

ITEM 8
TEST CLAIM
FINAL STAFF ANALYSIS

California Code of Regulations, Title 11,
Sections 1001, 1052, 1053, 1055, 1070, 1071, and 1082
(Register 2001, No. 29)

Training Requirements for Instructors and Academy Staff
(02-TC-03)

County of Sacramento, Claimant

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ITEM 8
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Training Requirements for Instructors and Academy Staff

02-TC-03

County of Sacramento, Claimant

EXECUTIVE SUMMARY

This item was scheduled for the January 25, 2007 Commission hearing but was continued to the March 29, 2007 hearing at the request of claimant's representative. After extensive comments at the hearing on March 29, 2007, the Commission continued the item to the May 31, 2007 hearing and reissued the final staff analysis for a 30-day comment period. This revised final staff analysis addresses the hearing testimony and comments filed by the County of Sacramento and the Department of Finance. The staff recommendation to deny this test claim has not changed.

The test claim addresses regulations adopted by the Commission on Peace Officer Standards and Training ("POST") that require specified training of certain POST instructors and key staff of POST training academies.

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.

The test claim poses the following question:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

The Test Claim Regulations Do Not Impose a State-Mandated Program on Local Agencies

Although the test claim regulations require persons who provide specified POST training to engage in certain activities, staff finds that the requirements flow from an initial discretionary decision by the local agency to participate in POST, and another discretionary decision to provide POST-certified training or establish an academy and employ training staff. Therefore, the test claim regulations are not subject to article XIII B, section 6 and do not constitute a state-mandated program.

Conclusion

Staff finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST

training academy, the test claim regulations are not subject to article XIII B, section 6 of the California Constitution, and therefore do not impose a state-mandated program on local agencies.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

STAFF ANALYSIS

Claimant

County of Sacramento

Chronology

08/06/02 County of Sacramento filed test claim with the Commission on State Mandates ("Commission")

09/13/02 The Department of Finance submitted comments on test claim to the Commission

10/31/02 The Commission on Peace Officer Standards and Training ("POST") submitted comments on the test claim with the Commission

12/08/06 Commission staff issued draft staff analysis

01/09/07 The Department of Finance submitted comments on the draft staff analysis to the Commission

01/11/07 Commission staff issued final staff analysis

01/25/07 Commission continued item to the March hearing

03/14/07 Commission staff re-issued final staff analysis

03/29/07 Commission heard test claim and continued item to the May hearing

04/02/07 Commission staff re-issued final staff analysis

04/17/07 Commission staff issued a copy of the March 29, 2007 hearing transcript

05/02/07 County of Sacramento submitted comments on the final staff analysis to the Commission

05/07/07 The Department of Finance submitted comments on the final staff analysis to the Commission

05/17/07 Commission staff issued revised final staff analysis

Background

This test claim addresses POST regulations that require training of specified POST instructors and key staff of POST training academies. This claim *does not* involve the requirement imposed on individual peace officers to receive basic training pursuant to Penal Code section 832.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.¹ The POST program is funded primarily by persons

¹ Penal Code section 13500 et seq.

who violate the laws that peace officers are trained to enforce.² Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.³

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.⁴ POST states the following:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement.⁵

A POST participating agency can offer its own in-house POST-certified training, or send its personnel to POST-certified training institutions operated by other entities, such as community colleges or other law enforcement agencies.⁶

On March 26, 2001, POST issued Bulletin number 01-05 entitled "Proposed Regulatory Action: Training Requirements for Instructors and Academy Staff of Specialized Training Courses." In that bulletin, POST stated:

For years, the training community has shared an informal expectation that persons who instruct in certain high risk/liability areas should attend a POST-certified instructor development course (or an equivalent one) on the related subject area. The same expectation has been maintained for certain key academy staff, and has, in fact, been formalized in the *POST Basic Course Management Guide*. The pertinent POST-certified instructor development courses are listed in the *POST Catalog of Certified Courses*. The proposed regulations also include provisions for equivalency determinations and exemptions from the training requirements.

Test Claim Regulations

POST subsequently adopted the regulations proposed in Bulletin number 01-05, which are the subject of this test claim.⁷ The regulations require that, effective July 1, 2002, primary

² *About California POST*, <<http://www.POST.ca.gov>>.

³ Penal Code sections 13522 and 13523.

⁴ Penal Code sections 13510, 13510.1, 13510.5, and 13511; California Code of Regulations, Title 11, section 1053.

⁵ *Training, Certificates & Services: Overview*, <<http://www.POST.ca.gov>>.

⁶ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

⁷ The test claim was filed with the Commission on August 6, 2002, on regulations in effect at that time. The subject regulations have subsequently been modified, however, those modified

instructors⁸ of designated specialized training courses complete a specified training standard, or its equivalent, prior to instructing in the specialized subject.⁹ Instructors of specialized training that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.¹⁰ A process was also established to allow presenters of the specialized courses to perform an equivalency evaluation of non-POST-certified training to meet the minimum training standard for the specialized subject.¹¹ Presenters of the specialized courses are required to maintain documentation demonstrating satisfaction of the minimum training standard by their instructors who teach any of the specialized courses.¹²

The test claim regulations also require that Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete specified minimum training standards within one year from the date of appointment to the position.¹³ Academy Directors are required to maintain documentation demonstrating satisfaction of the minimum training standard for the designated staff position.¹⁴

Three additional requirements are set forth in the test claim regulations with regard to specialized course instructors and Academy instructors. First, qualifications of certain academy staff, in addition to other instructors and coordinators, must now be evaluated by POST in requests for course certification.¹⁵ Second, specified elements of instructor resumes must now be provided for course certification requests.¹⁶ And third, certificates of completion must be issued by presenters to students who successfully complete POST-certified instructor development courses listed in section 1070, the Academy Director/Coordinator Workshop and the Recruit Training Officer Workshop.¹⁷

regulations have not been claimed and, thus, Commission staff makes no finding with regard to them.

⁸ "Primary instructor" is an individual responsible for the coordination and instruction for a particular topic. The responsibility includes oversight of topic content, logistics, and other instructors. (Cal. Code Regs., tit. 11, § 1001, subd. (aa))

⁹ California Code of Regulations, Title 11, section 1070, subdivision (a).

¹⁰ *Ibid.*

¹¹ California Code of Regulations, Title 11, section 1070, subdivision (b).

¹² California Code of Regulations, Title 11, section 1070, subdivision (c).

¹³ California Code of Regulations, Title 11, section 1071, subdivision (a). Content for the courses for each staff position is specified in section 1082.

¹⁴ California Code of Regulations, Title 11, section 1071, subdivision (b).

¹⁵ California Code of Regulations, Title 11, section 1052, subdivision (a)(2).

¹⁶ California Code of Regulations, Title 11, section 1053, subdivision (a)(2).

¹⁷ California Code of Regulations, Title 11, section 1055, subdivision (d).

