and/or costs incurred was included in this filing. A statement of actual costs incurred by the Fresno County LAFCO, and a statewide estimate of LAFCO costs were also included. This filing, however, is not complete and does not comply with Government Code section 17553 and section 1183 of the Commission's regulations for the following reasons:

- Government Code section 17553, subdivision (b)(1)(C),(D) and (E), require that the written narrative contain the actual increased costs incurred *by the claimant*, actual estimated costs incurred *by the claimant*, and a statewide cost estimate of increased costs that all local agencies will incur. This test claim amendment was filed by a special district. There is no information in the narrative about any costs incurred by Sacramento Metropolitan Fire District, or any other special district, as a result of the alleged mandate.
- Government Code section 17553, subdivision (b)(1)(H), requires that the written narrative be supported with declarations signed under penalty of perjury by the claimant. The filing contains a declaration signed by Rick Ballantyne, the Executive Director of the Fresno County LAFCO, contending that the test claim statutes and alleged executive orders resulted in estimated costs of 25% of the LAFCO annual budget. There is no declaration signed by the claimant, Sacramento Metropolitan Fire District.

Moreover, LAFCOs are not eligible to claim reimbursement under article XIII B, section 6 of the California Constitution and, thus, cannot represent the interests of other local agencies for purposes of mandate reimbursement. Reimbursement under article XIII B, section 6 is required only when a local entity is required to comply with the tax and spend provisions of articles XIII A and XIII B of the California Constitution. Under these provisions, limits are placed on an entity's authorization to expend proceeds of taxes, or tax revenues. There is no spending limitation placed on the expenditure of revenues that do not constitute proceeds of taxes. Thus, as determined by the courts, article XIII B, section 6 does not require reimbursement when the expenses incurred by the local entity are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.) A local entity cannot accept the benefits of an exemption from article XIII B's spending limit while asserting an entitlement to reimbursement under article XIII B, section 6. (*City of El Monte, supra*, at p. 282.)

A LAFCO is a separate and distinct entity from its county, city, and special district members. As a separate entity, it has several powers and duties listed in Government Code section 56375. But LAFCOs do not have the power to levy tax revenues to pay for their expenses. Rather, the operating costs of a LAFCO are paid by the county, cities, and special districts served by the LAFCO. (Gov. Code, §§ 56381 and 56381.6.) In addition, LAFCOs are authorized to charge fees for the cost of specified proceedings undertaken by the LAFCO, and funding and facilities for LAFCOs have historically been provided by the county served. (Gov. Code, §§ 56381, 56383.) Thus, LAFCOs are exempt from the spending limitations of article XIII B and cannot, by law, claim reimbursement under article XIII B, section 6 of the California Constitution.

Accordingly, I am disallowing the test claim amendment because it is incomplete. Pursuant to Government Code section 17553, the Commission no longer has jurisdiction over the filing and, thus, the filing is hereby returned.

On February 25, 2008, Sacramento Metropolitan Fire District filed an appeal of the Executive Director's decision to disallow the test claim amendment pursuant to section 1181, subdivision (c), of the Commission's regulations. Section 1181, subdivision (c)(6), states the following: "The commission shall determine whether to uphold the executive director's decision by a majority vote of the members present. The decision shall be final and not subject to reconsideration."

Appellant's Position (Exhibit F)

Appellant, Sacramento Metropolitan Fire District, contends that the Executive Director erred in the interpretation of the regulations governing completed test claim amendments and, thus, requests that the Commission reverse the decision to disallow the test claim amendment.

