

ITEM 20

**COURT-ORDERED SET ASIDE AND PROPOSED AMENDMENTS
TO STATEMENT OF DECISION ON RECONSIDERATION AND
PARAMETERS AND GUIDELINES**

Pursuant to *Department of Finance v. Commission on State Mandates* (2009)
170 Cal.App.4th 1355; Judgment and Writ issued May 8, 2009,
by the Sacramento County Superior Court, Case No. 07CS00079

FINAL STAFF ANALYSIS

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976, Chapter 465;
Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and
Statutes 1990, Chapter 675 (CSM 4499)

Peace Officer Procedural Bill of Rights
05-RL-4499-01 (CSM-4499)

Reconsideration Directed by Government Code Section 3313
(Stats. 2005, ch. 72, § 6 (Assem. Bill (AB) No. 138), eff. July 19, 2005)

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9
 10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF SACRAMENTO

<p>14 DEPARTMENT OF FINANCE, Plaintiff and Appellant, v. 18 COMMISSION ON STATE MANDATES, Defendant and Respondent.</p>	<p>Case No. 07CS00079 PROPOSED PEREMPTORY WRIT OF MANDATE Dept: 33 Judge The Honorable Lloyd G. Connelly</p>
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 21 TO RESPONDENT COMMISSION ON STATE MANDATES:

22 WHEREAS, Judgment having been entered in this action, ordering that a Peremptory Writ
 23 of Mandate be issued from this court, YOU ARE COMMANDED TO:

- 24 a. Set aside the portion of its reconsideration decision in "Case No. 05-RL-
 25 4499-01 Peace Officer Procedural Bill of Rights" (reconsideration decision) that found that the
 26 Peace Officer Procedural Bill Of Rights program constitutes a reimbursable state-mandated
 27 program for school districts, community college districts, and special districts that are permitted

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by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties;

b. Issue a new decision denying the portion of the reconsideration decision approving reimbursement for school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties; and

c. Amend the parameters and guidelines consistent with this judgment.

This judgment does not affect cities, counties, or special police protection districts named in Government Code section 53060.7, which wholly supplant the law enforcement functions of the County within their jurisdiction.

d. File a Return to the writ within 120 days of service of the writ.

Dated: **MAY - 8 2009**

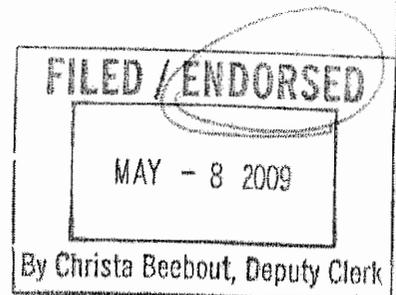


[Signature]
Clerk of the Superior Court

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*Attorneys for Plaintiff and Appellant
Department of Finance*



SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

DEPARTMENT OF FINANCE,

Plaintiff and Appellant,

v.

COMMISSION ON STATE MANDATES,

Defendant and Respondent.

Case No. 07CS00079

~~PROPOSED~~ JUDGMENT

Dept: 33
Judge The Honorable Lloyd G. Connelly

In a published opinion issued February 6, 2009, in Case No. C056833, the California Court of Appeal, Third Appellate District, reversed in its entirety the judgment of the Superior Court entered in favor of defendant Commission on State Mandates on July 13, 2007. The Court of Appeal further directed each party to bear its own costs on appeal pursuant to California Rules of Court, Rule 8.278, subdivisions (a)(3) and (a)(5).

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1 In accordance with the opinion issued by the Court of Appeals, IT IS HEREBY
2 ORDERED that:

3 1. The Petition for Writ of Administrative Mandamus is GRANTED;

4 2. Defendant Commission on State Mandates is ordered to:

5 a. Set aside the portion of its reconsideration decision in "Case No. 05-RL-
6 4499-01 Peace Officer Procedural Bill of Rights" (reconsideration decision) that found that the
7 Peace Officer Procedural Bill Of Rights program constitutes a reimbursable state-mandated
8 program for school districts, community college districts, and special districts that are permitted
9 by statute, but not required, to employ peace officers who supplement the general law
10 enforcement units of cities and counties;

11 b. Issue a new decision denying the portion of the reconsideration decision
12 approving reimbursement for school districts, community college districts, and special districts
13 that are permitted by statute, but not required, to employ peace officers who supplement the
14 general law enforcement units of cities and counties; and

15 c. Amend the parameters and guidelines consistent with this judgment.