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Claimant's Position

The claimant asserts that the test claim regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that development costs commencing in fiscal year 2001-2002 for the following activities will be incurred and are reimbursable:

1. Staff time to complete or update any necessary general, operations, or special orders as required.
2. Staff time to compile information to be distributed to instructors and key staff informing them of changes in regulations and what information they need to provide such as updated resumes, completed class certificates, etc.
3. Staff time to collect, review for completeness and evaluate contents of current, and any new, instructor and key academy staff information packages turned in.
4. Staff time to review information submitted for equivalency evaluation as instructor or key staff.
5. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
6. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
7. Staff time to provide required Basic Instructor Development course to new instructors.
8. Purchase of necessary computer hardware, software and any necessary programming services to set up database or modify existing database to track information on #6 above.
9. Staff time to enter information into database to track class, individual, instructor, academy staff, certificate information and any other data required by POST. Database

to be used for annual renewals, to provide POST information as necessary and during any audits of the program.

10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Develop or update training for data entry, report management and required notices in the database.
13. Meet and confer with POST representatives.
14. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, estimated costs for staff time are \$26,298 and estimated costs for computer hardware, software and programming services are "unknown at this time but could range from \$5,000 - \$20,000."

Claimant asserts that the following ongoing costs will be incurred and are reimbursable:

1. Staff time to collect, review for completeness and evaluate contents of new instructor and key academy staff resumes.
2. Staff time to collect, review for completeness and evaluate contents of annual renewal packages of instructor and key academy staff resumes.
3. Staff time to review information submitted for equivalency evaluation as instructor or key academy staff.
4. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
5. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
6. Staff time to provide required Basic Instructor Development course to new instructors.
7. Staff time to compile information to be distributed to instructors and key staff informing them of any changes to these regulations.
8. Staff time to enter information into database to track class, individual, instructor, academy staff and certificate information and any other data required by POST.
9. Staff time to fill out required certificates.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Staff time to meet and confer with POST representatives.
13. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, claimant estimates ongoing costs of \$25,000 per year.

The claimant filed additional comments in response to the staff's recommendation to deny the test claim. These comments are addressed in the analysis.

Position of Department of Finance

The Department of Finance stated in its comments that:

As the result of our review, we have concluded that the [test claim regulations] may have resulted in a higher level of service for an existing program. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

The Department submitted subsequent comments agreeing with the staff recommendation to deny the test claim.

Position of POST

POST stated in its comments that it believes the test claim regulations do not impose a new program or higher level of service within an existing program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

First, under Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

Second, any law enforcement agency voluntarily participating in the POST program *may* seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. There is no requirement for a participating agency to have POST-certified training courses. Since the test claim regulations affecting instructor/academy staff training requirements only apply to POST-certified training institutions, there is no requirement for the state to reimburse for such costs under the Government Code or the California Constitution.

Third, the new POST training requirements for instructors and academy staff are worded in such a way that they are directed to the individual instructor and academy staff members, not the training institutions. POST-certified training institutions are free to require applicants to complete this training on their own at their own expense. If POST-certified training institutions voluntarily provide their staff with this training, it is no reason to expect the state to reimburse for these costs.

Since POST has facilitated the ready availability of this instructor/academy staff training by certifying the training to virtually any POST-certified training institution that can demonstrate a need and capability, law enforcement trainers in the POST program can conduct much of this required training within their own facilities without sending their personnel away.

POST provided testimony at the March 29, 2007 hearing, stating the following:

- There are examples of police departments in California that do not participate in the POST program.¹⁸
- Those agencies that do not participate in POST can have their own standards that parallel POST, the disadvantage being that the travel and per diem for the training is not reimbursed by POST. Those agencies are still law enforcement agencies, and their trainers are still law enforcement trainers.¹⁹
- 44 of the 58 counties in California do not have their own academy; agencies that do have their own academy have local control and can train their officers to meet the particular needs of their community.²⁰

Discussion

The courts have found that article XIII B, section 6 of the California Constitution²¹ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²² “Its 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.”²³ 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.²⁴ In addition, the required activity or task must be new, constituting a “new program,” and it must create a “higher level of service” over the previously required level of service.²⁵

¹⁸ Reporter’s Transcript of Proceedings, March 29, 2007 Commission Hearing, page 42, line number 11.

¹⁹ *Id.* page 43, line number 13.

²⁰ *Id.* page 43, line number 1.

²¹ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

²² *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁴ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988)

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.²⁶ 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.²⁷ A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."²⁸

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁹

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 6.³⁰ 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."³¹

The analysis addresses the following issue:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

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

In order for the test claim regulations to impose a reimbursable state-mandated program under article XIII B, section 6, the language must order or command a local agency to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered. Moreover, where participation in the *underlying* program is voluntary, courts have held that

44 Cal.3d 830, 835-836 (*Lucia Mar*).

²⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

²⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

²⁹ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

³⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

³¹ *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

new requirements imposed within that underlying program do not constitute a reimbursable state mandate.³²

Do the test claim regulations mandate any activities?

The test claim regulations require the following activities:

1. As of July 1, 2002, primary instructors of designated specialized POST training courses must complete a specified training standard, or its equivalent, prior to instructing in the subject.
2. Instructors of designated specialized POST training courses that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.
3. Presenters of specialized courses must maintain documentation demonstrating their instructors who teach any of the specialized courses have satisfied the minimum training standard, and such documentation shall be made available for POST inspection upon request.
4. Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete the specified minimum training standards for their positions within one year from the date of appointment.
5. Academy Directors shall maintain documentation demonstrating satisfaction of the minimum training standard for each designated staff position, and such documentation shall be made available for POST inspection upon request.
6. Any person or organization desiring to have a course certified by POST shall now provide instructor resumes in addition to other information previously required.
7. Any presenter of a POST-Certified instructor development course, or any presenter of the Academy Director/Coordinator Workshop or Recruit Training Officer Workshop, shall issue certificates to students who successfully complete the training.

Thus, the plain language of the test claim regulations does require specified persons involved in POST training to engage in certain activities. However, based on the following analysis, staff finds that the requirements flow from the *initial discretionary decisions* by the local agency to become a member of POST, and to provide POST-certified training or establish a POST training academy. Therefore, the test claim regulations are not subject to article XIII B, section 6 and, thus, do not constitute a state-mandated program.

POST was created in 1959 “[f]or the purpose of raising the level of competence of local law enforcement officers ...”³³ To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the physical, mental, and moral fitness of peace officers, and for the training of peace officers. However, these rules apply only to those cities, counties, and school districts that participate in

³² *Kern High School Dist. supra*, 30 Cal.4th 727, 727.

³³ Penal Code section 13510.

the POST program and apply for state aid.³⁴ If the local agency decides to file an application for state aid, the agency must adopt an ordinance or regulation agreeing to abide by POST rules and regulations.³⁵ Not all local agencies have applied for POST membership,³⁶ nor do all local agencies provide POST-certified training. Nor is there any state statute, or other state law, that requires local agencies to participate in the POST program or provide POST-certified training. Moreover, consistent with POST's long standing interpretation of the Penal Code, POST's regulations state that participation in the POST program is voluntary.³⁷ POST stated the following in its comments on this test claim:

[U]nder Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

With regard to providing training, section 13511, subdivision (a), states that, "[i]n establishing standards for training, [POST] shall, so far as consistent with the purposes of this chapter, permit required training to be obtained at institutions approved by [POST]." On its website at <http://www.post.ca.gov/training/default.asp>, POST gives an overview of Training, Certificates & Services it provides which states:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement....