The appellant raises three points of contention. First, appellant states that the purpose of its amendment was to expand the list of eligible claimants on the *LAFCO* claim to include counties and cities. The appellant argues that its test claim amendment, when viewed in light of the existing *LAFCO* test claim record (02-TC-23), provides the actual increased costs incurred by the test claimant and the estimated costs incurred by the claimant. The appellant further argues that a statewide cost estimate of increased costs that all local agencies incur, including cities and counties, was included and based on the declaration submitted with the proposed amendment by the Fresno County LAFCO. Appellant states that "[s]ince the basis of the mandate is the budget of the LAFCOs which are, by law, borne by their constituent members and the division of that budget by law, such a declaration is the clearest and best statement of those costs." The appellant further states the following:

The driving force behind the mandate is Government Code section 56381 as it was amended by Chapter 761, Statutes 2000. This statute was cited as part of the original test claim. [Footnote citation omitted.] and (sic) the following information was provided concerning the test claimant:

The net result of Chapter 493, Statutes 1991 is that two representatives of special districts must sit upon the LAFCO Board. At the inception, this posed no problem because special districts did not contribute to the operations of the LAFCO. With the passage of Chapter 761, Statutes 2000, the cost of

claimant's mandatory participation in LAFCO increased to between \$20,000 and \$30,000 to underwrite the operational costs of LAFCO. With the passage of Chapter 493, Statutes 2003 [sic; the correct statute is Statutes 2002], the costs of claimant's mandatory participation will increase substantially. LAFCO is presently in the process of preparing its budget, and we have been informed that claimant's mandatory contribution will be in the range of \$50,000 to \$70,000.

During this time of fiscal constraints, all other agencies, cities, counties and special districts alike, have had to live within their existing financial resources. However, LAFCO is not so constrained. It determines what funding it wants to operate for the following fiscal year, and then develops a budget upon that determination. It is the LAFCO's budget that determines the mandatory contribution required of claimant, over which claimant has no control. [Footnote citation omitted.]

The above was sufficient under the Commission's regulations for the test claim to be considered at hearing. No statewide cost estimate was required.

Prior to the hearing on the test claim, the claimant's review of the filing showed a limitation heretofore unanticipated: The test claim was limited to special districts within the Sacramento County LAFCO. The intent of the filing was lost with the passage of time, but clearly the test claim should not have been so limited. An amendment was drafted which briefly set forth the necessary augmentation to the record. This amendment would have to comply with the current regulations. What the district's amendment does is to include other local agencies, namely cities and counties, and to augment the record – although the relevant legislation was properly plead, a more complete discussion of the statutes was needed. The amendment to include new potential claimants would provide the basis for a statewide cost estimate. These were provided as part of the amendment which stated: "As based on the attached declaration, the statewide costs are estimated to be seventy six million dollars for implementation of the Act for the six and one-half fiscal years since 2001. [Footnote citation omitted.]

After filing of the amendment, the hearing on the test claim went forward. At its September 27, 2007, hearing, the Commission decided to bifurcate the amendment from its underlying test claim. The Commission, then, partially approved the test claim which resulted in the special district becoming eligible for reimbursement of some costs but not those for compliance with Government Code section 56381. The argument in favor of those costs failed as it was seen as a shift from counties to special districts. [Footnote citation omitted.]

Therefore, (1) the actual increased costs incurred by the test claimant were already in the record in a manner that complied with the Commission's regulations at the time that they were filed; (2) estimated costs incurred by the claimant were also in the record in a manner that complied with the Commission's regulations at the time that they were filed, and (3) a statewide cost estimate of increased costs that all local agencies incur was included in the

amendment documents to support costs that may be claimed by the expanded pool of potential claimants.

Second, the appellant contends that the former requirements of Government Code section 17553 are controlling and do not require the filing of supporting declarations. The application of Government Code section 17553, as amended by Statutes 2004, chapter 890 (AB 2856), to the amendment of an original test claim filed before the Government Code was amended, is a retroactive application of the law.

Third, the appellant argues that the amendment seeks to clarify that the original test claim filing should have been interpreted to include claimants beyond special districts.

Issue: Should the Commission uphold the Executive Director's decision to disallow the proposed test claim amendment to the *LAFCO* test claim (02-TC-23)?

The arguments raised by appellant are either not relevant, or are not legally correct. As explained below, the Executive Director's disallowance of the proposed test claim amendment is consistent with the requirements of law.