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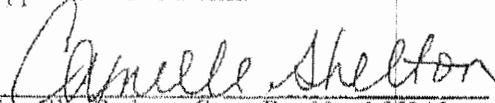
1 This judgment does not affect cities, counties, or special police protection districts named
2 in Government Code section 53060.7, which wholly supplant the law enforcement functions of
3 the County within their jurisdiction.

4
5 Dated: MAY - 8 2008

LLOYD G. CONNELLY
The Honorable Lloyd G. Connelly
Judge of the Sacramento County Superior Court

6
7 Submitted by:
8
9 

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14 Approved as to Form:
15 

16 Camille Shelton, State Bar No. 166945
17 Chief Counsel, Commission on State Mandates
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Telephone: 916. ~~980-5900~~ 323-8215
19 Attorney for Defendant

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

PROPOSED AMENDMENTS TO THE
STATEMENT OF DECISION ON
RECONSIDERATION AND THE
AMENDED PARAMETERS AND
GUIDELINES:

Government Code Sections 3300 through 3311, as added and amended by Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675; and,

Pursuant to *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355; Judgment and Writ issued May 8, 2009, by the Sacramento County Superior Court, Case No. 07CS00079

Case Nos: CSM-4499; 05-RL-4499-01,
06-PGA-06

*Peace Officers Procedural Bill of Rights
(POBOR)*

**NOTICE OF DRAFT STAFF ANALYSIS
AND PROPOSED AMENDMENTS TO
STATEMENT OF DECISION AND
AMENDED PARAMETERS AND
GUIDELINES; COMMENT PERIOD;
HEARING DATE**

Hearing Date: July 31, 2009

Website: <http://www.csm.ca.gov/pobor/index.shtml>

TO: League of California Cities
California State Association of Counties
California Community Colleges Chancellor's Office
Department of Personnel Administration
Department of Finance
Department of Education
State Controller's Office
State Personnel Board
Legislative Analyst
Interested Parties and Persons
Legislative Committees

Draft Staff Analysis, Proposed Amendments and Comment Period

The draft staff analysis and proposed amendments to the Statement of Decision on Reconsideration and Amended Parameters and Guidelines are enclosed for your review. These documents will be posted to the Commission's website by June 2, 2009:

<http://www.csm.ca.gov/pobor/index.shtml>

Interested parties, affected state agencies, and interested persons are invited to file comments with the Commission on the draft staff analysis and proposed amendments by June 24, 2009.

An original and one copy, or an original and an Adobe Acrobat PDF file, shall be submitted to the Commission. PDF files should be e-mailed to: csminfo@csm.ca.gov. All comments will be posted on the Commission's website. This will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.2, subdivision (d).

Commission Hearing

The Commission will hear this matter on Friday, **July 31, 2009**, at 9:30 a.m., in Room 447, State Capitol, Sacramento, California.

Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If there are no objections, this matter will be included on the Commission's Proposed Consent Calendar. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

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.

If you have any questions regarding this matter, please contact me at (916) 323-8210.

PAULA HIGASHI, Executive Director

June 2, 2009
Date

- Attachments: Draft Staff Analysis
Proposed Amendments to Statement of Decision on Reconsideration
Proposed Amendments to Amended Parameters and Guidelines

ITEM ___

**COURT-ORDERED SET ASIDE AND PROPOSED AMENDMENTS
TO STATEMENT OF DECISION ON RECONSIDERATION AND
PARAMETERS AND GUIDELINES**

Pursuant to *Department of Finance v. Commission on State Mandates* (2009)
170 Cal.App.4th 1355; Judgment and Writ issued May 8, 2009,
by the Sacramento County Superior Court, Case No. 07CS00079

DRAFT STAFF ANALYSIS

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976, Chapter 465;
Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and
Statutes 1990, Chapter 675 (CSM 4499)

Peace Officer Procedural Bill of Rights
05-RL-4499-01 (CSM-4499)

Reconsideration Directed by Government Code Section 3313
(Stats. 2005, ch. 72, § 6 (Assem. Bill (AB) No. 138), eff. July 19, 2005)

Executive Summary

Background

In January 2007, the Department of Finance filed a petition for writ of mandate challenging the Commission's Statement of Decision on Reconsideration, arguing that the Peace Officer Procedural Bill of Rights Act (POBOR) does not constitute a state-mandated program for school districts and special districts and, thus, school districts and special districts are not eligible claimants for this program (Sacramento County Superior Court, Case No. 07CS00079). The Department of Finance agreed, however, that the test claim statutes are state-mandated with respect to the police protection districts named in Government Code section 53060.7 that wholly supplant the law enforcement functions of the county within their jurisdiction.