In comments on this test claim, POST also stated that:

[A]ny law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. The point here is that there is no requirement for a participating agency to have POST-certified training courses....³⁸

³⁴ Penal Code section 13520.

³⁵ Penal Code section 13522.

³⁶ POST's website at http://www.post.ca.gov/library/other/agency_page.asp lists law enforcement agencies and participation status.

³⁷ California Code of Regulations, title 11, section 1010, subdivision (c).

³⁸ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

Thus, according to the Penal Code, and as the Penal Code provisions are interpreted by POST, participating in the POST program,³⁹ obtaining POST certification of training courses and providing POST-certified training are discretionary decisions on the part of the training provider. The courts have found it is a well-established principle that "contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; and courts will not depart from such construction unless it is clearly erroneous or unauthorized."⁴⁰ Staff finds no other provision in statute or regulation to contradict POST's interpretation of the Penal Code.

Therefore, based on the plain language of the governing statutes and regulations as set forth above, local law enforcement agencies have no legal compulsion to participate in POST or establish a POST training academy. However, where no "legal" compulsion is set forth in the test claim statutes or regulations, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. The Supreme Court in *Kern High School Dist.* addressed the issue of "practical" compulsion in the context of a school district that had participated in optional funded programs in which new requirements were imposed. In *Kern*, the court determined there was no "practical" compulsion to participate in the underlying programs, since a district that elects to discontinue participation in a program does not face "certain and severe ... penalties" such as "double ... taxation" or other "draconian" consequences.⁴¹

In the case of *San Diego Unified School Dist.*, the test claim statutes required school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.⁴² The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.⁴³ Regarding expulsion recommendations that were discretionary on the part of the district, the court acknowledged the school district's arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement to provide safe schools.⁴⁴ Ultimately, however, the Supreme Court denied reimbursement for the hearing procedures regarding discretionary expulsions on alternative grounds.⁴⁵

³⁹ California Code of Regulations, title 11, section 1010, subdivision (c).

⁴⁰ *State Compensation Insurance Fund v. Workers' Compensation Appeals Board* (1995) 37 Cal.App.4th 675, 683 (citing *Industrial Indemnity Co. v. Workers' Comp. Appeals Board* (1985) 165 Cal.App.3d 633, 638).

⁴¹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 754.

⁴² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 866.

⁴³ *Id.* at pages 881-882.

⁴⁴ *Id.* at page 887, footnote 22.

⁴⁵ *Id.* at page 888.

Here, as noted above, participation in the underlying POST program and providing POST-certified training is voluntary, i.e., no legal compulsion exists. Nor does staff find any support for the notion that "practical" compulsion is applicable in the instant case. The test claim regulations do not address a situation in any way similar to the circumstances in *San Diego Unified School Dist.*, where the expulsion of a student might be needed to comply with the constitutional requirement for safe schools. In fact, the circumstances here are substantially similar to those in the *Kern High School Dist.* case, where the district was denied reimbursement because its participation in the underlying program was voluntary, and no "certain and severe penalties" would result if local agencies fail to participate in POST or provide their own POST-certified training.

The Supreme Court in *San Diego Unified School Dist.* underscored the fact that a state mandate is found when the state, rather than a local official, has made the decision to require the costs to be incurred.⁴⁶ In this case, the state has not required the local public agency to participate in POST or provide POST-certified training; the local agency has made that decision. Moreover, the court in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 (*County of Los Angeles II*), in interpreting the holding in *Lucia Mar*,⁴⁷ noted that where local entities have alternatives under the statute other than paying the costs in question, the costs do not constitute a state mandate.⁴⁸ Here, local agencies have alternatives available in that they can: 1) choose not to become members of POST; 2) elect not to present training courses in-house and instead send their law enforcement officers to POST-certified training institutions operated by other entities such as community colleges or other law enforcement agencies; or 3) hire only those individuals who are already POST-certified peace officers.

Claimant argues that this analysis "does not fully address the unique situation of test claimant with regard to its relationship with the [POST]."⁴⁹ Claimant asserts that participation in POST is *de facto* compelled, even though there is no state statute requiring participation in POST. Claimant argues that, "[i]n what amounts to statutory double-speak, however, the officers are most certainly bound by the requirements of POST and so are the local agencies to the extent that they can hire such officers."⁵⁰ In support of this argument, claimant states that if a law enforcement agency does not wish to be involved in POST, the Penal Code section requiring every *peace officer* to have POST basic training⁵¹ makes that decision impossible. Claimant further notes that "POST has undeniable control of the hiring practices of even non-

⁴⁶ *Id.* at page 880.

⁴⁷ *Lucia Mar, supra*, 44 Cal.3d 830.

⁴⁸ *County of Los Angeles II, supra*, 32 Cal.App. 4th 805, page 818.

⁴⁹ Comments on Staff Analysis from County of Sacramento, submitted May 2, 2007, page 1.

⁵⁰ Comments on Staff Analysis from County of Sacramento, submitted May 2, 2007, page 3.

⁵¹ Penal Code section 832.

participating agencies”⁵² and “those who are intimately involved in this arena know the pervasive and inescapable control of the POST.”⁵³

The claimant has provided declarations asserting the following points:

- In order for the Sacramento County Sheriff’s Department to have qualified law enforcement employees, pursuant to the requirements of Penal Code section 832, the Department must either hire someone who has already been through a POST certified academy or provide its own academy and training.
- It is not cost effective for the Sacramento County Sheriff’s Department or the County of Sacramento as a public entity to send new officers to an outside agency for training.
- Once an officer is hired, continuing education is required by POST. It is not cost effective for an agency as large as Sacramento County or Los Angeles County to send its officers outside for such continuing education, thus these counties must have instructors that meet the new POST standards for instructors and academy staff.
- For most POST courses, travel and per diem costs are reimbursable from POST. However, POST reimbursement does not cover backfill or tuition, nor does it cover the administrative costs associated with maintaining the records to support the new instructor requirements or the cost of completing equivalent training.
- It is true that the counties are not required to have a training academy, nor is any community college required to have one. Thus, while no individual agency is required to have a training academy, some agency or college somewhere has to provide the training so that officers throughout California can get their POST-mandated training.
- Although it has been asserted that law enforcement agencies do not have to participate in POST, POST minimum standards are now an issue of “standard of care.” POST sets minimum standards by which officers and instructors are able to engage in their profession, similar to the Medical Board setting standards for doctors.

