

**ITEM 8
TEST CLAIM
FINAL STAFF ANALYSIS**

Penal Code Section 148.6
Statutes 1995, Chapter 590
Statutes 1996, Chapter 586
Statutes 2000, Chapter 289

False Reports of Police Misconduct (00-TC-26)

County of San Bernardino, Claimant

TABLE OF CONTENTS

Executive Summary/Staff Analysis	001
Exhibit A	
Test Claim Filing and Attachments, dated July 2, 2001	101
Exhibit B	
Completeness Review Letter, dated July 10, 2001	117
Exhibit C	
Department of Finance's Comments on Test Claim, dated August 9, 2001	123
Exhibit D	
Claimant's Rebuttal to DOF Comments, dated February 21, 2002	127
Exhibit E	
Draft Staff Analysis and Cover Letter, dated November 25, 2003	133

**ITEM 8
TEST CLAIM
FINAL STAFF ANALYSIS**

Penal Code Section 148.6

Statutes 1995, Chapter 590

Statutes 1996, Chapter 586

Statutes 2000, Chapter 289

False Reports of Police Misconduct (00-TC-26)

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

Background

Statutes 1995, chapter 590 (AB 1732) added section 148.6 to the Penal Code. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. It also required that any citizen filing a report must sign an informational advisory regarding the misdemeanor. Claimant, County of San Bernardino, alleges that Penal Code section 148.6, as amended, requires the claimant to engage in the following reimbursable state-mandated activities: warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor; make the advisory available in the language of the complainant; and explain the form to the citizen.

Claimant alleges costs from spending approximately 15 minutes explaining the form to the complainant. "Additionally, although the Department of Justice has provided translations of the forms, if the citizen desiring to make a complaint does not speak English, it takes additional time for staff to download and print the form in the language of the citizen complainant." Claimant estimates annual costs for complying with Penal Code section 148.6 at \$52,000.

Department of Finance's (DOF's) response to the test claim allegations argues that there is no reimbursable state mandate stemming from the test claim legislation. First, DOF asserts: "Although Section 148.6 of the Penal Code may result in costs to local entities, those costs are not reimbursable because they are not unique to local government." Next, DOF critiques the time and cost estimates for the claimed activities, stating that some are discretionary, others are required by prior law, and ultimately, that providing the advisory on the legal consequences of filing a false report will result in a reduction of complaints filed, which "would more than offset any costs associated with this test claim."

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." The California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all

residents and entities in the state. Staff finds that providing the advisory constitutes a “program” and, thus, is subject to article XIII B, section 6 of the California Constitution. However, this finding is only for city and county-level law enforcement agencies. School district employers of peace officers claims for these statutes are represented in a separate test claim filing, *False Reports of Police Misconduct, K-14 (02-TC-09)*.

Staff finds that Penal Code section 148.6, subdivision (a), sections (2) and (3), imposes a new program or higher level of service for city and county law enforcement agencies when accepting an allegation of peace officer misconduct. The legislation newly requires the law enforcement agency to: (1) require the complainant to read and sign the advisory prescribed; and (2) make the advisory available in multiple languages, utilizing the translations available from the State. In addition, staff finds that none of the Government Code section 17556 exceptions to finding costs mandated by the state apply to these activities.

Conclusion

Staff concludes that Penal Code section 148.6, subdivision (a), sections (2) and (3), imposes a new program or higher level of service for city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the specific new activities identified on page 12. Staff recommends denial of any remaining alleged activities or costs.

Staff Recommendation

Staff recommends that the Commission adopt the final staff analysis, which partially approves this test claim for local agencies (cities and counties).

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

- 07/05/01 Commission receives test claim filing¹
- 07/10/01 Commission staff determines test claim is complete and requests comments
- 07/25/01 Interested party requests information regarding inclusion of K-14 school districts as eligible claimants
- 08/09/01 DOF files response to test claim allegations
- 09/07/01 Commission grants an extension of time for claimant's rebuttal comments
- 11/08/01 Claimant requests an extension of time to file rebuttal comments
- 11/09/01 Commission grants an extension of time for rebuttal comments
- 02/04/02 Claimant requests a second extension of time to file rebuttal comments
- 02/06/02 Commission grants an extension of time for rebuttal comments
- 02/27/02 Claimant files rebuttal comments
- 04/23/02 Claimant requests a third extension of time to file rebuttal comments
- 04/26/02 Commission grants an extension of time for rebuttal comments
- 05/15/02 Claimant re-files rebuttal to DOF response (document dated February 21, 2002)
- 05/24/02 Commission's Executive Director responds to interested party concerns regarding status of school districts as eligible claimants
- 11/25/03 Commission staff issues draft staff analysis; hearing set for January 29, 2004
- 12/23/03 Claimant requests extension of time to file comments until March 15, 2004
- 01/06/04 Claimant withdraws request for extension of time

Background

Statutes 1995, chapter 590 (AB 1732) added section 148.6 to the Penal Code. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. It also required that any citizen filing a report must sign an informational advisory regarding the misdemeanor. AB 1732 was sponsored by the Los Angeles County Professional Peace Officers Association and supported by a number of law enforcement agencies and

¹ The test claim filing was dated July 2, 2001. June 30 fell on a Saturday in 2001, therefore the filing deadline for establishing a July 1, 1999 reimbursement period pursuant to Government Code section 17557, subdivision (c), and the operative regulations, was delivery or postmark by Monday, July 2, 2001. The potential reimbursement period for this claim begins no earlier than July 1, 1999.

associations.² The goals of the legislation, according to a September 5, 1995 letter from Assemblywoman Paula Boland³ were to “discourage these malicious reports,” which could be damaging to the personnel record of the officer accused, and also to “save the state a substantial amount of money ... [which] could then be used towards putting officers out on the street, thereby enhancing public safety.” In 2000, Penal Code section 148.6 was amended to add subdivision (a)(3): “The advisory shall be available in multiple languages.”

Claimant’s Position

Claimant, County of San Bernardino, alleges that the test claim legislation requires the following reimbursable state-mandated activities:

- warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor;
- make the advisory available in the language of the complainant;
- explain the form to the citizen.

Claimant alleges costs from spending approximately 15 minutes explaining the form to the complainant. “Additionally, although the Department of Justice has provided translations of the forms, if the citizen desiring to make a complaint does not speak English, it takes additional time for staff to download and print the form in the language of the citizen complainant.” Claimant estimates annual costs for complying with Penal Code section 148.6 at \$52,000.

State Agency’s Position

DOF’s August 9, 2001 response to the test claim allegations argues that there is no reimbursable state mandate stemming from the test claim legislation. First, DOF asserts: “Although Section 148.6 of the Penal Code may result in costs to local entities, those costs are not reimbursable because they are not unique to local government.” This argument is described and analyzed below, under “Issue 1.”

Next, DOF critiques the time and cost estimates for the claimed activities, stating that some are discretionary, others are required by prior law, and ultimately, that providing the advisory on the legal consequences of filing a false report will result in a reduction of complaints filed, which “would more than offset any costs associated with this test claim.” These individual contentions will be described in greater detail in the analysis below. No comments were received on the draft staff analysis.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁵ “Its

² Claimant was not identified as a sponsor or supporter of the legislation.

³ See Attachment 1 to Exhibit E.

⁴ Article XIII B, section 6 provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁷ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.⁸

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁰ Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹¹

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹² In making its

of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

⁵ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or "draconian" consequences. (*Id.*, at p. 754.)

⁸ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836.

⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁰ *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹³

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁴ Although the court has held that only one of these findings is necessary,¹⁵ both will be analyzed here in order to address one of the arguments presented by DOF.

DOF contends that the test claim legislation does not impose a reimbursable state-mandated program because it is not unique to local government. This directly counters the claimant's assertion that:

The statutory scheme ... imposes a unique requirement on local government. Only local government hires peace officers, and only local government is required to accept complaints against peace officers. Only local government is required to present to citizen complainants a warning that the making of a false report can be a misdemeanor.

DOF correctly argues that the test claim statute affects all law enforcement agencies in the state, including the California Highway Patrol, the University of California, the Department of Fish and Game, and the Department of Corrections. DOF states that the California Supreme Court decision in *County of Los Angeles* supports its position.¹⁶

However, staff finds that DOF misapprehends the decision in *County of Los Angeles* for support of its argument that the statutes relating to peace officers are not unique to local government and therefore not subject to reimbursement under the California Constitution. *County of Los Angeles* involved state-mandated increases in workers' compensation benefits, which affected public and private employers alike. The California Supreme Court found that the term "program" as used in article XIII B, section 6, and the intent underlying section 6 "was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred as an incidental impact of law that apply generally to all state residents and entities."¹⁷ (Emphasis added.) Since the increase in workers' compensation benefits applied to

¹³ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280.

¹⁴ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

¹⁵ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

¹⁶ *County of Los Angeles, supra*, 43 Cal.3d 46.