On February 6, 2009, the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1357, determined that POBOR is not a reimbursable mandate as to school districts and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties.

On May 8, 2009, the Sacramento County Superior Court issued a judgment and writ in Case No. 07CS00079, pursuant to the Third District Court of Appeal's decision in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, requiring the Commission to:

- a. Set aside the portion of its reconsideration decision in "Case No. 05-RL-4499-01 Peace Officer Procedural Bill of Rights" (reconsideration decision) that found that the Peace Officer Procedural Bill of Rights program constitutes a reimbursable state-mandated program for school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties;
- b. Issue a new decision denying the portion of the reconsideration decision approving reimbursement for school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties; and
- c. Amend the parameters and guidelines consistent with this judgment.

This judgment does not affect cities, counties, or special police protection districts named in Government Code section 53060.7, which wholly supplant the law enforcement functions of the County within their jurisdiction.

Attached are the proposed amended Statement of Decision on Reconsideration and proposed amended parameters and guidelines, which include the conclusions and rationale of the court. Changes are reflected in strike-out and underline.

Conclusion and Staff Recommendation

Staff recommends that the Commission adopt the proposed amendments to the Statement of Decision on Reconsideration and amended parameters and guidelines pursuant to the court's ruling in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, and judgment and writ issued May 8, 2009, by the Sacramento County Superior Court, Case No. 07CS00079.

STAFF ANALYSIS

Court Order

Department of Finance v. Commission on State Mandates (2009) 170 Cal.App.4th 1355; Judgment and Writ issued May 8, 2009, by the Sacramento County Superior Court, Case No. 07CS00079

Chronology

- 04/26/06 Commission adopts Statement of Decision on Reconsideration (directed by Stats. 2005, ch. 72, § 6, Assem. Bill 138)
- 12/04/06 Commission amends parameters and guidelines pursuant to Statement of Decision on Reconsideration
- 01/19/07 Department of Finance files petition for writ of mandate to challenge the Statement of Decision on Reconsideration, arguing that school districts and special districts are not eligible claimants (Sacramento County Superior Court, Case No. 07CS00079)
- 03/28/08 Commission amends parameters and guidelines (06-PGA-06) by adopting a reasonable reimbursement methodology
- 02/06/09 Third District Court of Appeal issues published decision in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, finding that POBOR does not constitute a reimbursable state-mandated program for school districts and special districts that are permitted by statute to employ peace officers and who supplement the general law enforcement units of cities and counties.
- 05/08/09 Judgment and Writ of Mandate issued by Sacramento County Superior Court
- 06/--/09 Staff issues draft staff analysis on court-ordered set aside and amendment of Statement of Decision on Reconsideration and parameters and guidelines

Background

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as “POBOR”) to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed this claim pursuant to Government Code section 3313 and found that the *San Diego Unified School Dist.* case supports the Commission’s original 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

In January 2007, the Department of Finance filed a petition for writ of mandate challenging the Commission's Statement of Decision on Reconsideration, arguing that POBOR does not constitute a state-mandated program for school districts and special districts and, thus, school districts and special districts are not eligible claimants (Sacramento County Superior Court, Case No. 07CS00079). The Department of Finance agreed, however, that the test claim statutes are state-mandated with respect to the police protection districts named in Government Code section 53060.7 that wholly supplant the law enforcement functions of the county within their jurisdiction.

On February 6, 2009, the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1357, determined that POBOR is not a reimbursable mandate as to school districts and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties.

On May 8, 2009, the Sacramento County Superior Court issued a judgment and writ in Case No. 07CS00079, pursuant to the Third District Court of Appeal's decision in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, requiring the Commission to:

- a. Set aside the portion of its reconsideration decision in "Case No. 05-RL-4499-01 Peace Officer Procedural Bill of Rights" (reconsideration decision) that found that the Peace Officer Procedural Bill of Rights program constitutes a reimbursable state-mandated program for school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties;
- b. Issue a new decision denying the portion of the reconsideration decision approving reimbursement for school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties; and
- c. Amend the parameters and guidelines consistent with this judgment.

