

COMMISSION ON STATE MANDATES

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July 8, 2014

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Ms. Jill Kanemasu
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Division of Accounting and Reporting
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And Interested Parties and Interested Persons (See Mailing List)

RE: **Proposed Amended Statewide Cost Estimate**
Local Agency Ethics (AB 1234), 07-TC-04
Government Code Sections 53232.2(b), 53232.3(a) and (b), 53235(f), and 53235.2(a)
Statutes 2005, Chapter 700
State Controller's Office, Requester

Dear Mr. Lal and Ms. Kanemasu:

The final staff analysis and proposed statewide cost estimate for this matter are enclosed.

Hearing

This matter is set for hearing on **Friday July 25, 2014**, at 10:00 a.m., in the State Capitol, Room 447, Sacramento, California. This matter is proposed for the Consent Calendar. Please let us know in advance if you oppose having this item placed on consent and wish to testify at the hearing or have a representative testify on your behalf, and 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 Jason Hone at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

Item 7

PROPOSED AMENDED STATEWIDE COST ESTIMATE Approximately \$19,352 to \$38,194 for Initial and First Year Annual Costs

(Approximate Prospective Cost of \$0 to \$11,130 Annually)

Government Code Sections 53232.2(b), 53232.3(a) and (b), 53235(f) and 53235.2(a)

Statutes 2005, Chapter 700

Local Agency Ethics (AB 1234)

07-TC-04

State Controller's Office, Requester

STAFF ANALYSIS

Background and Summary of the Mandate

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

On May 25, 2012, the Commission on State Mandates (Commission) adopted a statement of decision¹ finding that the test claim statutes impose a partially reimbursable state-mandated program on general law counties and those special districts subject to the tax and spend provisions of articles XIII A and XIII B of the California Constitution, *that are required by their enabling act to provide compensation or reimbursement of expenses to perform the reimbursable activities to their members*, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.² (Emphasis added.)

Eligible claimants were required to file initial reimbursement claims, for costs incurred between July 1, 2006, and June 30, 2012, with the State Controller's Office (SCO) by May 3, 2013. Late initial reimbursement claims may have been filed until May 3, 2014. Annual reimbursement claims for fiscal year 2012-2013 were due by February 18, 2014.

Eligible Claimants and Period of Reimbursement

General law counties and those eligible special districts subject to the tax and spend provisions of articles XIII A and XIII B of the California Constitution, that are required by their enabling

¹ Exhibit A, Test Claim Statement of Decision.

² Note that many special districts do not have such a requirement in their enabling act and so this determination will need to be made by the SCO on a district, by district basis. Only districts with such a statutory requirement are entitled to reimbursement under this program.

act to provide reimbursement of expenses to perform the reimbursable activities, are eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on October 23, 2007, establishing eligibility for reimbursement for the 2006-2007 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2006.

Reimbursable Activities

The parameters and guidelines³ were adopted on September 28, 2012 finding only the following limited activities reimbursable:

1. Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;⁴
2. Provide expense report forms;⁵
3. Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;⁶ and
4. Maintain training records, inclusive of training date and training provider, for five years.⁷

The test claim decision specifically found that *providing the ethics training was not a reimbursable activity*, since the duty to receive the training is imposed on the local official, not the local agency.⁸ Additionally, the Commission found that the *reimbursement of expenses which are paid by the local agency is not reimbursable*.⁹

³ Exhibit B, Parameters and Guidelines.

⁴ Government Code section 53232.2(b).

⁵ Government Code section 53232.3(a).

⁶ Government Code section 53235(f).

⁷ Government Code section 53235.2(a).

⁸ On page 26 of the test claim decision it states: “The plain language of Government Code section 53235.1 does not require local agencies to perform any activities. Rather, it provides a training timetable and specifies frequency requirements imposed on local agency officials if the local agency provides compensation or reimbursement of expenses. This section provides that if the local agency provides compensation or reimbursement of expenses then “*each local agency official* in local agency service as of . . . shall receive the training. . . .” Thus the training requirement is imposed on the local agency officials themselves, and not on the local agency.”

⁹ On page 33 of the test claim decision it states: “With regard to claimants’ alleged activity of requiring reimbursement of expenses, the test claim statute does not require reimbursement. Rather, the test claim statute added requirements for those local agencies that provide reimbursement, whether or not they are required to do so. General law counties were required to reimburse the members of their legislative bodies under the law in effect immediately prior to the enactment of the test claim statute.⁹ With regard to those eligible special districts that are required to provide reimbursement to the members of their legislative bodies, the test claim statute did not add this requirement to their special acts or principal acts. They also were

Offsetting Revenues

The Parameters and Guidelines provide:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, *reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.* [Emphasis added].