¹⁷ *Id.* at pages 56-57; *City of Sacramento, supra*, 50 Cal.3d at page 67.

all employees of private and public businesses, the court found that no reimbursement was required.

Here, the test claim legislation is to be followed by all law enforcement agencies, which by definition are public entities.¹⁸ The statutes do not apply “generally to all state residents and entities,” such as private businesses. Thus, the test claim legislation meets this test for “program” in that it does not impose requirements that apply generally to all residents and entities of the state, but only upon those public entities that employ peace officers.

Next, staff finds that the test claim legislation satisfies the other test that triggers article XIII B, section 6, carrying out the governmental function of providing a service to the public, to the extent that the test claim legislation requires law enforcement agencies to provide complainants with information concerning the right to file a complaint against a police officer, including an advisory of the misdemeanor charge that may be filed if the individual knowingly makes a false complaint. As discussed by the court in *Carmel Valley*, police protection is one “of the most essential and basic functions of local government.”¹⁹ Therefore, governmental functions required of law enforcement agencies, ultimately provide a service to the public. Accordingly, staff finds that providing the advisory constitutes a “program” and, thus, is subject to article XIII B, section 6 of the California Constitution.

However, this finding is only for city and county-level law enforcement agencies. School district employers of peace officers claims for these statutes are represented in a separate test claim filing, *False Reports of Police Misconduct, K-14 (02-TC-09)*. Therefore, the analysis that follows is limited to mandate findings on behalf of city and county (local agency) claimants.

Issue 2: Does the test claim legislation impose a new program or higher level of service within an existing program upon city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution?

Penal Code Section 148.6

Penal Code section 148.6, as added by Statutes 1995, chapter 590, and amended by Statutes 1996, chapter 586, and Statutes 2000, chapter 289, follows:

(a)(1) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.

(2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:

You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate citizens' complaints. You have a right to a written description of this procedure. This agency may find

¹⁸ Penal Code section 830 et seq.

¹⁹ *Carmel Valley*, *supra*, 190 Cal.App.3d at page 537.

after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.

It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.

I have read and understood the above statement.

Complainant

(3) The advisory shall be available in multiple languages.

(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

Statutes 1996, chapter 586 amended the original language, adding what is now subdivision (b), an additional misdemeanor for knowingly filing a false civil claim against a peace officer in his or her official capacity, with the intent to harass the officer. Statutes 2000, chapter 289 amended the section, adding subdivision (a)(3): "The advisory shall be available in multiple languages."

Claimant does *not* allege a reimbursable state mandate from the addition of the new misdemeanor charges to the Penal Code. The California Constitution and the Government Code expressly disallow a mandate finding for such reimbursement. Article XIII B, section 6 provides "that the Legislature may, but need not, provide such subvention of funds for the following mandates: ... (b) Legislation defining a new crime or changing an existing definition of a crime." In addition, Government Code section 17556, subdivision (g) provides that the Commission shall not find costs mandated by the state if the test claim statute "created a new crime or infraction ... but only for that portion of the statute directly relating to the enforcement of the crime or infraction." Thus Penal Code section 148.6, subdivision (a)(1) and subdivision (b) do not impose a new program or higher level of service on law enforcement agencies, and do not impose costs mandated by the state.

Claimant alleges that Penal Code section 148.6 imposes a reimbursable state mandate by requiring a law enforcement agency to: warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor; make the advisory available in the language of the complainant; and explain the form to the citizen.

Regarding the final alleged activity, DOF's response dated August 9, 2001, asserts:

[T]he test claim statute does not require local law enforcement agencies to read and explain the advisory form to potential complainants. Therefore, any costs resulting from the time that a local agency spends reading and explaining the form

to potential complainants are not reimbursable because those actions are done at the discretion of that agency.

Claimant, in a letter dated February 21, 2002, responded that DOF's "expectation that citizens be handed a document to read and sign is not realistic," and:

presumes that the citizen:

1. Will have no questions, or
2. Will understand all terms used in the form, or
3. Is calm enough to take the time to read all the information, or
4. Can read in their spoken language, or
5. Can read, or
6. Will sign the document, or
7. Is even present. (They may have submitted their complaint in a letter mailed to the law enforcement agency.)

Despite claimant's concerns, staff notes that the Commission first looks to the plain meaning of the statutory language when identifying a reimbursable state-mandated program. According to the California Supreme Court:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. "We begin by examining the statutory language, giving the words their usual and ordinary meaning." If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.²⁰ (Citations omitted.)

The plain language of Penal Code section 148.6 does not require a law enforcement agency to read the document aloud, explain the document, answer questions, or make sure the complainant is "calm enough to take the time to read all the information." As further evidence that the statute does not require the advisory to be read aloud and explained to the complainant, Senate Bill 2133, as introduced, sought to amend Penal Code section 148.6 from "a peace officer shall require the complainant to read and sign the following advisory," to "a peace officer shall read the following advisory to the complainant, provide the complainant with a written copy of this advisory and require the complainant to acknowledge this advisory by his or her signature, prior to filing the complaint."²¹ Instead, when the bill was chaptered as Statutes 2000, chapter 289, this amendment was removed and the Legislature only added a requirement that the advisory be available in multiple languages (discussed below). Thus, the Legislature considered an amendment requiring greater action on the part of peace officers, but chose not to implement it when adopting the final version of the bill. Staff agrees with DOF's assertion that any explanatory or other additional activities are undertaken at the discretion of the law enforcement agency, and thus are not reimbursable. Staff finds that the plain language of the statute imposes

²⁰ *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

²¹ Senate Bill 2133, as introduced. (Attachment to Exh. E.)

a new program or higher level of service for city and county law enforcement agencies when accepting an allegation of peace officer misconduct, for requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2).

Regarding the statutory requirement that “the advisory shall be available in multiple languages,” claimant alleges that this provision means that the advisory shall be available in the language of the complainant. DOF, on the contrary, argues that having the advisory available in “only one language in addition to English would serve to comply with the law.” DOF also references the Dymally–Alatorre Bilingual Services Act, and asserts this law previously required local agencies “to provide translated materials.”

Government Code section 7290 et seq., known as the Dymally–Alatorre Bilingual Services Act,²² requires state and local agencies to provide certain bilingual services to people who would otherwise be “precluded from utilizing public services because of language barriers.” Specifically Government Code section 7295 requires local agencies to provide non-English translation of “any materials explaining services available” into language spoken by a “substantial number of the public served by the agency.” The statute concludes: “The determination of when these materials are necessary when dealing with local agencies shall be left to the discretion of the local agency.” Penal Code section 148.6, by specifically requiring that the advisory be available in multiple languages, has removed that determination from the local agency’s discretion. Therefore, staff finds that the prior law of the Bilingual Services Act does not preclude a finding of a new program or a higher level of service.

Claimant acknowledges that “the Department of Justice has provided translations of the forms,” but asserts that if the complainant “does not speak English, it takes additional time for staff to download and print the form in the language of the citizen complainant.”²³ DOF disagrees with this methodology and asserts “A more efficient process would be to download the form once from the Department of Justice website and make photocopies of that form to have available as needed.” Claimant responds: “Local law enforcement agencies are better able to determine the frequency and number of forms needed in additional languages.” Staff finds that this is an appropriate issue to defer for parameters and guidelines. California Code of Regulations, title 2, section 1183.1 requires a successful test claimant to submit proposed parameters and guidelines including “a description of the most reasonable methods of complying with the mandate.”

However, claimant and DOF have an additional disagreement requiring a legal finding: DOF asserts that having the form available in “only one language in addition to English would serve to comply with the law.” Claimant contends, “because of the variety and non-conformity of non-English languages and dialects, might not the law enforcement agency encounter a situation in which a version of the form has not been developed by the Department of Justice?” Staff finds that the statutory language calls for a practical interpretation that neither argument supports.

Again, subdivision (a)(3) simply requires “The advisory shall be available in multiple languages.” DOF focuses on the word “multiple,” and contends that it merely means “more than one.” Although this is a recognized definition of the word, it is also a synonym to “many,” “numerous,” and “several.” The Legislature, by use of the word “multiple” likely did not intend

²² Statutes 1973, chapter 1182.

²³ Test Claim Filing, page 2.

to require individual law enforcement agencies to provide translations in every conceivable language or dialect. Nor did it likely intend that agencies serving diverse immigrant populations would merely make available a single translation other than English, in order to comply with the bare minimum expressed in the statutory language. The Department of Justice, under the authority of the state Attorney General, has created translations of the advisory and made them available via its website, according to the test claim declarations, to law enforcement agencies statewide. Use of any or all of these translated advisories, as necessary, is a reasonable interpretation of the statutory meaning of “make the advisory available in multiple languages.”