Claimant is, however, confusing *peace officer* requirements with *local law enforcement agency* requirements. It is true that peace officers are required to meet certain standards set by POST. Penal Code section 832 requires peace officers to complete a POST basic training requirement, as follows:

(a) Every person described in this chapter as a peace officer shall satisfactorily complete an introductory course of training prescribed by [POST]. On or after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by [POST]. Training in the carrying and use of firearms shall not be required of any peace officer whose employing agency prohibits the use of firearms.

⁵² Comments on Staff Analysis from County of Sacramento, submitted May 2, 2007, page 5.

⁵³ *Ibid.*

(b)(1) Every peace officer described in this chapter, prior to the exercise of the powers of a peace officer, shall have satisfactorily completed the course of training described in subdivision (a).

(2) Every peace officer described in Section 13510 or in subdivision (a) of Section 830.2 may satisfactorily complete the training required by this section as part of the training prescribed pursuant to Section 13510.

(c) Persons described in this chapter as peace officers who have not satisfactorily completed the course described in subdivision (a), as specified in subdivision (b), shall not have the powers of a peace officer until they satisfactorily complete the course.

But there is no state statute or executive order requiring a local law enforcement agency itself to adopt an ordinance to participate in POST or establish its own POST training classes or a POST academy. Claimant argues that because the individual officer is required to be certified by POST under Penal Code section 832, and the "pervasive and inescapable control of the POST," it is impossible for the law enforcement agency to avoid being a member of POST. Yet POST regulations clearly state that participation by the local agency in POST is voluntary.

Moreover, claimant has not demonstrated it is "practically" compelled to participate in POST or establish a training academy. Claimant asserts the "more complete analysis" set forth in *San Diego Unified School Dist.* is applicable in this instance, wherein the Supreme Court cautioned "there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement ... whenever an entity makes an initial discretionary decision that in turn triggers mandated costs."⁵⁴ In that passage, the court referenced the case of *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, which found a reimbursable state mandate was created by an executive order that required county firefighters to be provided with protective clothing and safety equipment.⁵⁵ The *San Diego* court theorized that, because the local agency possessed discretion concerning how many firefighters it would employ and could in that sense control costs, a strict application of the *City of Merced* rule could foreclose reimbursement in such a situation "for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc."⁵⁶ The court found it "doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result..."⁵⁷

Staff finds the court's analysis inapplicable in the instant case. In the context of the Supreme Court's warning regarding an overly-strict application of the *City of Merced* rule, claimant is attempting to liken its discretionary decisions to participate in the POST program and establish a POST training academy, with a local fire agency's exercise of discretion concerning the number of firefighters it needs to employ for a program which, based on the plain language of the executive order, mandates the local agency to provide protective clothing and equipment to

⁵⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

its employees. However, the *San Diego* court did not have such a situation before it, nor, more importantly, did it overrule *Kern High School Dist.*, the rule of which is plainly applicable in this instance as set forth above. As noted above, the Supreme Court in *Kern High School Dist.* ruled on a substantially similar set of facts. In that case, the school district had participated in optional funded programs in which new requirements were imposed. Here, new requirements are imposed on local law enforcement agencies that choose to participate in POST and establish POST-certified training or POST academies, and those agencies can receive POST reimbursement for certain program-related costs.

In *Kern*, the court determined there was no practical compulsion to participate in the underlying programs, since a district that elects not to participate or to discontinue participation in a program does not face “certain and severe ... penalties” such as “double ... taxation” or other “draconian” consequences.⁵⁸ Claimant concedes that local law enforcement agencies are not subject to draconian consequences but argues this ruling is not on point because a local agency cannot “fully discontinue participation due to the pervasive control of the POST.” There is no evidence in the record to support the claim that a local law enforcement agency cannot discontinue participation in POST, other than the assertion that control by POST is “pervasive and inescapable,” and establishing POST training programs in house is “cost effective.”

However, the relevant holding is from *Kern* wherein the Supreme Court states that school districts that have discretion will make the choices that are ultimately the most beneficial for the district:

As to each of the optional funded programs here at issue, school districts are, and have been, free to decide whether to (i) continue to participate and receive program funding, even though the school district also must incur program-related costs associated with the [new] requirements or (ii) decline to participate in the funded program. Presumably, a school district will continue to participate only if it determines that the best interests of the district and its students are served by participation – in other words, if, *on balance*, the funded program, even with strings attached, is deemed beneficial. And, presumably, a school district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits. (Emphasis in original.)⁵⁹

The circumstances discussed above are analogous to this case. Claimant states that it is “cost effective” for the Counties of Sacramento and Los Angeles, because of their size, to establish training academies and provide training in house rather than send their peace officers outside for training. Presumably, law enforcement agencies have made and will continue to make discretionary decisions regarding POST training that are the most beneficial to the agency. When those agencies have such discretion, the program is *not* state-mandated.

Therefore, any activities or costs a local agency might incur for participation in POST, establishing a training academy, and, as a result, providing POST training to trainers or

⁵⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 754.

⁵⁹ *Id.* at 753.

ensuring academy staff have appropriate qualifications, are not subject to article XIII B, section 6, and thus do not constitute a state-mandated program.

Conclusion

Staff finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations are not subject to article XIII B, section 6 of the California Constitution, and therefore do not impose a state-mandated program on local agencies.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

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State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2 91)

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Claim No. 02-TC-03

TEST CLAIM FORM

Local Agency or School District Submitting Claim

County of Sacramento

Contact Person

Telephone No.

Nancy Gust, SB-90 Sheriff's Dept

(916) 874-6032

Fax (916) 874-5263

Address

**711 G Street, Room 405
Sacramento, CA 95814**

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 8, 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.

P.O.S.T. Regulations 1001, 1052, 1053, 1055, 1070, 1071, 1082

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

Name and Title of Authorized Representative

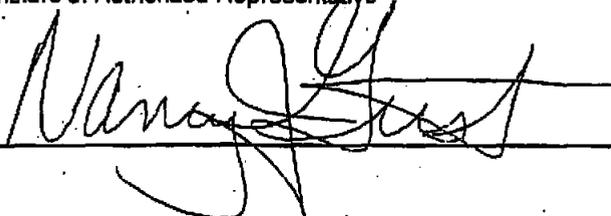
Telephone No.

Nancy Gust, SSD SB-90 Coordinator

(916) 874-6032

Signature of Authorized Representative

Date



8/6/02

**BEFORE THE
COMMISSION ON STATE MANDATES**

Test Claim of:
County of Sacramento

Training Requirements for Instructors and Academy Staff

POST Bulletin 01-05

(Amend Regulations 1001, 1052, 1053, 1055 and Adopt Commission Regulations 1070, 1071
and 1082)

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

The County of Sacramento is a voluntary member, along with all the other counties and cities, of the Commission on Peace Officers Standards and Training (POST). As a member of POST, certain county employees are required to participate in training in order to adhere to the minimum standards imposed by POST for recruitment and continuing professional training. This training is provided by a wide variety of instructors including individuals working at the Sacramento County Sheriff's Department. Currently there are no minimum training standards for the primary instructors of certain specialized training courses and/or key academy personnel that provide the POST mandated training.