This judgment does not affect cities, counties, or special police protection districts named in Government Code section 53060.7, which wholly supplant the law enforcement functions of the County within their jurisdiction.

Proposed Amendments to Statement of Decision on Reconsideration and Parameters and Guidelines

Pursuant to the court's ruling, staff proposes the following amendments to the Statement of Decision on Reconsideration (changes are reflected in strike-out and underline):

- The face sheet of the Statement of Decision on Reconsideration is amended to show that the decision dated April 26, 2006 is amended pursuant to the court's ruling in *Department of Finance v. Commission on State Mandates*.
- A brief description of the litigation and summary of the Court's findings and writ is placed in the Summary of Findings.

- Issue II B. deletes the Commission’s findings that POBOR constitutes a state-mandated program for school districts and special districts, and replaces the language with a verbatim restatement of the Court’s conclusions and findings in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1365 through 1368.
- The conclusion is modified to reflect the court’s ruling and to strike the language that is inconsistent with the court’s ruling.

The parameters and guidelines are similarly amended as follows:

- Section I, Summary and Source of the Mandate, is amended to summarize the court’s judgment and writ, and the proposed amendments to the Statement of Decision on Reconsideration.
- Section II, Eligible Claimants, is amended as follows:
Counties, cities, a city and county, school districts and special police protection districts named in Government Code section 53060.7 that wholly supplant the law enforcement functions of the county within their jurisdiction that employ peace officers are eligible claimants.
School districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties are not eligible claimants entitled to reimbursement.
- Section III, Period of Reimbursement is amended to delete the words “or school district.”
- Section IV (D), Reimbursable Activities, Adverse Comment, is amended to delete the reimbursable activities for school districts. In addition, the header for “Cities and Special Districts” is amended to provide “Cities and Special Police Protection Districts.”
- Section V (A), Claim Preparation and Submission, Reasonable Reimbursement Methodology is amended to delete the words “and school districts.” In addition, language describing the indirect cost rates for school districts, county offices of education, and community college districts is deleted. Finally, the boilerplate language is amended to reflect the new citation adopted by the Commission for the calculation of indirect costs: “2 CFR Part 225, Appendix A and B (OMB Circular A-87).”
- Section X, Legal and Factual Basis for the Parameters and Guidelines, is amended to include a citation to *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355.

In all other respects, the Statement of Decision on Reconsideration and the parameters and guidelines remain undisturbed. The findings and conclusions of the Commission that have not been challenged are final and may not be altered by the Commission.

CONCLUSION

Staff recommends that the Commission adopt the proposed amendments to the Statement of Decision on Reconsideration and parameters and guidelines pursuant to the court's ruling in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, and judgment and writ issued May 8, 2009, by the Sacramento County Superior Court, Case No. 07CS00079.



ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

June 24, 2009

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance (Finance) has reviewed the Commission's draft staff analysis amending the Statement of Decision on Reconsideration (05-RL-4499-01) and the Amended Parameters and Guidelines (06-PGA-06) of Claim No. 4499, "Peace Officers Procedural Bill of Rights (POBOR)" pursuant to an appellate court decision.

Finance concurs with the Commission's proposed amendments to the reconsideration decision and the amended parameters and guidelines (POBOR documents). The proposed amendments are consistent with the Superior Court judgment and writ pursuant to the appellate court decision in the *Department of Finance v. Commission on State Mandates (Department of Finance)* (2009) 170 Cal.App.4th 1355. In *Department of Finance*, the court found that POBOR is not a reimbursable mandate for school districts (including community colleges districts) and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties. The Commission accurately amended the language of the POBOR documents to remove school districts and specified special districts as eligible claimants for reimbursement.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that interested parties have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay
Program Budget Manager

Enclosure

Attachment A

DECLARATION OF CARLA CASTAÑEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-4499, 05-RL-4499-01, 06-PGA-06

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

June 24, 2009
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Peace Officers Procedural Bill of Rights (POBOR)
Test Claim Number: CSM-4499, 05-RL-4499-01, 06-PGA-06

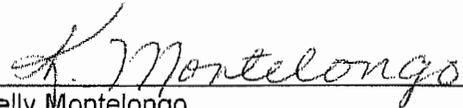
I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12th Floor, Sacramento, CA 95814.

On 6-24-09, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

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 6-24-09 at Sacramento, California.



Kelly Montelongo

ICC: DUCAY, LYNN, CASTAÑEDA, FEREBEE, GENEACOU, SHELTON, FILE

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