Thus, staff finds that Penal Code section 148.6, subdivision (a), sections (2) and (3), imposes a new program or higher level of service for city and county law enforcement agencies for the following activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). (Pen. Code, § 148.6, subd. (a)(2).)²⁴
- Make the advisory available in multiple languages, utilizing the translations available from the State. (Pen. Code, § 148.6, subd. (a)(3).)²⁵

Issue 3: Does the test claim legislation found to require a new program or higher level of service also impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose “costs mandated by the state.” Government Code section 17514 defines “costs mandated by the state” as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. Claimant estimated costs of \$200 or more for the test claim allegations.²⁶ Staff finds that claimant met this threshold showing.

The Commission shall not find costs mandated by the state, as defined in section 17514, in certain instances. (Gov. Code, § 17556.) Claimant states that none of the Government Code section 17556 exceptions apply. DOF disagrees, claiming potential offsetting savings to costs arising from the statute.²⁷ DOF argues that “having the form available in multiple languages will reduce the number of complaints filed, thereby providing substantial saving to law enforcement agencies.” But DOF offers no evidence in support of its argument for this alleged offset. Accordingly, staff finds that none of the section 17556 exceptions apply. For the activities listed

²⁴ As added by Statutes 1995, chapter 590; reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

²⁵ As amended by Statutes 2000, chapter 289; reimbursement period begins no earlier than January 1, 2001, the operative date of the statute.

²⁶ As required by Government Code section 17564 at the time the claim was filed. Current statute and regulations require claims filed to exceed \$1000.

²⁷ The Commission shall not find costs if “[t]he statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts” (Gov. Code, § 17556, subd. (e).)

below, staff finds that they impose costs mandated by the state upon city and county law enforcement agencies within the meaning of Government Code section 17514.

CONCLUSION

Staff concludes that Penal Code section 148.6, subdivision (a), sections (2) and (3), imposes a new program or higher level of service for city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). (Pen. Code, § 148.6, subd. (a)(2).)²⁸
- Make the advisory available in multiple languages, utilizing the translations available from the State. (Pen. Code, § 148.6, subd. (a)(3).)²⁹

Staff recommends denial of any remaining alleged activities or costs, including any from Penal Code section 148.6, subdivision (a)(1), as added by Statutes 1995, chapter 590, and subdivision (b) as added by Statutes 1996, chapter 586, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

²⁸ As added by Statutes 1995, chapter 590; reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

²⁹ As amended by Statutes 2000, chapter 289; reimbursement period begins no earlier than January 1, 2001, the operative date of the statute.

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Claim No. <u>00-TC-26</u>

TEST CLAIM FORM

Local Agency or School District Submitting Claim

County of San Bernardino

Contact Person

John Logger

Telephone No.

(909) 386-8850
 FAX (909) 386-8830

Address

Office of the Auditor/Controller-Recorder
 222 W. Hospitality Lane, San Bernardino, CA 92415-0018

Representative Organization to be Notified

California State Association of Counties (CSAC)

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Statutes of 1995, Chapter 590 (Section 1);
 Statutes of 1996, Chapter 586 (Section 1);
 Statutes of 2000, Chapter 289 (Section 1).
 Penal Code Section 148.6

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Elizabeth A. Starbuck
 Asst. Auditor/Controller-Recorder

Telephone No.

(909) 386-8821

Signature of Authorized Representative

Elizabeth A. Starbuck

Date

July 2, 2001

**BEFORE THE
COMMISSION ON STATE MANDATES**

Test Claim of:
County of San Bernardino

FALSE REPORTS OF POLICE MISCONDUCT

Penal Code Section 148.6
Chapter 590, Statutes of 1995
Chapter 5806, Statutes of 1996
Chapter 289, Statutes of 2000

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

The statutes cited above on which this test claim is based, added Penal Code, Section 148.6. As originally adopted, this section required that law enforcement agencies, when accepting an allegation of peace officer misconduct, have the complainant read and sign an advisory which is required to state, in boldface type:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

Complainant

The amendment to this legislation in 1996 made changes which made it clear that criminal penalties only apply to actions which have arisen out of the course and scope of the peace officer's duties.

The 2000 amendments, added by Chapter 289, Statutes of 2000, requires that the foregoing advisory be available in multiple languages.

As originally adopted, it was recognized in the Bill Analysis on the Assembly Floor that there would be costs to local government.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no requirement prior to 1975, to mandate the requirement that those making complaints against peace officers execute the foregoing acknowledgment that false complaints can result in a misdemeanor.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, all of the mandated activities are contained within Penal Code, Section 148.6. The section was originally enacted by Chapter 590, Statutes of 1995, and was subsequently amended by Chapter 586, Statutes of 1996 and Chapter 289, Statutes of 2000.

Penal Code, Section 148.6 is directly related to the reimbursable provisions of this test claim.

D. COST ESTIMATES

It takes approximately 15 minutes to explain the form to each individual desiring to make a complaint against a peace officer. Additionally, although the Department of Justice has provided translations of the forms, if the citizen desiring to make a complaint does not speak English, it takes additional time for staff to download and print the form in the language of the citizen complainant. Therefore, annual costs are estimated to be \$52,500.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the County of San Bernardino as a result of the statutes included in this test claim are all reimbursable as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Section 17500 *et seq.* of the

Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."
3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

F. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these three statutes clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. Only local government hires peace officers, and only local government is required to accept complaints against peace officers. Only local government is required to present to citizen complainants a warning that the making of a false report can be a misdemeanor.

Mandate Carries Out a State Policy

From the legislation, it is clear that the state has a policy of warning that individuals who make a false complaint against a peace officer for actions taken within the scope of employment can result in a misdemeanor. Furthermore, the state wishes to make this clear to all citizens, by now having a requirement that this advisory be available in all languages.

In summary, the statutes mandate that the County of San Bernardino warn all citizens making a complaint against a peace officer and advise them, in the language of the complainant, of the fact that a false report can be a misdemeanor.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code, Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code, Section 17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the County of San Bernardino's test claim.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that presenting the advisory to potential citizen complainants for signature that they have a right to make a complaint against a peace officer, but that a false report can constitute a misdemeanor, and explaining that form to the complainant, is a reimbursable state mandate.

G. CLAIM REQUIREMENTS

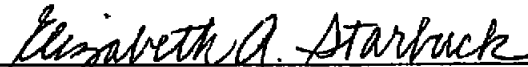
The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

- Exhibit A: Penal Code Section 148.6
- Exhibit B: Chapter 590, Statutes of 1995
- Exhibit C: Assembly Floor Analysis for AB 1732 (Chapter 590/95)
- Exhibit D: Chapter 586, Statutes of 1996
- Exhibit E: Chapter 289, Statutes of 2000

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 2nd day of July, 2001, at San Bernardino, California, by:



Elizabeth A. Starbuck
Asst. Auditor/Controller-Recorder



148.6. (a) (1) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.

(2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:
YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.
IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

Complainant

(3) The advisory shall be available in multiple languages.

(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

B

BILL NUMBER: AB 1732 CHAPTERED
BILL TEXT

CHAPTER 590
FILED WITH SECRETARY OF STATE OCTOBER 4, 1995
APPROVED BY GOVERNOR OCTOBER 4, 1995
PASSED THE ASSEMBLY SEPTEMBER 5, 1995
PASSED THE SENATE AUGUST 24, 1995
AMENDED IN SENATE JULY 19, 1995

INTRODUCED BY Assembly Member Boland

FEBRUARY 24, 1995

An act to add Section 148.6 to the Penal Code, relating to false reports of police misconduct.

LEGISLATIVE COUNSEL'S DIGEST

AB 1732, Boland. False reports of police misconduct.

Existing law makes it a misdemeanor to knowingly make a false report that a felony or misdemeanor has been committed to specified peace officers or employees of specified state and local agencies assigned to accept reports from citizens.

This bill would make it a misdemeanor to file an allegation of misconduct against any peace officer, knowing the report to be false.

Any law enforcement agency accepting an allegation of misconduct would be required to have the complainant read and sign a specified information advisory. The bill would impose a state-mandated local program by creating a new crime and imposing additional duties on local agencies.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 148.6 is added to the Penal Code, to read:

148.6. (a) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the report to be false, is guilty of a misdemeanor.

(b) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following information advisory, all in boldface type:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

Complainant

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



AB 1732

Page 1

CONCURRENCE IN SENATE AMENDMENTS

AB 1732 (Boland) - As Amended: July 19, 1995

ASSEMBLY VOTE: 63-5 (June 1, 1995) SENATE VOTE: 32-2 (August 24, 1995)

Original Committee Reference: PUB. S.

DIGEST

Existing law makes it a misdemeanor to knowingly make a false report that a felony or misdemeanor has been committed to specified peace officers or employees of specified state and local agencies assigned to accept reports from citizens.

As passed by the Assembly, this bill:

- 1) Made it a misdemeanor to file an allegation of misconduct against any peace officer, knowing the report to be false.
- 2) Provided that any law enforcement agency accepting an allegation of misconduct would be required to admonish the complainant.

The Senate amendments provide that any law enforcement agency accepting an allegation of misconduct would be required to require the complainant to read and sign a specified information advisory instead of requiring to admonish the complainant.