The Commission does not have jurisdiction to address allegations relating to the original *LAFCO* test claim

First, appellant's suggestion that the original *LAFCO* test claim (02-TC-23) was wrongly decided to include only special districts is not relevant to the issue presented in this appeal. The Commission no longer has jurisdiction over the findings made in the original test claim. The Statement of Decision was adopted in September 2007, and the time for filing a request for reconsideration pursuant to Government Code section 17559 (30 days after the Statement of Decision is delivered or mailed) has expired.¹² Moreover, if the appellant wanted to clarify that portions of its original test claim were made on behalf of cities and counties, then under the Commission's regulations, it simply needed to add a city or county as a co-claimant to the original claim. A test claim amendment was not required to be filed.¹³

The Executive Director did not apply the law in a retroactive manner

Second, the Executive Director has not applied Government Code section 17553 and section 1183 of the Commission's regulations retroactively to the proposed test claim

¹² Based on the statutes pled by Sacramento Metropolitan Fire District in the original *LAFCO* test claim (02-TC-23), and the fact that not all special districts are eligible to claim reimbursement under article XIII B, section 6, the draft staff analysis limited the findings of the claim only to independent special districts that were subject to the tax and spend provisions of articles XIII A and XIII B. (Ex. H.) Comments to the draft staff analysis from Sacramento Metropolitan Fire District did not challenge that finding, but only challenged substantive findings on the statutes. (Ex. I.) The final staff analysis contained the same limitation regarding eligible claimants. (Ex. J.) At the hearing, the claimant did not challenge the limitation regarding eligible claimants. The issue was first raised at the hearing by Mr. Allan Burdick, representing the California State Association of Counties. (See Ex. K, transcript of the September 27, 2007 Commission hearing, pp. 34-39.)

¹³ Section 1181 of the Commission's regulations specifically states that an amendment is not defined as the addition or substitution of parties.

amendment. The original *LAFCO* test claim (02-TC-23) was filed on May 29, 2003, by Sacramento Metropolitan Fire District, on five Government Code sections and two alleged executive orders. The appellant correctly states that in 2003, when the original *LAFCO* test claim was filed, Government Code section 17553 and section 1183 of the Commission's regulations did not require test claimants to file a written narrative and declarations describing the actual increased costs incurred by the claimant, the actual estimated costs incurred by the claimant, or a statewide cost estimate of increased costs that all local agencies will incur. Claimants were only required to include a written narrative of the alleged mandated activities and those required under prior law, and a statement that the actual and/or estimated costs resulting from the alleged mandate exceed \$1000. Additionally, if the test claim contained assertions or representations of fact, the assertions or representations had to be supported by documentary evidence authenticated by a declaration under penalty of perjury signed by a person who was authorized and competent to do so, based on the declarant's personal knowledge, information, or belief.¹⁴ These prior procedural rules were applied to the original *LAFCO* test claim. The test claim also included a declaration signed under penalty of perjury by the claimant's Deputy Chief.¹⁵

Effective January 1, 2005, Government Code section 17553 was amended by Statutes 2004, chapter 890 (AB 2856). Government Code section 17553, as amended, requires test claims to contain the following information supported by declarations signed under penalty of perjury:

- the actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;
- the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed; and
- a statewide cost estimate of increased costs that all local agencies will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.¹⁶

To implement the statutory amendments made by AB 2856, the Commission amended section 1183 of its regulations. The amendments were effective on September 6, 2005 (Register 2005, No. 36). Section 1183, subdivision (d), states that “[a]ll test claims, *or amendments thereto*, shall be filed on a form developed by the executive director and shall contain all of the elements and supplemental documents required by the form and statute.” (Emphasis added.) Thus, pursuant to the Commission's regulations, the filing requirements for test claim amendments are the same as the filing requirements for test claims – both of which must comply with Government Code section 17553.