The proposed regulations require, as of July 1, 2002, that primary instructors of enumerated specialized training courses complete a POST-certified instructor development course prior to conducting specialized training. Instructors, other than primary instructors, are required to complete the training if they were appointed as an instructor on or after July 1, 2002. Provisions are incorporated into the regulations for training presenters to conduct equivalency evaluations for instructors who have completed equivalent instructor training.

The proposed regulations also require certain key basic academy staff (Academy Director, Academy Coordinator and Recruit Training Officer) appointed on or after July 1, 2002, to complete a specified training course within one year of assignment. It is believed that the one-year grace period is necessary to accommodate operational necessities at most academies.

Proposed new regulations 1070 and 1071 identify the new minimum training standards for instructors of POST-Certified specialized training courses and Basic Academy Director, Coordinators and Recruit Training Officers. These regulations also list the respective training standards and a process for determining equivalency. Proposed new regulation 1082 identifies the minimum topic areas to be included in each specialized training instructor and academy staff course(s). Regulation 1001 is being modified to define "primary instructor" and the special training requirements that inure to that position.

Regulation 1052 is being revised to require that the qualifications of certain academy staff be evaluated, along with other criteria, in requests for course certification. Regulation 1053 would specify the elements that must be addressed in the resumes of instructors included in course certification request. Amended Regulation 1055 would require presenters to issue certificates of completion to specialized training instructor course graduates and lists the elements to be included.

The new POST Regulation 1070 (Minimum training standards for Instructors of POST-certified Specialized Training Courses) reads as follows:

- (a) Minimum training standards. Effective July 1, 2002, primary instructors of any POST-certified specialized training course listed below shall complete the specified training standard, or its equivalent, prior to leading instruction in the POST-certified course. Instructors other than primary instructors must complete the appropriate training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002. "Primary instructor" is defined in Regulation 1001, and the equivalency process is defined in Regulation 1070(b).

The courses listed below under "Training Standard" may refer to prerequisites which are stated in the POST Catalog of Certified Courses.

CERTIFIED COURSE	TRAINING STANDARD (Content for the following courses is in Regulation 1082)
Arrest and Control Techniques	Arrest and Control Instructor or Defensive Tactics Instructor
Baton/Impact Weapons	Baton/Impact Weapons Instructor or Defensive Tactics Instructor
Chemical Agents	Chemical Agents Instructor
Defensive Tactics Update	Defensive Tactics Instructor or Arrest and Control Instructor and Baton/Impact Weapons Instructor
Diversionary Devices	Diversionary Devices Instructor
Driver Training Update	Driver Training Instructor

Driver Training-Simulator Firearms (As stand-alone course or part of a larger course)	Driver Training Simulation Instructor Firearms Instructor
First Aid/CPR	First Aid/CPR Instructor
Force Options Simulator	Force Options Simulator Instructor
Hazardous Material-First Responder	Hazardous Material Train-the-Trainer
Institute for Criminal Investigation	Institute for Criminal Investigation Instructor
Less Lethal Weapons	Less Lethal Force Instructor
Motorcycle Training	Motorcycle Training Instructor
Physical Training (Basic Course)	Physical Training Instructor
Supervisory Leadership Institute	Supervisory Leadership Institute Instructor

(b) **Equivalency Process.** The training standard specified in (a) above may be satisfied through an equivalency evaluation performed by the presenter. An individual requesting an evaluation of non-POST-certified training to meet the minimum training standard shall submit to the presenter an expanded course outline for each course to be considered in the evaluation. Additionally, each course outline must indicate the name of the course, dates of training, and the name of the training presenter. Presenters will base their evaluations on a comparison of the submitted expanded course outline(s) against the content specified in Regulation 1082 for the required course. Documentation for approved equivalencies shall be retained by the presenter.

(c) **Proof of Completed Training Standard.** Presenters of the POST-certified courses specified in (a) above are required to maintain documentation which demonstrates satisfaction of the minimum training standard by their instructors who teach any of the certified courses listed in subsection (a). Documentation shall be a copy of the certificate of course completion issued by the training presenter of the required training standard in (a) above, or a POST training record (as maintained in the POST data base) for the instructor, or the expanded course outline(s) used in conducting an equivalency per (b) above. Documentation must be made available for POST inspection upon request.

The new POST Regulation 1071 (Minimum Training Standards for Basic Academy Directors, Coordinators, and Recruit Training Officers) reads as follows:

(a) The minimum training standards for Academy Directors, Academy Coordinators and Academy Recruit Training Officers apply only to those individuals appointed to those positions on or after July 1, 2002. The specified minimum standard shall be completed within one year from the date of appointment to any of the staff positions mentioned above.

STAFF POSITION**TRAINING STANDARD**

(Content for the following courses in Regulation 1082)

Academy Director
Academy Coordinator
Academy Recruit Training Officer

Academy Director/Coordinator Workshop*
Academy Director/Coordinator Workshop
Recruit Training Officer Workshop

* Attendance at the Academy Director/Coordinator Workshop is not required if the director has attended as a coordinator within three years prior to appointment as director.

- (b) Proof of Completed Training Standard. Academy directors shall maintain documentation which demonstrates satisfaction of the minimum training standard as required for the staff positions indicated in (a) above. Documentation shall be a certificate of course completion issued by the training presenter of the required training standard in (a) above or a POST training record (as maintained in the POST database) for the instructor. Documentation must be made available for POST inspection upon request.

The new POST Regulation 1082 (Minimum Content Requirements for POST-Certified Specialized Training Instructor and Academy Staff Courses) reads as follows:

- (a) Minimum course content. The POST-certified courses listed in this regulation, which is responsive to Regulations 1070 and 1071, shall meet the minimum content requirements as stated below. Presenters are expected to assess student proficiency in each topic area. The assessment (written/oral examination) must be consistent with learning objectives. Requirements for certification and presentation of these courses are specified in Regulations 1052-1056.

- (*) All instructors and academy staff courses shall include content on legal issues, performance evaluation techniques and safety protocols.