FISCAL EFFECT

According to the Assembly Appropriations Committee analysis, minor and absorbable costs to both local government and the state General Fund; crimes and infractions disclaimer; minor costs to local law enforcement agencies to document admonitions to complainants; potentially reimbursable.

COMMENTS

AB 1732

Page 2

The information advisory referred to in the Senate amendments reads, as follows:

You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate citizens' complaints.

You have a right to a written description of this procedure. This agency may find that after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make a complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.

It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.



BILL NUMBER: AB 2637 CHAPTERED
BILL TEXT

CHAPTER 586
FILED WITH SECRETARY OF STATE SEPTEMBER 17, 1996
APPROVED BY GOVERNOR SEPTEMBER 15, 1996
PASSED THE SENATE AUGUST 15, 1996
PASSED THE ASSEMBLY MAY 29, 1996
AMENDED IN ASSEMBLY APRIL 29, 1996

INTRODUCED BY Assembly Member Bowler

FEBRUARY 21, 1996

An act to amend Section 148.6 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2637, Bowler. Peace officers: false claims.

Existing law makes it a misdemeanor to file an allegation of misconduct against any peace officer, knowing the allegation to be false.

This bill would make it a misdemeanor to file a civil action against any peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties.

The bill would provide that this provision applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 148.6 of the Penal Code is amended to read:

148.6. (a) (1) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.

(2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:
YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR

FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

Complainant

(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

E

BILL NUMBER: SB 2133 CHAPTERED
BILL TEXT

CHAPTER 289
FILED WITH SECRETARY OF STATE SEPTEMBER 1, 2000
APPROVED BY GOVERNOR AUGUST 31, 2000
PASSED THE ASSEMBLY AUGUST 18, 2000
PASSED THE SENATE MAY 31, 2000
AMENDED IN SENATE MAY 18, 2000
AMENDED IN SENATE MAY 1, 2000

INTRODUCED BY Senator Polanco

FEBRUARY 25, 2000

An act to amend Section 148.6 of the Penal Code, relating to law enforcement.

LEGISLATIVE COUNSEL'S DIGEST

SB 2133, Polanco. Law enforcement: complaints of misconduct.

(1) Existing law provides that every person who files any allegation of misconduct against any peace officer, as defined, knowing the allegation to be false, is guilty of a misdemeanor, and requires any law enforcement agency accepting an allegation of misconduct against a peace officer to require the complainant to read and sign a specified advisory.

This bill would require this advisory to be available in multiple languages. By increasing duties imposed on local law enforcement agencies, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 148.6 of the Penal Code is amended to read:

148.6. (a) (1) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.

(2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:
YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY

FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

Complainant

(3) The advisory shall be available in multiple languages.

(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

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



July 10, 2001

Mr. John Logger
SB-90 Coordinator
County of San Bernardino
222 West Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

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

Re: *False Reports of Police Misconduct* - 00-TC-26
County of San Bernardino, Claimant
Statutes of 2000, Chapter 289
Statutes of 1996, Chapter 586
Statutes of 1995, Chapter 590
Penal Code Section 148.6

Dear Mr. Logger:

The Commission on State Mandates determined that the subject test claim submittal is complete. The test claim initiates the process for the Commission to consider whether the provisions listed above impose a reimbursable state-mandated program upon local entities. State agencies and interested parties are receiving a copy of this test claim because they may have an interest in the Commission's determination.

The key issues before the Commission are:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?

Mr. John Logger

July 10, 2001

Page 2

The Commission requests your participation in the following activities concerning this test claim:

- **Informal Conference.** An informal conference may be scheduled if requested by any interested party. See Title 2, California Code of Regulations, section 1183.04 (the regulations).
- **State Agency Review of Test Claim.** State agencies receiving this letter are requested to analyze the merits of the enclosed test claim and to file written comments on the key issues before the Commission. Alternatively, if a state agency chooses not to respond to this request, please submit a written statement of non-response to the Commission. Requests for extensions of time may be filed in accordance with sections 1183.01 (c) and 1181.1 (g) of the regulations. State agency comments are due 30 days from the date of this letter.
- **Claimant Rebuttal.** The claimant and interested parties may file rebuttals to state agencies' comments under section 1183.02 of the regulations. The rebuttal is due 30 days from the service date of written comments.
- **Hearing and Staff Analysis.** A hearing on the test claim will be set when the record closes. Pursuant to section 1183.07 of the Commission's regulations, at least eight weeks before the hearing is conducted, a draft staff analysis will be issued to parties, interested parties, and interested persons for comment. Comments are due 30 days following receipt of the analysis. Following receipt of any comments, and before the hearing, a final staff analysis will be issued.
- **Mailing Lists.** Under section 1181.2 of the Commission's regulations, the Commission will promulgate a mailing list of parties, interested parties, and interested persons for each test claim and provide the list to those included on the list, and to anyone who requests a copy. Any written material filed on that claim with the Commission shall be simultaneously served on the other parties listed on the claim.
- **Dismissal of Test Claims.** Under section 1183.09 of the Commission's regulations, test claims filed after May 5, 2001, may be dismissed if postponed or placed on inactive status by the claimant for more than one year. Prior to dismissing a test claim, the Commission will provide 150 days notice and opportunity for other parties to take over the claim.

MAILED: DATE: 7/10/01
FAXED: INITIAL: JS
FILE: CHRON: 7/10/01
WORKING BINDER:

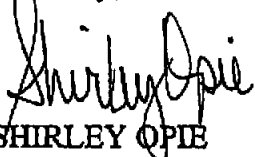
Mr. John Logger
July 10, 2001
Page 3

If the Commission determines that a reimbursable state mandate exists, the claimant is responsible for submitting proposed parameters and guidelines for reimbursing all eligible local entities. All interested parties and affected state agencies will be given an opportunity to comment on the claimant's proposal before consideration and adoption by the Commission.

Finally, the Commission is required to adopt a statewide cost estimate of the reimbursable state-mandated program within 12 months of receipt of an amended test claim. This deadline may be extended for up to six months upon the request of either the claimant or the Commission.

Please contact Nancy Patton at (916) 323-8217 if you have any questions.

Sincerely,



SHIRLEY OPIE
Assistant Executive Director

Enclosures: Mailing List and Test Claim

f:/mandates/2000/tc/00tc26/completetr

Commission on State Mandates

List Date: 07/10/2001

Mailing Information

Mailing List

Claim Number 00-TC-26 **Claimant** County of San Bernardino

Subject Statutes of 2000, Chapter 289; Statutes of 1996, Chapter 586; Statutes of 1995, Chapter 590

Issue False Reports of Police Misconduct

Harmeet Barkschat,
Mandate Resource Services

8254 Heath Peak Place
Antelope CA 95843

Tel: (916) 727-1350

FAX: (916) 727-1734

Interested Person

Mr. Glenn Haas, Bureau Chief (B-8)

State Controller's Office
Division of Accounting & Reporting
3301 C Street Suite 500
Sacramento CA 95816

Tel: (916) 445-8756

FAX: (916) 323-4807

State Agency

Mr. Steve Keil,
California State Association of Counties

1100 K Street Suite 101
Sacramento CA 95814-3941

Tel: (916) 327-7523

FAX: (916) 441-5507

Interested Person

Mr. John Logger, SB-90 Coordinator
Auditor-Controller's Office

222 West Hospitality Lane
San Bernardino CA 92415-0018

Tel: (909) 386-8850

FAX: (909) 386-8830

Claimant

Mr. James Lombard, Principal Analyst (A-15)
Department of Finance

915 L Street
Sacramento CA 95814

Tel: (916) 445-8913

FAX: (916) 327-0225

State Agency

Subject
ISSUE

Statutes of 2000, Chapter 289; Statutes of 1996, Chapter 586; Statutes of 1995, Chapter 590

False Reports of Police Misconduct

Mr. Gary Maggie,
Department of Justice

4949 Broadway
Sacramento Ca 95820

Tel: (916) 000-0000
FAX: (916) 000-0000

State Agency

Mr. Paul Minney,
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive
Sacramento Ca 95825

Tel: (916) 646-1400
FAX: (916) 646-1300

Interested Person

Mr. Keith B. Petersen, President
Sixten & Associates

5252 Balboa Avenue Suite 807
San Diego CA 92117

Tel: (858) 514-8605
FAX: (858) 514-8645

Interested Person

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.