As was noted in the test claim decision, most enterprise districts (such as water and sanitary districts) are primarily funded with fees.¹⁰ To the extent they have used fees, as opposed to proceeds of taxes, to pay for the costs of the program, those costs are not reimbursable.

Amended Statewide Cost Estimate

Request to Amend Previously Adopted Statewide Cost Estimate

The Commission adopted a statewide cost estimate of \$0 for this program on July 26, 2013.¹¹ That estimate was based on one reimbursement claim submitted by one special district, Idyllwild Water District (Idyllwild), to the SCO. Based on the most recent *Special Districts Annual Report* available at the time, Commission staff determined that Idyllwild Water District was not subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution, and was therefore not an eligible claimant.¹²

On May 5, 2014, the SCO filed a request¹³ for an amended statewide cost estimate based on late claims filed by Colusa County and evidence submitted to the SCO to support Idyllwild's standing as an eligible special district claimant, subject to the taxing and spending limitations of the California Constitution.

Assumptions

In the previously adopted statewide cost estimate staff reviewed the only claim available at the

required reimburse the members of their legislative bodies under the law in effect immediately prior to the enactment of the test claim statute.⁹ Therefore, the Commission finds that the requirement for general law counties and certain eligible special districts to reimburse the members of their legislative bodies is not new, and not eligible for reimbursement pursuant to article XIII B, section 6.”

¹⁰ Exhibit A, Test Claim Statement of Decision, Page 13.

¹¹ Exhibit C, Statewide Cost Estimate adopted July 26, 2013.

¹² The SCO issues an annual report that identifies those special districts that collect tax revenue and are subject to the spending limitations of article XIII B. On October 30, 2012, the SCO issued its *Special Districts Annual Report* for fiscal year 2010-2011. This report showed that Idyllwild Water District was not subject to the appropriations limit of article XIII B, thus making it an ineligible claimant for mandates purposes. Special districts have a statutory duty to submit annual reports to the SCO pursuant to Government Code section 12463, which provide the information on which the SCO's annual report is based.

¹³ Exhibit D, SCO Request to Amend the Statewide Cost Estimate filed May 5, 2014.

time. That claim was filed by Idyllwild for fiscal year 2011-2012 for a total of \$21,195.¹⁴ To be eligible to claim reimbursement for state mandated costs, a claimant must be both: 1) a local agency; and 2) subject to the tax and spend limitations of articles XIII A and B of the California Constitution. With the May 5, 2014, request to amend the previously adopted statewide cost estimate, the SCO provided a board resolution from Idyllwild establishing the district's appropriation limit, demonstrating that it is subject to the tax and spend limitations of articles XIII A and B of the California Constitution. Additionally, the SCO request included data for late claims from the County of Colusa received on May 23, 2013.

While it appears Idyllwild has standing as an eligible claimant to file a test claim for state mandated costs because it is a local agency subject to the taxing and spending limitations of the California Constitution; for purposes of reimbursement, a special district must also demonstrate that the costs incurred in complying with the mandated program were paid for using proceeds of taxes and not service charges or some other source of non-tax revenue. All revenues other than tax revenues are offsetting revenues for mandate reimbursement purposes.

Based on this information, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *Future annual amounts claimed for reimbursement may increase and exceed the estimated annual claim amount in this statewide cost estimate.*
 - There are currently 44 general law counties and approximately 610 eligible special districts in California. However, very few eligible claimants have filed a reimbursement claim. Although the deadline of May 3, 2014 to file late initial claims for this program for fiscal years 2006-2007 through 2011-2012 has passed, more eligible claimants may file annual claims for this program in the future.
- *There may be several reasons that non-claiming general law counties and eligible special districts did not file for reimbursement, including but not limited to:*
 - The Commission approved only a few minor administrative activities for this program and found that the test claim statute does not impose a state-mandated program on most local agencies and that the most costly activities claimed, the compensation and reimbursement of members of local agency legislative bodies for ethics training and related travel are not required by the test claim statute. Therefore, eligible claimants may not be able to reach the \$1,000 threshold for filing annual reimbursement claims.
 - Eligible claimants did not have supporting documentation to file a reimbursement claim.
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*
 - The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable.
 - The test claim decision specifically denied the costs of training or travel to training, so to the extent that reimbursement claims are submitted for these activities, they will be reduced by the SCO upon audit. In a desk review of the filed claim forms, Commission staff notes that it appears that many of the claimed activities exceed the

¹⁴ Claims data reported as of May 17, 2013.

limited scope of this reimbursable mandate. For example:

- Colusa County filed claims for three fiscal years totaling \$14,408.25. Of that total, \$12,319.92 is claimed for the activity to "Provide expense report forms to the members of the legislative body." In their claims, compensation for several employees, including several board of supervisor members, is listed at two or more hours each with the expense description reading "Ethics Training" under each employee's name. This was submitted for the reimbursable activity to "Provide expense report forms to the members of the legislative body."
- The \$3,494 claim from Lake Hemet Municipal Water District for FY 2012-13 lists expenditures under the category of "Maintain training records indicating the dates and providers for five years," however, attached documentation identifies costs as "Ethics Training and Printed Materials" provided by a contracted law firm.
- The \$21,195 claim from Idyllwild Water District for fiscal year 2011-12 included \$13,260 for the reimbursable activity to "Provide information on training courses to meet the ethics training requirements at least once annually." Expenses for one employee are claimed under this activity. This employee's expenses include 152 hours of salary and benefits, as well as materials and travel.
- In its capacity as an auditor, the SCO may determine the extent to which proceeds of taxes are used by a special district to fund the costs of this reimbursable program, since only costs which must be paid with proceeds of taxes are reimbursable. It is expected that many enterprise districts, even if subject to the taxing and spending restrictions of the Constitution, will nonetheless not be entitled to reimbursement since they did not expend proceeds of taxes for the program.
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because fewer eligible claimants may be able to reach the \$1,000 threshold for filing annual reimbursement claims.*
 - Given the low cost of the three ongoing activities to provide expense report forms;¹⁵ provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;¹⁶ and maintain training records, inclusive of training date and training provider, for five years,¹⁷ it may be difficult for many claimants to reach the threshold for future claims. Presumably adopting the policy in the initial claiming period is the most costly activity and the initial claiming period has ended.

Methodology

Fiscal Years 2006-2007 through 2012-2013

The amended statewide cost estimate for fiscal years 2006-2007 through 2012-2013 was developed by totaling the three reimbursement claims filed with the SCO for the initial claiming

¹⁵ Exhibit A. Government Code section 53232.3(a).

¹⁶ Exhibit A. Government Code section 53235(f).

¹⁷ Exhibit A. Government Code section 53235.2(a).

period (2006-2007 through 2011-2012) as well as the two annual claims filed for 2012-2013.¹⁸ The two annual claims filed for the 2012-2013 fiscal year were:

1. \$5,374 claimed by County of Colusa, filed January 21, 2014; and
2. \$3,494 claimed by Lake Hemet Municipal Water District, filed February 6, 2014.

Staff finds that the averages for the most recent three-year period are likely the most indicative of future annual costs. Based on the last three years of claims data, costs averaged \$11,130 annually. Following is a breakdown of estimated total costs per fiscal year:

| Fiscal Year | Number of Claims Filed with SCO | Estimated Cost |
|--------------------------------|--|-----------------------|
| <i>Initial Claiming Period</i> | | |
| 2006-2007 | 1 ¹⁹ | \$4,803 |
| 2007-2008 | 0 | \$0 |
| 2008-2009 | 0 | \$0 |
| 2009-2010 | 0 | \$0 |
| 2010-2011 | 1 ²⁰ | \$3,328 |
| 2011-2012 | 1 | \$21,195 |
| Subtotal | 3 | \$29,326 |
| <i>Annual Claims</i> | | |
| 2012-2013 | 2 | \$8,868 |
| TOTAL | 8 | \$38,194 |

Draft Proposed Amended Statewide Cost Estimate

On June 6, 2014, Commission staff issued the draft proposed amended statewide cost estimate for comment.²¹ On June 16, 2014, the SCO filed comments on the draft proposed amended statewide cost estimate recommending no changes.²²

Staff Recommendation

Based on the forgoing, staff recommends the Commission adopt the proposed amended statewide cost estimate of approximately **\$19,352 to \$38,194** for initial and first year annual costs incurred in complying with the *Local Agency Ethics (AB 1234)* program and approximate prospective costs of **\$0 to \$11,130** annually.

¹⁸ Exhibit E, Reimbursement Claims filed with the State Controller's Office.

¹⁹ The County of Colusa filed late claims for two fiscal years of the initial claiming period. The respective figures in this table have been adjusted by Commission staff to account for the 10% late filing penalty that would be assessed by the SCO.

²⁰ See above.

²¹ Exhibit F, Draft Proposed Amended Statewide Cost Estimate issued June 6, 2014.

²² Exhibit G, SCO Comments filed June 16, 2014.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 8, 2014, I served the:

Proposed Amended Statewide Cost Estimate

Local Agency Ethics (AB 1234), 07-TC-04

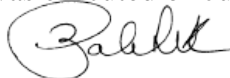
Government Code Sections 53232.2(b), 53232.3(a) and (b), 53235(f), and 53235.2(a)

Statutes 2005, Chapter 700

State Controller's Office, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 8, 2014 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/1/14

Claim Number: 07-TC-04

Matter: Local Agency Ethics (AB 1234)

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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