(1) Academy Director/Coordinator Workshop

- (A) Academy Management Guidelines
(B) Basic Training Support System
(C) Budgeting
(D) Ethics and Professionalism
(E) Instructional Quality

- (F) Instructional Planning
(G) Instructional Resources
(H) Learning Domain Instructional System
(I) Testing Regulations and Management
(*) (See above)

(2) Arrest and Control Instructor
(A) Body Physics and Dynamics

- (B) Control Techniques
 - (C) Handcuffing
 - (D) Injury Prevention
 - (E) Prisoner Restraint
 - (F) Searches
 - (G) Use of Force
 - (H) Weaponless Defense
 - (I) Weapon Retention/Takeaway
 - (*) (See above)
- (3) Baton/Weapons Instructor
- (A) Blocking Techniques
 - (B) Drawing Techniques
 - (C) Patterns of Movement
 - (D) Stances
 - (E) Strike Zones
 - (F) Striking Techniques
 - (G) Use of Force
 - (*) (See above)
- (4) Chemical Agents Instructor
- (A) Decontamination
 - (B) Delivery Methods
 - (C) Disposal of Aerosol Devices
 - (D) First Aid Protocols
 - (E) Gas Mask Applications
 - (F) Maintenance of Aerosol Devices
 - (*) (See above)
- (5) Defensive Tactics Instructor
The content for this course is a composite of the "Arrest and Control Instructor" and "Baton/Impact Weapons Instructor" courses
- (6) Diversionary Devices Instructor
- (A) Device Deployment and Ignition
 - (B) Overpressure
 - (C) Types of Devices
 - (D) Types of Diversions
- (*) (See above)
- (7) Driver Awareness Instructor
- (A) Course Management
 - (B) Defensive Driving
 - (C) Pre-Shift Inspection
 - (D) Reverse Driving Practical Applications
 - (E) Vehicle Control Techniques
 - (F) Vehicle Dynamics
 - (*) (See above)
- (8) Driver Awareness Instructor
- (A) Course Management
 - (B) Pursuit Guidelines
 - (C) Risk Assessment
 - (D) Vehicle Control Techniques
 - (*) (See above)
- (9) Driver Training Simulation Instructor
- (A) Code 3 and Pursuit Decision Making
 - (B) Driving Coordination/Communication Tactics
 - (C) Scenario Design
 - (D) Simulator Calibration/Troubleshooting
 - (E) Simulator Orientation
 - (F) Vehicle Control Techniques
 - (G) Vehicle Dynamics
 - (H) Work Station Operation
 - (*) (See above)
- (10) Firearms Instructor
- (A) Coaching
 - (B) Firearms Maintenance
 - (C) Fundamentals of Shooting
 - (D) Range Preparation
 - (E) Tactical Considerations
 - (F) Target Analysis
 - (G) Use of Force Guidelines
 - (*) (See above)

- (11) First Aid/CPR Instructor
- (A) Abdominal/Chest Injuries
 - (B) Bleeding
 - (C) Burns
 - (D) Cardiovascular System
 - (E) Communicable Disease
 - (F) CPR Techniques
 - (G) Dressings/Bandages
 - (H) Environmental Emergencies
 - (I) Fractures
 - (J) Obstetric/Pediatric Emergencies
 - (K) Patient Assessments
 - (L) Respiratory System
 - (M) Shock
 - (N) Wounds
 - (*) (See above)
- (12) Force Options Simulator Instructor
- (A) Force Options
 - (B) Scenarios Application
 - (C) Simulator Weapons Familiarization
 - (D) Tactics
 - (*) (See above)
- (13) Hazardous Materials Instructor (Train-the-Trainer)
- (A) Haz Mat Containment
 - (B) Haz Mat Identification and Assessment
 - (C) Incident Management
 - (D) Notification Protocols
 - (E) Placarding/Labeling
 - (F) Responder Awareness Actions
 - (G) Simulated Incidents
 - (*) (See above)
- (14) Institute for Criminal Investigation (ICI Instructor)
- (A) Workshop on adult experience-based learning
- (15) Less Lethal Force Instructor
- (A) Apprehension Techniques
 - (B) Level of Effectiveness
 - (C) Medical Treatment Protocol
 - (D) Precautions
 - (E) Projectile Specifications
 - (F) Psychological Effects
 - (G) Reporting Procedures
 - (*) (See above)
- (16) Motorcycle Training Instructor
- (A) Apexing
 - (B) Braking Demonstrations
 - (C) Cone Patterns
 - (D) Defensive Riding
 - (E) Enforcement Stops
 - (F) Incline Work
 - (G) Motorcycle Maintenance
 - (H) Pullouts
 - (I) Street Riding Techniques
 - (*) (See above)
- (17) Physical Training Instructor
- (A) Anatomy/Physiology
 - (B) Biometrics
 - (C) Calisthenics
 - (D) Circuit Training
 - (E) Conditioning Principles
 - (F) Exercise Prescription
 - (G) Injury Prevention and Assessment
 - (H) Motivation
 - (I) Nutrition
 - (*) (See above)
- (18) Recruit Training Officer Workshop
- (A) Basic Training Delivery System
- (B) Workshop for instructional competency verification
- (C) Student teaching in a classroom environment
- (*) (See above)

- | | |
|--|--|
| (B) Counseling Techniques | (19) Supervisory Leadership Institute |
| (C) Ethics and Professionalism | (SLI) Instructor |
| (D) Functions of the Recruit
Training Officer | (A) Workshop on experience-
based learning and
facilitation skills |
| (E) POST
Administration/Organization | (B) Competency verification /
evaluation session. |
| (F) Special Training Issues | (*) (See above) |
| (*) (See above) | |

The Amended POST Regulation 1001 (Definitions) was changed as indicated

No changes were made in definitions (a) through (z). (aa) was added as follows:

- (aa) "Primary instructor" is an individual responsible for the coordination and instruction for a particular topic. The responsibility includes oversight of topic content, logistics and other instructors.

All definitions after (aa) were subordinated by one.

The Amended POST Regulation 1052 (Requirements for Course Certification) was changed as follows:

- (a) Each request for course certification shall be evaluated in accordance with the following factors:

- (1) Course content and hours
- (2) Qualifications of instructors, and coordinators, and/or academy staff (Reference Regulations 1070 and 1071 for minimum training standards)

No changes [(b) through (b)(2)(A)(4)***continued]

- (5) Each academy shall comply with the minimum training standards for directors, coordinators and recruit training officers as prescribed in Regulation 1071.

- (c) Only those courses for which there is an identifiable and unmet need shall be certified.

- (d) Courses for which POST has established curriculum requirements must comply with those requirements. (See Regulation(s) 1081, 1082 and any training specifications referenced in Commission Procedure D-1 which have been incorporated into regulation by reference.

[(e) through (h)(4) *** continued]

The Amended POST Regulation 1052 (Requirements for Course Certification) was changed as follows:

(a) Course Certification Request. Any person or organization desiring to have a course certified shall contact a POST training consultant to ensure that the proposed course meets the required criteria and shall prepare and submit a complete course certification request package to POST. Submission of the following forms and related materials shall constitute a complete package:

- (1) Course Certification Request (POST 2-103 rev 7/92)
- (2) Instructor Resume(s) which shall include the following elements: 1) Course Title, 2) Course Subjects Assigned to Instruct, 3) Relevant Experience/Training, 4) Prior Instructor Training/Experience, 5) Education/Teaching Credential, and 6) Presenter/Coordinator Approval Signature. Documentation shall be submitted for those instructors or academy staff required to meet a minimum training standard as specified in Regulations 1070 or 1071 respectively.

[(3) through (b)(3) *** continued]

The Amended POST Regulation 1055 (Requirements for Course Certification) was changed as follows:

[(a) through (k) *** continued]

(l) Certificate of Completion: Any presenter of a POST-certified instructor development course listed in Regulation 1070 or presenters of the Academy Director/Coordinator Workshop or Recruit Training Officer Workshop shall issue certificates to students who successfully completed the training. The certificate must include title of course, dates of course, hours completed, and the POST course control number.