2275 Watt Avenue Suite C
Sacramento CA 95825

Tel: (916) 487-4435
FAX: (916) 487-9662

Interested Person

Jim Spano,
State Controller's Office
Division of Audits (B-B)
300 Capitol Mall, Suite 518 P.O. Box 942850
Sacramento CA 95814

Tel: (916) 323-5849
FAX: (916) 324-7223

State Agency

Ms. Pam Stone, Legal Counsel
DMG-MAXIMUS

4320 Auburn Blvd. Suite 2000
Sacramento CA 95841

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

Interested Person

Claim Number

00-TC-26

Claimant

County of San Bernardino

Subject

Statutes of 2000, Chapter 289; Statutes of 1996, Chapter 586; Statutes of 1995, Chapter 590

Issue

False Reports of Police Misconduct

Mr. David Wellhouse,
Wellhouse & Associates

9175 Kiefer Blvd Suite 121
Sacramento CA 95826

Tel: (916) 368-9244

FAX: (916) 368-5723

Interested Person



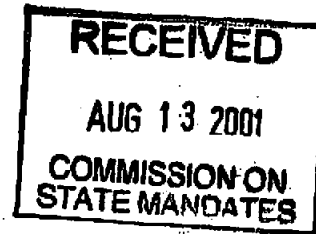
DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

GRAY DAVIS, GOVERNOR

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

August 9, 2001

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



Dear Ms. Higashi:

As requested in your letter of July 10, 2001 the Department of Finance has reviewed the test claim submitted by San Bernardino County (claimant) asking the Commission to determine whether specified costs incurred under Penal Code Section 148.4, as added or amended by Chapter 590, Statutes of 1995; Chapter 586, Statutes of 1996; and Chapter No. 289, Statutes of 2000; are reimbursable State-mandated costs (Claim No. CSM-00-TC-26 "False Reports of Police Misconduct"). Commencing with page 1, section A, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable State mandates:

- Presenting an advisory statement form to potential citizen complainants for their signature.
- Having that form available in multiple languages.

As the result of our review of this test claim and Section 148.6 of the Penal Code, we have concluded that a reimbursable State mandate has not been created by the amendments in Chapter 590, Statutes of 1995; Chapter 586, Statutes of 1996; and Chapter No. 289, Statutes of 2000.

Although Section 148.6 of the Penal Code may result in additional costs to local entities, those costs are not reimbursable because they are not unique to local government. Section 1 (a) (2) of the test claim statute reads, in part: "**Any** law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory..." [emphasis added]. Numerous State agencies have personnel classified as peace officers, including the California Highway Patrol, the University of California, the Department of Fish and Game, and the Department of Corrections. Therefore, based on Section 6, Article XIII B of the California State Constitution and the California Supreme Court ruling in *County of Los Angeles et al. v. the State of California et al.*, 43 Cal App 3d 46 (1987), we believe the test claim statutes do not result in reimbursable State-mandated costs.

Additionally, in section D of the test claim, the claimant estimates 15 minutes to explain the advisory form to each potential complainant. Although the advisory form requires the complainant to sign the form signifying they have read and understood the form, the test claim statute does not require local law enforcement agencies to read and explain the advisory form to potential complainants. Therefore, any costs resulting from the time that a local agency spends reading and explaining the form to potential complainants are not reimbursable because those actions are done at the discretion of that agency.

Ms. Paula Higashi
August 9, 2001
Page Two

The claimant also claims costs for accessing translated forms on the Department of Justice's website, and downloading and printing those forms in the language of the citizen complainant. The Dymally-Alatorre Bilingual Services Act requires local agencies to provide translated materials into any non-English language spoken by a substantial number of the public served by that agency. Therefore, under current State law, local law enforcement agencies are already required to provide forms such as the advisory statement form in non-English languages prior to passage of the test claim statutes.

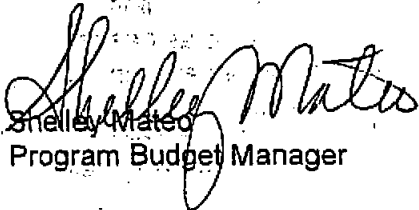
We would also disagree with the claimant's cost estimates regarding the need to access and download a translated form each time an agency is required to provide a translated advisory statement form. A more efficient process would be to download the form once from the Department of Justice website and make photocopies of that form to have available as needed. We note that the test claim legislation does not specify in how many languages the advisory form must be available. Therefore, only one language in addition to English would serve to comply with the law.

In addition, we believe that having the form available in multiple languages will reduce the number of complaints filed, thereby providing substantial savings to law enforcement agencies. These savings would more than offset any costs associated with this test claim.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 10, 2001 letter 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 Cedrik Zemitis, Principal Program Budget Analyst at (916) 322-2263 or Jim Lombard, State Mandates Claims Coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,


Shelley Matedo
Program Budget Manager

Attachments

cc: Mr. William Ashby, Division of Accounting, State Controller's Office
Ms. Marianna O'Malley, Legislative Analyst's Office
Mr. Leonard Kaye, Department of the Auditor-Controller, County of Los Angeles
Mr. David Wellhouse, Wellhouse and Associates
Mr. Allan Burdick, David M. Griffiths and Associates

Attachment A

DECLARATION OF CEDRIK ZEMITIS
DEPARTMENT OF FINANCE
CLAIM NO. CSM-00-TC-26

1. I am currently employed by the State of California, Department of Finance (Finance), I am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter No. 590, Statutes of 1985 sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.
3. Attachment B is a true copy of Finance's analysis of SB 2133 prior to its enactment as Penal Code Section 148.6, as added or amended by Chapter 590, Statutes of 1995; Chapter 586, Statutes of 1996; and Chapter 289, Statutes of 2000.

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.

Cedrik Zemitis
Mr. Cedrik Zemitis

Sacramento 8/8/01
Place and Date

Test Claim Name: "False Reports of Police Misconduct"
Test Claim Number: CSM-00-TC-26

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, 8 Floor, Sacramento, CA 95814.

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, 8 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

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Mr. William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Ms. Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

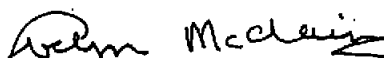
SB 90 Service
C/O David M. Griffiths & Associates
Attention: Mr. Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention: Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Ms. Evelyn McClain

8/9/01 Sacramento, California
Date and Place Declaration was Executed

AUDITOR/CONTROLLER-RECORDER COUNTY CLERK

EXHIBIT D
COUNTY OF SAN BERNARDINO



AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830
RECORDER - COUNTY CLERK • 222 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

February 21, 2002

RECEIVED
FEB 27 2002
COMMISSION ON
STATE MANDATES

LARRY WALKER
Auditor/Controller-Recorder
County Clerk
ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

PAULA HIGASHI, EXECUTIVE DIRECTOR
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Post-It® Fax Note 7671	
To <i>Paula H.</i>	Date <i>2/26/02</i> # of pages <i>5</i>
Co./Dept.	From <i>County of SB</i>
Phone #	Co.
Fax #	Phone #
	Fax #

RE: CSM-00-TC-26 - FALSE REPORTS OF POLICE MISCONDUCT

Dear Ms. Higashi;

The County of San Bernardino has reviewed the letter filed by the Department of Finance on August 9, 2001 regarding the test claim for False Reports of Police Misconduct. In that letter, Department of Finance argues that this state mandate is not reimbursable because these costs are not unique to local government in that these duties are imposed on the California Highway Patrol, the University of California, and other state agencies. The Department bases this argument on the California Supreme Court ruling in *County of Los Angeles et al. v. the State of California et al.*, 43 Cal App 3d 46 (1987).

The Department of Finance's argument is without merit. The issue addressed in *County of Los Angeles*, compares a mandate imposed on local agencies to a mandate imposed on local agencies AND other private businesses throughout California. It makes no conclusion nor compares a mandate imposed on local agencies to any mandate imposed on local agencies AND state agencies.

The Department's argument is also inconsistent with the practice and history of the Commission on State Mandates rulings for other mandates on *law enforcement agencies* that have routinely applied to both local and state law enforcement agencies.

On another point, the Department of Finance argues that the statute does not require local law enforcement agencies to read and explain the advisory statement to potential complainants. Although the intent of the statute is to inform a citizen of the legal ramifications of knowingly filing a false report and to obtain a signature stating that they understand these ramifications, the Department of Finance presumes that the citizen:

1. Will have no questions, or
2. Will understand all terms used in the form, or
3. Is calm enough to take the time to read all the information, or
4. Can read in their spoken language, or
5. Can read, or
6. Will sign the document, or
7. Is even present. (They may have submitted their complaint in a letter mailed to the law enforcement agency.)

WILLIAM H. RANDOLPH
County Administrative Officer

Board of Supervisors			
BILL POSTMUS First District	DENNIS HANSBERGER Third District
JON D. MIKELS Second District	FRED AGUIAH Fourth District
JERRY EAVES Fifth District		

False Reports of Police Misconduct

February 21, 2002

Page 2 of 2

The expectation that citizens be handed a document to read and sign is not realistic.

The Department of Finance also argues that, prior to the test claim statute, local law enforcement agencies were already required to provide forms similar to the advisory statement in non-English languages. However, the advisory statement is a *new form* and a *new requirement* imposed by a specific *new statute*. The Department of Finance's argument is groundless and vague especially when they also argue that, "... only one language in addition to English would serve to comply with the law".