¹⁴ Former Government Code section 17553, as amended by Statutes 1999, chapter 643; California Code of Regulations, title 2, section 1183, as amended on April 21, 2003 (Register 2003, No. 17.)

¹⁵ Exhibit G.

¹⁶ Government Code section 17553, subdivision (b)(1)(C-E), and subdivision (b)(2).

The proposed test claim amendment at issue here was first filed on September 25, 2007, two and a half (2 ½) years *after* Government Code section 17553 and section 1183 of the Commission's regulations were amended. The proposed filing of September 25, 2007, was deemed incomplete, and the claimant did not challenge that finding. The second filing by the claimant was received on December 28, 2007, in an attempt to make the proposed amendment complete. The appellant argues that the Executive Director should have applied Government Code section 17553 and section 1183 of the Commission's regulations, as they existed in 2003, to the proposed test claim amendment filings. By using the 2003 law, appellant argues that the proposed amendment should be deemed complete and the Commission should take jurisdiction over the filing. Appellant further argues that the Executive Director's application of Government Code section 17553 and section 1183 of the Commission's regulations that were in effect in 2007 when the proposed amendment was filed, and which had been in effect for over two years at that point, was applied retroactively and constitutes an error of law. Appellant's interpretation of the law is wrong.

The courts have made it clear that the Legislature may change the rules of procedure, and such changes may be made applicable to pending actions. In such cases, the application of the new procedure is not considered retroactive because procedural statutes become operative only when and if the procedure is invoked. The operation of the amended procedural statute is prospective because it does not deprive a party of any right that existed at the time of the commencement of the action, but instead only prescribes the conditions upon which the action may be brought and maintained.¹⁷ If, however, the new statute affects substantive rights or liabilities of the parties that changes the legal consequences of past events, then the application of the statute may be considered retroactive.¹⁸

In this case, the application of Government Code section 17553 and section 1183 of the Commission's regulations, as these provisions were amended by AB 2856, to the proposed test claim amendment cannot be considered retroactive. When the proposed amendment was filed, the Executive Director severed the amendment from the original *LAFCO* test claim (02-TC-23) for separate consideration by the Commission. The statement of decision on the original *LAFCO* test claim was adopted on September 27, 2007, and was not affected by the proposed test claim amendment. Thus, the substantive rights and liabilities of the parties to the original *LAFCO* test claim were not affected by the Executive Director's decision of February 15, 2008, to disallow the incomplete test claim amendment.

Government Code section 17553 and section 1183 of the Commission's regulations, as amended, simply prescribe the conditions upon which the test claim amendment may be brought and maintained after the operative and effective date of AB 2856. These provisions were applied prospectively to the proposed test claim amendment filed more than two years after the Legislature changed the procedure for filing test claims and test claim amendments.

The facts of this case are similar to other cases where the court has determined that an intervening change in the law applies prospectively only. For example, in *Department of Health*

¹⁷ *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912. (Ex. M.)

¹⁸ *Ibid.*

Services v. Fontes, the court considered an amendment to a statute addressing the state’s right to claim reimbursement for Medi-Cal benefits from the estate of a Medi-Cal recipient who died after the statute was enacted, but received benefits before the effective date of the statute. The court held that the application of the statute was prospective and not retroactively applied.¹⁹ In *Tapia*, the California Supreme Court determined that Proposition 115, the Crime Victim’s Justice Reform Initiative that changed the legal consequences of criminal behavior, applied to prosecutions occurring after the effective date of the initiative for crimes committed before the measure’s effective date.²⁰ And in *Murphy v. City of Alameda*, the court addressed a statute that changed the burden of proof when challenging city ordinances relating to building permits for residential construction. The statute was enacted after the ordinance was adopted, but before the lawsuit was filed. The court held that the statute applied prospectively to the case.²¹

The facts here can also be *distinguished* from a separate decision of the Executive Director regarding this proposed test claim amendment; a decision that was based on the law that existed when the original *LAFCO* test claim was filed in 2003. When the original *LAFCO* test claim was filed in 2003, the law allowed a party to amend its test claim “at any time prior to a commission hearing without affecting the original filing date as long as the amendment substantially relates to the test claim that was originally filed.”²² Thus, under prior law, a claimant could amend a test claim up until the point the Commission Chairperson started the hearing.

