



July 24, 2017

Ms. Jill Magee  
Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**Re: Written Comments Regarding Proposed Regulatory Action Before the  
Commission on State Mandates.**

Public Hearing Date: July 28, 2017

Dear Ms. Magee:

The California Special Districts Association (CSDA), California State Association of Counties (CSAC), and League of California Cities (League), hereby submit these comments in response to the request for written comment on proposed regulations intended to clarify and streamline regulations governing the Commission on State Mandates (Commission). Our feedback is intended to assist the Commission as it considers whether the proposed regulatory changes will achieve the anticipated benefits of increased clarity for participating in the Commission's processes and faster decision making.

As noted in the Commission's "Notice of Proposed Rulemaking," the Commission must determine that no reasonable alternative brought to the attention of the Commission would be more effective in carrying out the purpose of any proposal, or would be less burdensome and more cost effective for interested parties.<sup>1</sup> In keeping with the stated purpose of making the proposed changes cost effective and less burdensome for both the Commission and interested parties, our organizations offer the following comments with respect to the proposed regulations:

**1. Filing Period Requirements for Test Claims**

**a. Test Claim Filing – Section 1183.1**

The Commission asserts the "Necessity and Anticipated Benefit" for the proposed change to Section 1183.1(c) of the California Code of Regulations is to apply a "clear, predictable, and precise one year period of limitation to the filing of all test claims, whether based on the effective date of the test claim statute or executive order or the date that costs were first incurred under the test claim statute or executive order, consistent with Government Code section 17551(c)."

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<sup>1</sup> Cal. Gov. Code § 11346.5(a)(13).

As currently enacted, California Code of Regulations Section 1183.1(c) has a clear, predictable and precise test claim submission deadline. It properly recognizes the distinction between the “effective date of a statute or executive order” and “first incurring increased costs” by clarifying that for the purposes of claiming based on the date of first incurring costs, “within 12 months” means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred. The existing language provides local governments that are considering filing a test claim a clearly defined deadline to submit a claim for costs incurred while also reflecting an understanding of the budget planning procedure for local governments.

The proposed change would strongly deter local governments from submitting test claims by hindering their ability to gather the relevant data and file in a timely manner. For example, under the proposed regulations, if the “effective date” or “date that costs were first incurred” were to fall on January 1, the result will be a reduction of 181 days, or 33.2% of time, from 546 days to file to 365 days. A July 1 “effective” or “first incurred” date would result in a 364 day, or 49.9%, reduction in time under the proposed regulations.

The proposed change builds on two previous efforts to shorten the test claim filing period. In 2002, Assembly Bill 3000 (Chapter No. 1124, Statutes of 2002) authorized the Commission to enforce a statute of limitations, requiring that local entities file test claims within three years following the effective date of the related requirement. As a result, the Commission experienced a decrease in the number of test claims submitted.<sup>2</sup> Subsequently, in 2005, the Legislature further reduced the existing statute of limitations for filing new test claims from three years to one year.<sup>3</sup> This reduction contributed to another decline in submissions.

**Proposed Alternative:** *Retain existing language in Section 1183.41(c).* The proposed change will result in fewer and less accurate claims. In many instances, the proposed changes will require local governments to file test claims before they can adequately track associated costs, much less audit those costs for accuracy. Moreover, the increased costs may not yet be realized or the process for tracking the increased costs may not be complete if the mandate is complicated or affects a long running project. In sum, the proposed regulation will either deter local governments from submitting an otherwise viable test claim because of the shortened deadline, or will force many to file a test claim prior to having accumulated all relevant data for the submission of the test claim.

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<sup>2</sup> California State Auditor Report: “*State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and in Controlling Costs and Liabilities*” (Report Number 2009-501), dated October 15, 2009.

<sup>3</sup> AB 2856.

## 2. Joint Test Claim Single Representative Requirement

### a. Test Claim Filing – Section 1183.1(g)(3)

The statement of reasons for this proposed change does not provide sufficient information to explain the purpose of the change or how it would be beneficial to the Commission or interested parties. The existing language for Section 1183.1(g) permits a joint effort between two or more claimants so long as, among other provisions, the claimants designate one contact person to act as the resource for information regarding the test claim for the Commission. (emphasis added).

The proposed regulation would change this requirement entirely, mandating that joint claimants designate one “sole representative” for all claimants, while striking language that denotes the representative acting as the “resource for information.” The revised language could be construed to require an unanimity of factual and legal concerns by all claimants. This would have a harmful effect on the efforts of joint claimants by requiring such unanimity, and by forcing them to select a single representative for their efforts despite the fact that they may have diverging concerns in certain circumstances on narrow issues that would not otherwise deter a joint test claim. This will result in an increased burden and cost to the Commission, as test claims that would otherwise have been filed as part of a joint effort will likely be filed as separate test claims under the proposed regulations.

**Proposed Alternative:** *Amend existing language as follows:*

1183.1(g)(3) The claimants have designated one ~~contact~~ person to act as the ~~resource~~ sole representative for all claimants for information for all claimants regarding the test claim.

Our organizations seek additional information and clarification regarding the problem the Commission proposes to solve with the proposed regulation, along with a thorough explanation of the necessity and anticipated benefit.

## 3. Filing and Service of All Documents

### a. Conduct of Hearing – Section 1182.10(b)

The proposed regulation regarding the “Conduct of Hearing” for an application for a finding of significant distress strikes out existing language that provides the hearings will not be conducted according to technical rules relating to evidence and witnesses, and permitting hearsay evidence in certain circumstances. No information is provided regarding the necessity or anticipated benefit of the proposed change.

The Commission is a quasi-judicial body, and therefore, should not be required to act in accordance with traditional “courtroom” rules and order. However, by striking out Section 1182.10(b), it is unclear whether or not the Commission will be required to act as such. Moreover, the proposed regulation conflicts with other regulations governing the conduct of hearings before the Commission. Section 1187.5, regarding evidence submitted to the

Commission in a quasi-judicial hearing, contains the same language being stricken in proposed regulation Section 1182.10(b).

**Proposed Alternative:** *Retain existing language in Section 1182.10(b).*

Our organizations seek information regarding the necessity or anticipated benefit of the proposed regulation, and seek to ensure that Commission hearings will continue to be conducted under the existing rules of California Code of Regulations section 1187.5(a).

4. **Filing and Service of All Documents**

- a. Various – Sections 1182.2(d), 1182.7(b), 1182.10(d), etc.

The numerous proposed regulations contain amendments wherein language has been inserted to require that “all representations of fact shall be supported by documentary or testimonial evidence[.]” Although common law definitions for “documentary evidence” and “testimonial evidence” exist, our organizations seek clarification regarding what the terms mean in the Commission’s quasi-judicial context.

**Proposed Alternative:** *Add definitions of “documentary evidence” and “testimonial evidence” to Section 1181.2.*

We would be happy to provide additional information or answer any follow-up questions the Commission may have. Please do not hesitate to contact Mustafa Hessabi at CSDA at (916) 442-7887, Dorothy Johnson at CSAC at (916) 327-7500, or Dan Carrigg at the League at (916) 658-8222.

Sincerely,



Mustafa Hessabi  
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California Special Districts Association



Dorothy Johnson  
Legislative Representative  
California State Association of Counties



Dan Carrigg  
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