In addition, the Department of Finance's recommendation to download all of the translated forms at once is irrelevant here in that the law enforcement agency is in the best position to determine whether there is a need to download each form as individually required, to download each form and make and maintain a supply of photo-copies, or to utilize a combination of the two methods. Local law enforcement agencies are better able to determine the frequency and number of forms needed in additional languages. Additionally, when a supply of photocopied forms is maintained, local agencies still need to monitor the Department of Justice's website for changes and update forms as needed. If the Department of Justice has changed their form in any way, the local agency might then distribute an out-of-date form. And because of the variety and non-conformity of non-English languages and dialects, might not the law enforcement agency encounter a situation in which a version of the form has not been developed by the Department of Justice?

The County of San Bernardino refutes all arguments provided by the Department of Finance for this test claim. The County requests that the Commission on State Mandates reject the Department of Finance's arguments and determine that Penal Code section 148.6, as modified by the test claim chapters, constitutes a reimbursable state mandated program within the meaning and intent of Section 6, Article XIII B of the California State Constitution.

Sincerely,

Larry Walker
Auditor/Controller-Recorder

By: Barbara K. Redding
Barbara K. Redding
Reimbursable Projects Manager

cc: Interested parties on the Commission's mailing list.

LW:BR:sr

rps/Barbara/letters/False Reports of Police Misconduct - Rebuttal.doc

List Date: 07/10/2001

Mailing Information Extension Request

Mailing List

Claim Number

00-TC-26

Claimant

County of San Bernardino

Subject

Statutes of 2000, Chapter 289; Statutes of 1996, Chapter 586; Statutes of 1995, Chapter 590

Issue

False Reports of Police Misconduct

Ms. Harnett Barkschat,
Mandate Resource Services

5325 Elkhorn Blvd. #307
Sacramento CA 95842

Tel: (916) 727-1350
FAX: (916) 727-1734

Interested Person

Mr. Robert Brooks, Staff Analyst II
Riverside Co. Sheriff's Acct. and Finance Bureau

4095 Lemon Street P O Box 512
Riverside Ca 92502

Tel: (909) 955-2709
FAX: (909) 955-2720

Interested Person

Ms. Annette Chinn,
Cost Recovery Systems

705-2 East Bidwell Street #294
Folsom CA 95630

Tel: (916) 939-7901
FAX: (916) 939-7801

Interested Person

Ms. Susan Geanacou, Senior Staff Attorney
Department of Finance

915 L Street, 11th Floor Suite 1190
Sacramento CA 95814

Tel: (916) 445-3274
FAX: (916) 327-0220

State Agency

Mr. Glenn Haas, Bureau Chief (B-8)

State Controller's Office
Division of Accounting & Reporting
3301 C Street Suite 500
Sacramento CA 95816

Tel: (916) 445-8757
FAX: (916) 323-4807

State Agency

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On February 25, 2002 and February 26, 2002, I faxed the letter dated February 21, 2002 to the Commission on State Mandates requesting an extension of time for submitting responses to state agency comments on three test claims. I faxed it also to the other parties listed on this 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 February 26, 2002 at San Bernardino, California.



SHAR ROBINSON

Subject Statutes of 2000, Chapter 289; Statutes of 1996, Chapter 586; Statutes of 1995, Chapter 590
Issue False Reports of Police Misconduct

Mr. Steve Kell,
California State Association of Counties
1100 K Street Suite 101
Sacramento CA 95814-3941
Tel: (916) 327-7523
FAX: (916) 441-5507
Interested Person

Ms. Tom Lutzenberger, Principal Analyst (A-15)
Department of Finance
915 L Street, 6th Floor
Sacramento CA 95814
Tel: (916) 445-8913
FAX: (916) 327-0225
State Agency

Mr. Paul Minney,
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento Ca 95825
Tel: (916) 646-1400
FAX: (916) 646-1300
Interested Person

Mr. Arthur Pulkowitz, Legislative Mandates Specialist
San Diego Unified School District
4100 Normal Street Room 2148
San Diego CA 92103
Tel: (619) 725-7565
FAX: (619) 725-7569
Interested Party

Mr. Keith B. Petersen, President
Sixten & Associates
5252 Balboa Avenue Suite 807
San Diego CA 92117
Tel: (858) 514-8605
FAX: (858) 514-8645
Interested Person

Ms. Barbara K Redding, RPS Manager
Auditor-Controller-Recorder
County of San Bernardino
222 West Hospitality Lane
San Bernardino CA 92415
Tel: (909) 386-8850
FAX: (909) 386-8830
Claimant

Subject

Statutes of 2000, Chapter 289; Statutes of 1996, Chapter 586; Statutes of 1995, Chapter 590

Issue

False Reports of Police Misconduct

Mr. Steve Shields,
Shields Consulting Group, Inc.

1536 36th Street
Sacramento CA 95816

Tel: (916) 454-7310
FAX: (916) 454-7312

Interested Person

Sale Mangram

Mr. Mark Sigman, SB 90 Coordinator

Riverside County
Auditor-Controller
4080 Lemon St. 3rd Floor
Riverside CA 92501

Tel: (909) 955-6283
FAX: (909) 955-2428 3802

Interested Person

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.

2275 Watt Avenue
Sacramento CA 95825

Tel: (916) 487-4435
FAX: (916) 487-9662

Interested Person

Mr. Jim Spano,
State Controller's Office
Division of Audits (B-8)
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Sacramento CA 95814

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

State Agency

Ms. Pam Stone, Legal Counsel
MAXIMUS

4320 Auburn Blvd. Suite 2000
Sacramento CA 95841

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FAX: (916) 485-0111

Interested Person

Mr. David Wellhouse,
David Wellhouse & Associates, Inc.

9175 Kiefer Blvd Suite 121
Sacramento CA 95826

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

Interested Person

COMMISSION ON STATE MANDATES

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



November 25, 2003

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

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

Re: Draft Staff Analysis and Hearing Date
False Reports of Police Misconduct – 00-TC-26
Penal Code Section 148.6, as added and amended by Statutes 1995, Chapter 590;
Statutes 1996, Chapter 586; and Statutes 2000, Chapter 289
County of San Bernardino, Claimant

Dear Ms. Ter Keurst:

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **Friday, December 26, 2003**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Thursday, January 29, 2004** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about Friday, January 8, 2004. 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 you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Katherine Tokarski at (916) 323-3562 with any questions regarding the above.

Sincerely,

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

PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis

MAILED: Mail List FAXED:
DATE: 11/25/03 INITIAL: VS
CHRON: FILE:
WORKING BINDER:

ITEM ____
TEST CLAIM
DRAFT STAFF ANALYSIS

Penal Code Section 148.6

Statutes 1995, Chapter 590

Statutes 1996, Chapter 586

Statutes 2000, Chapter 289

False Reports of Police Misconduct (00-TC-26)

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

The Executive Summary will be included with the Final Staff Analysis.

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

- 07/05/01 Commission receives test claim filing¹
- 07/10/01 Commission staff determines test claim is complete and requests comments
- 07/25/01 Interested party requests information regarding inclusion of K-14 school districts as eligible claimants
- 08/09/01 DOF files response to test claim allegations
- 09/07/01 Commission grants an extension of time for claimant's rebuttal comments
- 11/08/01 Claimant requests an extension of time to file rebuttal comments
- 11/09/01 Commission grants an extension of time for rebuttal comments
- 02/04/02 Claimant requests a second extension of time to file rebuttal comments
- 02/06/02 Commission grants an extension of time for rebuttal comments
- 04/23/02 Claimant requests a third extension of time to file rebuttal comments
- 04/26/02 Commission grants an extension of time for rebuttal comments
- 05/15/02 Claimant files rebuttal to DOF response (document dated February 21, 2002)
- 05/24/02 Commission's Executive Director responds to interested party concerns regarding status of school districts as eligible claimants
- 11/25/03 Commission staff issues draft staff analysis

Background

Statutes 1995, chapter 590 (AB 1732) added section 148.6 to the Penal Code. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. It also required that any citizen filing a report must sign an informational advisory regarding the misdemeanor. AB 1732 was sponsored by the Los Angeles County Professional Peace Officers Association and supported by a number of law enforcement agencies and associations.² The goals of the legislation, according to a September 5, 1995 letter from Assemblywoman Paula Boland³ were to "discourage these malicious reports," which could be damaging to the personnel record of the officer accused, and also to "save the state a substantial

¹ June 30 fell on a Saturday in 2001, therefore the filing deadline for establishing a July 1, 1999 reimbursement period pursuant to Government Code section 17557, subdivision (c), and the operative regulations, was delivery or postmark by Monday, July 2, 2001. The potential reimbursement period for this claim begins no earlier than July 1, 1999.

² Claimant was not identified as a sponsor or supporter of the legislation.

³ See Attachment 1.

amount of money ... [which] could then be used towards putting officers out on the street, thereby enhancing public safety.”