Effective January 1, 2005, AB 2856 amended Government Code section 17557 to require that test claim amendments be filed earlier; “before the test claim is set for hearing.”²³

In this case, the September 2007 hearing date for the original *LAFCO* test claim was set on June 28, 2007, when the draft staff analysis was issued. *If* the Executive Director applied the language in Government Code section 17557, as amended by AB 2856, to the test claim amendment, the amendment would not have been accepted in the first place because it was filed *after* the date the original *LAFCO* test claim was set for hearing. Under those circumstances, the claimant’s legal right to file a test claim amendment would have been denied and Government Code section 17557 would have had a retroactive affect on the claimant’s rights. Claimant’s right to file an amendment, however, has not been affected. Rather, the Executive Director simply applied the filing requirements and procedures that were in effect at the time the proposed amendment was filed to determine whether the filing complied with the requirements of the statute and was complete.

¹⁹ *Department of Health Services, supra*, 169 Cal.App.3d 301, 304-305.

²⁰ *Tapia, supra*, 53 Cal.3d 282, 287-292

²¹ *Murphy, supra*, 11 Cal.App.4th 906, 911-912.

²² Former Government Code section 17557, subdivision (c); Former California Code of Regulations, title 2, section 1183, subdivision (a).

²³ Government Code section 17557, subdivision (e), as amended by Statutes 2004, chapter 890 (AB 2856); see also section 1187 of the Commission’s regulations, as amended on September 6, 2005 to implement AB 2856. That section states that “[a] test claim shall be set for hearing when commission staff issues its draft staff analysis.”

Accordingly, Government Code section 17553 and section 1183 of the Commission's regulations, as these provisions existed when the proposed test claim amendment was filed in 2007, is the law that must be applied to determine if the test claim amendment is complete.

The law governing the procedures for filing test claims that was effective and operative when the proposed amendment was filed is the law that must be applied here

Government Code section 17553, subdivision (b)(1)(C),(D) and (E), requires that the written narrative contain the actual increased costs incurred *by the claimant* during the fiscal year the claim was filed, the actual or estimated costs incurred *by the claimant* during the year following the fiscal year that the claim was filed, and a statewide cost estimate of increased costs that all local agencies will incur to implement the mandate in the fiscal year immediately following the fiscal year for which the claim was filed. Government Code section 17553, subdivision (b)(2), states that these allegations must be supported by declarations signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so.

The documents contained in the proposed amendment filed by Sacramento Metropolitan Fire District are located in Exhibits A and D and described below. Upon further review of these documents, the proposed amendment does contain a statewide estimate of costs that all local agencies may incur as a result of the alleged mandate, and declarations to support the statewide cost estimate to satisfy Government Code section 17553, subdivisions (b)(1)(E) and (b)(2). But the proposed test claim amendment does not contain a statement of actual increased costs incurred *by the claimant* during the fiscal year the claim was filed, the actual or estimated costs incurred *by the claimant* during the year following the fiscal year that the claim was filed, or declarations to support these elements as required by Government Code section 17553, subdivisions (b)(1)(C)(D) and (b)(2).

The proposed test claim amendment pleads 178 Government Code sections in addition to the code sections and alleged executive orders contained in the original *LAFCO* test claim (02-TC-23). There is no information in the narrative of the proposed amendment describing the actual costs incurred by the claimant, Sacramento Metropolitan Fire District, as a result of the alleged mandate. Rather, the actual costs described in the proposed test claim amendment, on page 393 of the record, the December 28, 2007 filing identifies costs to the Fresno County LAFCO only: "Fresno County LAFCO, which recently updated its sphere of influence, experienced almost a 25% increase in costs to do so as stated in the attached declaration of Rick Ballantyne [Executive Officer of the Fresno County LAFCO]." For ongoing cost estimates, page 394 of the record, the December 28, 2007 filing states: "As based on the attached declaration of Allan Burdick costs for on-going compliance with the Act is estimated to be two-thirds of each LAFCO's annual budget."