With the passage of this mandate, the County of Sacramento has been required to ensure that each instructor or key academy staff currently employed meets the new minimum training standard and/or receives the necessary training to comply. Additionally, a process has to be established to review the documentation of new instructors and/or key academy staff to ensure that they meet the minimum training standard and/or that they receive the required training before conducting classes.

This has been accomplished by requesting updated resumes of all primary instructors and key academy staff. After evaluation of the updated resumes any additional training will be scheduled as necessary.

B. LEGISLATIVE HISTORY PRIOR TO 1975

Prior to July 2002 instructors providing training for POST classes were only required to submit resumes outlining their expertise in the subject matter and their qualifications for teaching. On July 1, 2002 new POST regulations go into place that require minimum training standards for the instructors who provide certain specialized training courses and key academy personnel. These new regulations require the instructor and/or academy personnel to attend a POST-certified instructor development course (or an equivalent one). The proposed regulations also include provisions for equivalency determinations and exemptions from the training requirements.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

Commission on Peace Officer Standards and Training Regulations (POST), Amended 1001, 1052, 1053, 1055, and New 1070, 1071 and 1082. As related above, the mandated activities are all contained within these regulations. These regulations relate directly to the reimbursable provisions of this test claim.

D. COST ESTIMATES

1. Development Costs Commencing in Fiscal Year 2001-2002

1. Staff time to complete or update any necessary general, operations, or special orders as required.
2. Staff time to compile information to be distributed to instructors and key staff informing them of changes in regulations and what information they need to provide such as updated resumes, completed class certificates, etc.
3. Staff time to collect, review for completeness and evaluate contents of current, and any new, instructor and key academy staff information packages turned in.
4. Staff time to review information submitted for equivalency evaluation as instructor or key staff.
5. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
6. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
7. Staff time to provide required Basic Instructor Development course to new instructors.
8. Purchase of necessary computer hardware, software and any necessary programming services to set up database or modify existing database to track information in #6.

9. Staff time to enter information into database to track class, individual, instructor, academy staff, certificate information and any other data required by POST. (Database to be used for annual renewals; to provide POST information as necessary and during any audits of the program).
10. Staff time to fill out required documentation for POST
11. Staff time to schedule required training for instructors and key staff as necessary
12. Develop or update training for data entry, report management and required notices in the database.
13. Meet and confer with POST representatives
14. Material costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors & key academy personnel.

Estimated costs for staff time are \$26,298. Estimated cost for computer hardware, software and programming services are unknown at this time but could range from \$5,000 - \$20,000.

2. On-Going Costs

1. Staff time to collect, review for completeness and evaluate contents of new instructor and key academy staff resumes.
2. Staff time to collect, review for completeness and evaluate contents of annual renewal packages of instructor and key academy staff resumes.
3. Staff time to review information submitted for equivalency evaluation as instructor or key academy staff.
4. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
5. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
6. Staff time to provide required Basic Instructor Development course to new instructors.
7. Staff time to compile information to be distributed to instructors and key staff informing them of any changes to these regulations.
8. Staff time to enter information into database to track class, individual, instructor, academy staff and certificate information and any other data required by POST.
9. Staff time fill out required certificates.
10. Staff time to fill out required documentation for POST
11. Staff time to schedule required training for instructors and key staff as necessary
12. Staff time to meet and confer with POST representatives
13. Material costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors & key academy personnel.

Estimated On-Going Costs are \$25,000 per year.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the County of Sacramento as a result of the statute included in the test claim are all reimbursable costs 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 investigates, arrests and assists in the prosecution of criminal offenses. Consequently, only local government is responsible for training its peace officers. This mandate only applies to local government.

Mandate Carries Out a State Policy

From the Commission Regulations, it is clear that the state wishes all law enforcement instructors and key basic academy staff to meet minimum training standards. For that reason, the mandate was enacted, and thus carries out the state policy, through the requirement that all such instructors and academy staff meet minimum training requirements.

In summary, the Commission on Peace Officer Standards and Training Regulations mandate that the County of Sacramento advise and make certain that all instructors, and key academy staff, meet the new minimum training standards. This will involve receiving updated resumes from all instructors and academy staff, extensive evaluation, making sure required documentation is obtained and that a process is in place to review new instructors and/or academy staff. To this end, the County of Sacramento has had to evaluate its instructors and key basic academy staff in order to comply with this legislation.

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 Sacramento's test claim.

CONCLUSION

The enactment of POST Regulations 1070, 1071 and 1082, along with the amendment of POST Regulations 1001, 1052, 1053 and 1055, imposed a new state mandated program and costs on the County of Sacramento by requiring it to have all of its primary instructors and key basic academy staff meet the new minimum training standards. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement has any application to this claim.

G. CLAIM REQUIREMENTS

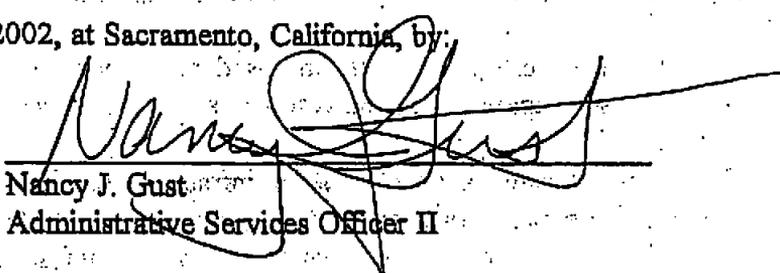
The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

- Exhibit 1: POST Regulation 1070
- Exhibit 2: POST Regulation 1071
- Exhibit 3: POST Regulation 1082
- Exhibit 4: POST Regulation 1001
- Exhibit 5: POST Regulation 1052
- Exhibit 6: POST Regulation 1053
- Exhibit 7: POST Regulation 1055

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 5th day of August, 2002, at Sacramento, California, by:


Nancy J. Gust
Administrative Services Officer II

(916) 874-6032
Phone No.

(916) 874-5263
Fax No.

ngust@sacsheriff.com
e-mail address

DECLARATION OF NANCY GUST

I, Nancy Gust, make the following declaration under oath:

I am the SB90 Coordinator for the County of Sacramento Sheriff's Department. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

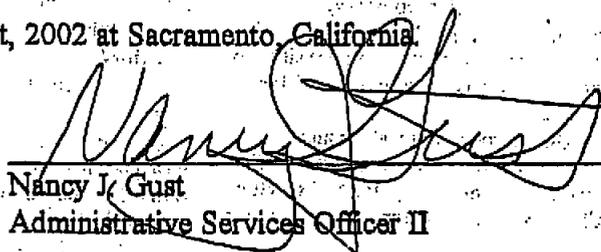
I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "costs mandated by the State", as defined in Government Code, Section 17514:

"Costs mandated by the State" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates 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."