In 2000, Penal Code section 148.6 was amended to add subdivision (a)(3): “The advisory shall be available in multiple languages.”

Claimant's Position

Claimant alleges that the test claim legislation requires the following reimbursable state-mandated activities:

- Warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor;
- Make the advisory available in the language of the complainant;
- Explain the form to the citizen.

Claimant alleges costs from spending approximately 15 minutes explaining the form to the complainant. “Additionally, although the Department of Justice has provided translations of the forms, if the citizen desiring to make a complaint does not speak English, it takes additional time for staff to download and print the form in the language of the citizen complainant.” Claimant estimates annual costs for complying with Penal Code section 148.6 at \$52,000.

State Agency's Position

DOF's response to claimant's test claim allegations argues that there is no reimbursable state mandate stemming from the test claim legislation. First, DOF asserts: “Although Section 148.6 of the Penal Code may result in costs to local entities, those costs are not reimbursable because they are not unique to local government.” This argument is described and analyzed below, under “Issue 1.”

Next, DOF critiques the time and cost estimates for the claimed activities, stating that some are discretionary, others are required by prior law, and ultimately, that providing the advisory on the legal consequences of filing a false report will result in a reduction of complaints filed, which “would more than offset any costs associated with this test claim.” These individual contentions will be described in greater detail in the analysis below.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁵ “Its

⁴ Article XIII B, section 6 provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

⁵ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁷ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁸ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.⁹

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁰ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹¹

⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or "draconian" consequences. (*Id.*, at p. 754.)

⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma*, *supra*, 84 Cal.App.4th at page 1284; Government Code sections 17514 and 17556.

¹⁰ *Kirlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹¹ *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th at page 1817; *County of Sonoma*, *supra*, 84 Cal.App.4th at page 1280.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹² Although the court has held that only one of these findings is necessary,¹³ both will be analyzed here in order to address one of the arguments presented by DOF.

DOF contends that the test claim legislation does not impose a reimbursable state-mandated program because it is not unique to local government. This directly counters the claimant's assertion that:

The statutory scheme ... imposes a unique requirement on local government. Only local government hires peace officers, and only local government is required to accept complaints against peace officers. Only local government is required to present to citizen complainants a warning that the making of a false report can be a misdemeanor.

DOF correctly argues that the test claim statute affects all law enforcement agencies in the state, including the California Highway Patrol, the University of California, the Department of Fish and Game, and the Department of Corrections. DOF states that the California Supreme Court decision in *County of Los Angeles* supports its position.¹⁴

However, staff finds that DOF misapprehends the decision in *County of Los Angeles* for support of its argument that the statutes relating to peace officers are not unique to local government and therefore not subject to reimbursement under the California Constitution. *County of Los Angeles* involved state-mandated increases in workers' compensation benefits, which affected public and private employers alike. The California Supreme Court found that the term "program" as used in article XIII B, section 6, and the intent underlying section 6 "was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred as an incidental impact of law that apply generally to all state residents and entities."¹⁵ (Emphasis added.) Since the increase in workers' compensation benefits applied to all employees of private and public businesses, the court found that no reimbursement was required.

Here, the test claim legislation is to be followed by all law enforcement agencies, which by definition are public entities.¹⁶ The statutes do not apply "generally to all state residents and

¹² *County of Los Angeles, supra*, 43 Cal.3d at page 56.

¹³ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

¹⁴ *County of Los Angeles, supra*, 43 Cal.3d 46.

¹⁵ *Id.* at pages 56-57; *City of Sacramento, supra*, 50 Cal.3d at page 67.

¹⁶ Penal Code section 830 et seq.

entities," such as private businesses. Thus, the test claim legislation meets this test for "program" in that it does not impose requirements that apply generally to all residents and entities of the state, but only upon those public entities that employ peace officers.

Next, staff finds that the test claim legislation satisfies the other test that triggers article XIII B, section 6, carrying out the governmental function of providing a service to the public, to the extent that the test claim legislation requires law enforcement agencies to provide complainants with information concerning the right to file a complaint against a police officer, including an advisory of the misdemeanor charge that may be filed if the individual knowingly makes a false complaint. As discussed by the court in *Carmel Valley*, police protection is one "of the most essential and basic functions of local government."¹⁷ Therefore, governmental functions required of law enforcement agencies, ultimately provide a service to the public. Accordingly, staff finds that providing the advisory constitutes a "program" and, thus, is subject to article XIII B, section 6 of the California Constitution.

However, this finding is only for city and county-level law enforcement agencies. School district employers of peace officers claims for these statutes are represented in a separate test claim filing, *False Reports of Police Misconduct (K-14)* (02-TC-09). Therefore, the analysis that follows is limited to mandate findings on behalf of city and county (local agency) claimants.

Issue 2: Does the test claim legislation impose a new program or higher level of service within an existing program upon city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution?

Penal Code Section 148.6

Penal Code section 148.6, as added by Statutes 1995, chapter 590, and amended by Statutes 1996, chapter 586, and Statutes 2000, chapter 289, follows:

(a)(1) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.

(2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:

You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate citizens' complaints. You have a right to a written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.

¹⁷ *Carmel Valley, supra*, 190 Cal.App.3d at page 537.

It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.

I have read and understood the above statement.

Complainant

(3) The advisory shall be available in multiple languages.

(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

Statutes 1996, chapter 586 amended the original language, adding what is now subdivision (b), an additional misdemeanor for knowingly filing a false civil claim against a peace officer in his or her official capacity, with the intent to harass the officer. Statutes 2000, chapter 289 amended the section, adding subdivision (a)(3): "The advisory shall be available in multiple languages."

Claimant does *not* allege a reimbursable state mandate from the addition of the new misdemeanor charges to the Penal Code. The California Constitution and the Government Code expressly disallow a mandate finding for such reimbursement. Article XIII B, section 6 provides "that the Legislature may, but need not, provide such subvention of funds for the following mandates: ... (b) Legislation defining a new crime or changing an existing definition of a crime." In addition, Government Code section 17556, subdivision (g) provides that the Commission shall not find costs mandated by the state if the test claim statute "created a new crime or infraction" ... but only for that portion of the statute directly relating to the enforcement of the crime or infraction." Thus Penal Code section 148.6, subdivision (a)(1) and subdivision (b) do not impose a new program or higher level of service on law enforcement agencies, and do not impose costs mandated by the state.

Claimant alleges that Penal Code section 148.6 imposes a reimbursable state mandate by requiring a law enforcement agency to: warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor; make the advisory available in the language of the complainant; and explain the form to the citizen.

Regarding the final alleged activity, DOF's response dated August 9, 2001, asserts:

[T]he test claim statute does not require local law enforcement agencies to read and explain the advisory form to potential complainants. Therefore, any costs resulting from the time that a local agency spends reading and explaining the form to potential complainants are not reimbursable because those actions are done at the discretion of that agency.

Claimant, in a letter dated February 21, 2002, responded that DOF's "expectation that citizens be handed a document to read and sign is not realistic," and:

presumes that the citizen:

1. Will have no questions, or
2. Will understand all terms used in the form, or
3. Is calm enough to take the time to read all the information, or
4. Can read in their spoken language, or
5. Can read, or
6. Will sign the document, or
7. Is even present. (They may have submitted their complaint in a letter mailed to the law enforcement agency.)

Despite claimant's concerns, staff notes that the Commission first looks to the plain meaning of the statutory language when identifying a reimbursable state-mandated program. According to the California Supreme Court:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. "We begin by examining the statutory language, giving the words their usual and ordinary meaning." If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.¹⁸ (Citations omitted.)

The plain language of Penal Code section 148.6 does not require a law enforcement agency to read the document aloud, explain the document, answer questions, or make sure the complainant is "calm enough to take the time to read all the information." As further evidence that the statute does not require the advisory to be read aloud and explained to the complainant, Senate Bill 2133, as introduced, sought to amend Penal Code section 148.6 from "a peace officer shall require the complainant to read and sign the following advisory," to "a peace officer shall read the following advisory to the complainant, provide the complainant with a written copy of this advisory and require the complainant to acknowledge this advisory by his or her signature, prior to filing the complaint."¹⁹ Instead, when the bill was chaptered as Statutes 2000, chapter 289, this amendment was removed and the Legislature only added a requirement that the advisory be available in multiple languages (discussed below). Thus, the Legislature considered an amendment requiring greater action on the part of peace officers, but chose not to implement it when adopting the final version of the bill. Therefore, staff agrees with DOF's assertion that any explanatory or other additional activities are undertaken at the discretion of the law enforcement agency, and thus are not reimbursable.

Regarding the statutory requirement that "the advisory shall be available in multiple languages," claimant alleges that this provision means that the advisory shall be available in the language of

¹⁸ *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

¹⁹ Attachment 2 (SB 2133, as introduced.)

the complainant. DOF, on the contrary, argues that having the advisory available in "only one language in addition to English would serve to comply with the law." DOF also references the Dymally-Alatorre Bilingual Services Act, and asserts this law previously required local agencies "to provide translated materials."