Two declarations were attached to the December 28, 2007 filing. The first declaration is signed by Rick Ballantyne, Executive Director of the Fresno County LAFCO. The declaration describes alleged increased costs to Fresno County LAFCO as a result of the test claim statutes. The declaration does not discuss any costs incurred by the claimant,

Sacramento Metropolitan Fire District, or any other local agency. Mr. Ballantyne's declaration states in relevant part the following:

2. In 2000, Cortese-Know-Hertzberg Local Government Reorganization Act created a major change for LAFCOs. The Act encouraged the LAFCOs to be independent agencies no longer part of county government. As a result, those working for LAFCOs were no longer County employees, LAFCOs hired independent counsel and were able to provide for services for in-house or contract out.
3. Fresno County LAFCO is comprised of two representatives from the County of Fresno; two representatives of cities located within Fresno County; and one at-large representative.
4. Fresno County LAFCO has faced two challenges and increased costs due to requirements of the Act. These are: Municipal Service Review and updated the Sphere of Influence. Fresno County has 15 cities and 122 special districts making the update a large enough project that the matter was handled by consultants at a cost of \$196,497.
5. The annual budget for Fresno County LAFCO this year is \$803,000. We are fortunate to be going through a period of growth which will bring us an estimated \$250,000 in fees. I estimate that 24.5% of our annual budget was put towards compliance with the Act through completion of the required Municipal Reviews and Spheres of Influence Updates.²⁴

The second declaration is signed by Mr. Allan Burdick of MAXIMUS, Inc. Mr. Burdick is listed as the claimant's representative on the proposed test claim amendment filed on September 25, 2007. Mr. Burdick's declaration is filed in support of the alleged statewide cost estimate for the proposed amendment, which does comply with Government Code section 17553, as amended by AB 2856. The declaration does not, however, state facts relating to the actual increased costs incurred *by the claimant* during the fiscal year the claim was filed, or the actual or estimated costs incurred *by the claimant* during the year following the fiscal year that the claim was filed. Mr. Burdick's declaration states in relevant part the following:

1. I am currently employed by MAXIMUS, Inc. and have worked with California's state mandate cost local program since 1978 as an employee of MAXIMUS or the California State Association of Counties. I have personal knowledge of the facts stated herein and if called upon to testify, I could do so competently.
2. In establishing the statewide cost estimate, I discussed the test claim statute with several LAFCO representatives over a period of weeks gathering general information on the requirements of the Act and the impact on LAFCOs. On December 28, 2007, I contacted Rick Ballantyne, Executive Officer of the Fresno County LAFCO, to establish some additional facts. I was advised that the costs in his declaration are for the consultants to complete the sphere of influence update and the municipal services review but that the staff worked on these as well and

²⁴ See page 395 of the record.

had done so over a period of two fiscal years. I was also advised that, in light of the Act, Fresno County LAFCO expanded its staff from two to five.

3. I consulted the State Controller's Annual Report for Counties online to obtain fiscal year 04-05 county figures. I expanded that figure, assuming counties are paying one-third of LAFCOs' costs, to create total costs for the 04-05 fiscal year. I then extrapolated those costs to projects [sic] costs both backward to fiscal year 00-01 and forward. Assuming twenty percent of 04-05 costs for FY 00-01, eighty percent for 01-02, ninety-two percent for 02-03, ninety five percent for 03-04, a five percent increase for 05-06 and a twenty percent increase for 06-07 to account for the required compliance with the update of the sphere of influence and the municipal service review, I estimated the annual statewide budget for all LAFCOs. That estimate is: FY 00-01, \$4,631,908; FY 01-02, \$14,790,105; FY 02-03, \$17,008,621; FY 03-04, \$17,563,250; FY 04-05, \$18,487,632; FY 05-06, \$10,412,013; and FY 06-07, \$22,185,158.
4. In looking at the information I was able to gather, I estimated that the total impact of compliance with the Act would involve at least two-thirds of the annual LAFCOs' budgets. This would cover the new costs to cities and special districts and a small percentage increase for counties who had to bear costs prior to the Act. That amount for the six and a half fiscal years is approximately seventy six million dollars.²⁵