Government Code section 7290 et seq., known as the Dymally-Alatorre Bilingual Services Act,²⁰ requires state and local agencies to provide certain bilingual services to people who would otherwise be "precluded from utilizing public services because of language barriers." Specifically Government Code section 7295 requires local agencies to provide non-English translation of "any materials explaining services available" into language spoken by a "substantial number of the public served by the agency." The statute concludes: "The determination of when these materials are necessary when dealing with local agencies shall be left to the discretion of the local agency." Penal Code section 148.6, by specifically requiring that the advisory be available in multiple languages, has removed that determination from the local agency's discretion. Therefore, staff finds that the prior law of the Bilingual Services Act does not preclude a finding of a new program or a higher level of service.

Claimant acknowledges that "the Department of Justice has provided translations of the forms," but asserts that if the complainant "does not speak English, it takes additional time for staff to download and print the form in the language of the citizen complainant."²¹ DOF disagrees with this methodology and asserts "A more efficient process would be to download the form once from the Department of Justice website and make photocopies of that form to have available as needed." Claimant responds: "Local law enforcement agencies are better able to determine the frequency and number of forms needed in additional languages." Staff finds that this is an appropriate issue to defer for parameters and guidelines. California Code of Regulations, title 2, section 1183.1 requires a successful test claimant to submit proposed parameters and guidelines including "a description of the most reasonable methods of complying with the mandate."

However, claimant and DOF have an additional disagreement requiring a legal finding. DOF asserts that having the form available in "only one language in addition to English would serve to comply with the law." Claimant contends, "because of the variety and non-conformity of non-English languages and dialects, might not the law enforcement agency encounter a situation in which a version of the form has not been developed by the Department of Justice?" Staff finds that the statutory language calls for a practical interpretation that neither argument supports.

Again, subdivision (a)(3) simply requires "The advisory shall be available in multiple languages." DOF focuses on the word "multiple," and contends that it merely means "more than one." Although this is a recognized definition of the word, it is also a synonym to "many," "numerous," and "several." The Legislature, by use of the word "multiple" likely did not intend to require individual law enforcement agencies to provide translations in every conceivable language or dialect. Nor did it likely intend that agencies serving diverse immigrant populations would merely make available a single translation other than English, in order to comply with the bare minimum expressed in the statutory language. The Department of Justice, under the authority of the state Attorney General, has created translations of the advisory and made them

²⁰ Statutes 1973, chapter 1182.

²¹ Test Claim Filing, page 2.

available via its website, according to the test claim declarations, to law enforcement agencies statewide. Use of any or all of these translated advisories, as necessary, is a reasonable interpretation of the statutory meaning of "make the advisory available in multiple languages."

Thus, staff finds that Penal Code section 148.6, subdivision (a), sections (2) and (3), imposes a new program or higher level of service for city and county law enforcement agencies for the following activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). (Pen. Code, § 148.6, subd. (a)(2).)²²
- Make the advisory available in multiple languages, utilizing the translations available from the State. (Pen. Code, § 148.6, subd. (a)(3).)²³

Issue 3: Does the test claim legislation found to require a new program or higher level of service also impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. Claimant estimated costs of \$200 or more for the test claim allegations.²⁴ Staff finds that Claimant met this threshold showing.

The Commission shall not find costs mandated by the state, as defined in section 17514, in certain instances. (Gov. Code, § 17556.) Claimant states that none of the Government Code section 17556 exceptions apply. DOF disagrees, claiming potential offsetting savings to costs arising from the statute.²⁵ DOF argues that "having the form available in multiple languages will reduce the number of complaints filed, thereby providing substantial saving to law enforcement agencies." But DOF offers no evidence in support of its argument for this alleged offset. Accordingly, staff finds that none of the section 17556 exceptions applies.

For the activities listed in the conclusion below, staff finds that they impose costs mandated by the state upon law enforcement agencies within the meaning of Government Code section 17514.

²² As added by Statutes 1995, chapter 590; reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

²³ As amended by Statutes 2000, chapter 289; reimbursement period begins no earlier than January 1, 2001; the operative date of the statute.

²⁴ As required by Government Code section 17564 at the time the claim was filed. Current statute and regulations require claims filed to exceed \$1000.

²⁵ The Commission shall not find costs if "[t]he statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts . . ." (Gov. Code, § 17556, subd. (e).)

CONCLUSION

Staff concludes that Penal Code section 148.6, subdivision (a), sections (2) and (3), imposes a new program or higher level of service for city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). (Pen. Code, § 148.6, subd. (a)(2).)²⁶
- Make the advisory available in multiple languages, utilizing the translations available from the State. (Pen. Code, § 148.6, subd. (a)(3).)²⁷

Staff recommends denial of any remaining alleged activities or costs, including any from Penal Code section 148.6, subdivision (a)(1), as added by Statutes 1995, chapter 590, and subdivision (b) as added by Statutes 1996, chapter 586, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

²⁶ As added by Statutes 1995, chapter 590; reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

²⁷ As amended by Statutes 2000, chapter 289; reimbursement period begins no earlier than January 1, 2001, the operative date of the statute.

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Assembly California Legislature

PAULA L. BOLAND

MEMBER OF THE ASSEMBLY
THIRTY-EIGHTH DISTRICT

PUBLIC SAFETY
MEMBER:
EDUCATION
HOUSING & COMMUNITY
DEVELOPMENT
NATURAL RESOURCES



September 5, 1995

Governor Pete Wilson
State of California
State Capitol
Sacramento, CA 95814

Dear Governor Wilson:

This letter is to request your signature on Assembly Bill 1732, relating to false police reports.

Yearly hundreds of unfounded and false complaints are filed against peace officers. In the Los Angeles County Sheriff's Department alone, over 500 complaints were received of which approximately 60 to 70 percent were unfounded.

Unfortunately for these officers, these complaints usually become a permanent part of their personnel jackets regardless of the outcome of the administrative inquiries or investigations. Additionally, most of the officers find that they have very little recourse against the complainants.

AB 1732 would discourage these malicious reports by making it a misdemeanor to file an allegation of misconduct against any peace officer, knowing the report to be false. This bill was amended to provide that any law enforcement agency accepting an allegation of misconduct against a peace officer require the complainant to read and sign an information advisory.

AB 1732 is sponsored by the Los Angeles County Professional Peace Officers Association and is supported by the following law enforcement agencies throughout the state:

California Organization of Police and Sheriffs
California Probation, Parole and Correctional Association
Los Angeles County Sheriff's Department
California State Sheriff's Association
Attorney General
Southern California Alliance of Law Enforcement
Peace Officers Research Association

Association for Los Angeles Deputy Sheriffs, Inc.
Sacramento County Deputy Sheriffs Association
California Council of Police & Sheriffs
City of Bakersfield, Office of the Chief of Police
California Union of Safety Employees
Huntington Beach Police Officers' Association
Association of Orange County Deputy Sheriffs
Anaheim Police Officers Association
Long Beach Police Officers Association
Santa Ana Police Officers Association

By reducing the amount of frivolous claims against peace officers, AB 1732 will also save the state a substantial amount of money. This cost savings could then be used towards putting more officers out on the street, thereby enhancing public safety.

I would appreciate your favorable consideration of AB 1732. If you have any questions, please do not hesitate to contact my legislative assistant, Janene Balantac at 445-1002.

Sincerely,



PAULA L. BOLAND

PLB:jb

BILL NUMBER: SB 2133 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Polanco

FEBRUARY 25, 2000

An act to amend Section 148.6 of the Penal Code, relating to law enforcement.

LEGISLATIVE COUNSEL'S DIGEST

SB 2133, as introduced, Polanco. Law enforcement: complaints of misconduct.

(1) Existing law provides that every person who files any allegation of misconduct against any peace officer, as defined, knowing the allegation to be false, is guilty of a misdemeanor, and requires any law enforcement agency accepting an allegation of misconduct against a peace officer to require the complainant to read and sign a specified advisory.

This bill would instead provide that any law enforcement agency accepting an allegation of misconduct against a peace officer read this advisory to the complainant, provide the complainant with a written copy of the advisory, and require the complainant to acknowledge this advisory by his or her signature, prior to filing the complaint. By increasing duties imposed on local law enforcement agencies, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 148.6 of the Penal Code is amended to read:

148.6. (a) (1) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.

(2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall ~~require the complainant to read and sign the~~ following advisory ~~all in boldface type~~ to the complainant, provide the complainant with a written copy of this advisory and require the complainant to acknowledge this advisory by his or her signature, prior to filing the complaint :

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

Complainant

(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Commission on State Mandates

Original List Date: 7/8/2001 Mailing Information: Draft Staff Analysis
Last Updated: 3/28/2003
List Print Date: 11/26/2003 **Mailing List**
Claim Number: 00-TC-26
Issue: False Reports of Police Misconduct

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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