While these declarations may support the allegation that the test claim statutes resulted in increased costs to LAFCOs, there is no evidence in the filings regarding the amounts charged to and expended by the LAFCO members - which are cities, counties, and special districts - for the alleged new activities for any fiscal year. As stated in the letter disallowing the proposed amendment, allegations of increased costs by a LAFCO, an entity that is not a local agency eligible to claim reimbursement under article XIII B, section 6 of the California Constitution, cannot represent the interests of other local agencies. Reimbursement under article XIII B, section 6 is required only when a local entity is required to comply with the tax and spend provisions of articles XIII A and XIII B of the California Constitution. Under these provisions, limits are placed on an entity's authorization to expend proceeds of taxes, or tax revenues. There is no spending limitation placed on the expenditure of revenues that do not constitute proceeds of taxes. Thus, as determined by the courts, article XIII B, section 6 does not require reimbursement when the expenses incurred by the local entity are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.) A local entity cannot accept the benefits of an exemption from article XIII B's spending limit while asserting an entitlement to reimbursement under article XIII B, section 6. (*City of El Monte, supra*, at p. 282.)

A LAFCO is a separate and distinct entity from its county, city, and special district members. As a separate entity, it has several powers and duties listed in Government Code section 56375. But LAFCOs do not have the power to levy tax revenues to pay for their expenses. Rather, the

²⁵ See page 396 of the record.

operating costs of a LAFCO are paid by the county, cities, and special districts served by the LAFCO. (Gov. Code, §§ 56381 and 56381.6.) In addition, LAFCOs are authorized to charge fees for the cost of specified proceedings undertaken by the LAFCO, and funding and facilities for LAFCOs have historically been provided by the county served. (Gov. Code, §§ 56381, 56383.) Thus, LAFCOs are exempt from the spending limitations of article XIII B and cannot, by law, claim reimbursement under article XIII B, section 6 of the California Constitution.

And finally, appellant argues that its test claim amendment, when viewed in light of the existing *LAFCO* test claim record (02-TC-23), provides a record of the actual increased costs incurred by the test claimant and the estimated costs incurred by the claimant. The Commission, however, cannot use the record of the original *LAFCO* test claim to support the alleged costs incurred as a result of the proposed test claim amendment because the test claim amendment pleads an additional 178 Government Code statutes that were *not* pled in the original test claim. The claimant has not complied with the requirements of Government Code section 17553 with respect to these additional statutes.

Conclusion

Accordingly, Sacramento Metropolitan Fire District did not file a completed test claim amendment within the time requirements provided by law. Government Code section 17553 and the section 1183 of the Commission's regulations only provide potential claimants 30 calendar days from the date that an incomplete test claim amendment was returned to perfect the filing. The claimant has been given 30 days, after it was notified that its first filing was incomplete, to file a completed test claim amendment. The second document filed on December 28, 2007, still does not satisfy the filing requirements for test claim amendments. Since the law does not give the Commission jurisdiction to accept another filing to perfect the requirements of Government Code section 17553, the Executive Director, pursuant to the authority provided in Government Code section 17553, subdivision (c), properly disallowed the proposed test claim amendment.

Recommendation

Therefore, staff recommends that the Commission deny the appeal and uphold the Executive Director's decision to disallow the proposed test claim amendment to the original *LAFCO* test claim (02-TC-23).