I am personally conversant with the foregoing facts, 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 foregoing is true and correct of my own knowledge, except as to the matters which are stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 5th day of August, 2002 at Sacramento, California.



Nancy J. Gust
Administrative Services Officer II

Division 2. Commission on Peace Officer Standards and Training

Article 1. General

§ 1000. Objectives.

NOTE: Authority cited: Section 11422; Government Code. Reference: Section 13506, Penal Code.

HISTORY

1. Repealer of Article 1 (Sections 1000-1016, not consecutive) and now Article 1 (Sections 1000-1017, not consecutive) filed 12-29-78; effective thirtieth day thereafter (Register 78, No. 52). For prior history, see Registers 78, No. 22; 77, No. 48; 77, No. 22; 77, No. 14; 77, No. 5; 76, No. 33; 75, No. 49; 74, No. 35; 74, No. 23; 74, No. 21; 72, No. 40; 72, No. 23; 71, No. 23; 71, No. 1; 69, No. 48; 69, No. 10; 68, No. 27; 65, No. 18; 63, No. 24.
2. Repealer of Article 1 (Sections 1000-1017) filed 12-21-79 as an emergency; designated effective 1-1-80. Certificate of Compliance included (Register 79, No. 51). For prior history, see Register 79, No. 20.
3. Repealer of Section 1000 filed 2-10-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 7).

§ 1001. Definitions.

(a) Acceptable College Education is:

(1) Courses or degrees provided by a community college, college, or university which have been accepted by a community college, college or university accredited by a recognized national or regional accrediting body.

(2) Courses or degrees provided by a community college, college, or university accredited by a recognized national or regional accrediting body.

(b) "The Act" refers to Part 4, Title 4 of the Penal Code of California, commencing at Section 13500 and entitled, "Standards and Training of Local Law Enforcement Officers."

(c) "Actual course presentation cost" is the total allowable direct and indirect expenses (see Regulation 1054) to conduct one presentation of a POST-certified course, less any subventions from outside sources. Subventions received from outside sources may include, but are not limited to, fees, grants, gifts. Full-Time Equivalent Student (FTES) shares from community college affiliations, and monetary equivalents of services, equipment or materials provided in support of the course.

(d) "Agency presenter" is a department, or departments working together under a joint powers or other agreement, eligible for POST reimbursement which presents POST-certified training course(s).

(e) "Assistant Department Head" is an individual occupying the first position subordinate to a department head, is generally responsible for supervision of middle managers and/or supervisors, and is a position for which commensurate pay is authorized.

(f) "Backfill Reimbursement" is the reimbursable allowance for an agency's expense of paying salary at the overtime rate to a peace officer employee who replaces another peace officer employee for his/her attendance of selected POST-certified training [reference regulation 1015(e)].

(g) "Certificate programs" are programs in which the Commission applies specific criteria for awards of certificates as a means of recognizing achievements in education, training, and experience and for the purpose of raising the level of competence of law enforcement officers, dispatchers, and records supervisors. Requirements for professional certificates are set forth in Regulation 1011 and Procedures F and H-4.

(h) "Certified Course" (see "POST-certified Course").

(i) "Cheating" is any attempt or act by a student to gain an unfair advantage or give an unfair advantage to another student or group of students taking a POST- or training-presenter required test in a POST-certified course. Cheating includes, but is not limited to, the following prohibited acts:

(1) Using any materials which would give an unfair advantage to oneself, or providing such materials to other students so that they may gain an unfair advantage when preparing for or taking a test. Materials include, but are not limited to, oral or written information, graphics, and

information recorded on audiotapes, videotapes and/or computer diskettes.

(2) Using or possessing POST- or presenter-developed test materials unless one is in the process of taking a test or engaging in an after-examination review of such test while under the supervision of a presenter's staff member or presenter-authorized test proctor.

(3) Obtaining, or attempting to obtain, test information improperly from any source. Such actions include, but are not limited to, copying from another student, theft of test materials, receiving or coercing test answers from others, and/or unauthorized observation of scenario or exercise tests.

(4) Plagiarism.

(5) Intentionally aiding, abetting or concealing an act of cheating.

(j) "Commission" is the Commission on Peace Officer Standards and Training.

(k) "Commuter Trainee" is one who attends a training course and travels between his or her department or normal residence and the course site each day.

(l) "Department or Participating Department" is any law enforcement entity which has made application to and been accepted by the Commission to participate in POST programs and receive services. Eligibility for participation in POST programs is set forth in Regulations 1009 and 1010. Any department may participate in the POST Certificate Programs, however, only those departments eligible for state aid may participate in the POST Reimbursement Program.

(m) "Department Head" is the chief law enforcement executive.

(n) "Executive Position" is a position above the middle management position, up to and including department head, for which commensurate pay is authorized, and is responsible principally for command assignments and the supervision of subordinate middle management and supervisory positions. The executive position is most commonly the rank of captain or higher.

(o) "First-level Supervisory Position" is the supervisory peace officer position between the operational level and the "middle management position", for which commensurate pay is authorized, and is responsible principally for the direct supervision of subordinates, or is subject to assignment of such responsibilities. The first-level supervisory position does not encompass positions with limited or intermittent supervisory responsibilities, i.e., quasi-supervisory positions. The first-level supervisory position is most commonly the rank of sergeant.

(p) "Full-time Employment" is employment as defined by a state, local, or departmental regulation, charter, resolution, or ordinance; wherein the employee normally works in excess of 20 hours weekly or 87 hours monthly; is tenured or has a right to due process in personnel matters; and is entitled to workers compensation and retirement provisions as are other full-time employees of the same personnel classification in the department.

(q) "General law enforcement duties" are duties which include the investigation of crime, patrol of a geographic area, responding to the full range of requests for police services, and performing any enforcement action on the full range of law violations.

(r) "High School" is a U.S. school accredited as a high school by the department of education of the state in which the high school is located, or a U.S. school accredited as a high school by the recognized regional accrediting body, or a U.S. school accepted as a high school by the state university of the state in which the high school is located. Inclusive in this definition are schools for the dependents of U.S. military personnel which comprise the Department of Defense Dependent School System.

(s) "Lateral Entry" refers to a hiring practice which may exempt an individual from some of the department's hiring and training procedures, as the individual's prior experience, level of responsibility, and/or training are taken into consideration for appointment.

(t) "Legislatively mandated training" is training that may or may not be POST-certified, and shall consist of POST-specified curriculum as required by law. It may be presented as a stand-alone course, a tele-course, or as part of a POST-certified course. Minimum standards for legislatively mandated training are set forth in Regulation 1081.

(u) "Limited Function Peace Officer" is a deputy sheriff, regularly employed and paid as such, of a county, a police officer of a city, a police officer of a district authorized by statute to maintain a police department, or a peace officer designated on or prior to June 30, 1985, to be a peace officer as enumerated in Penal Code section 830.1(c), and is employed to perform duties other than the prevention and detection of crime and the general enforcement of the criminal laws of the state.

(v) "Middle Management Position" is a management peace officer position between the first-level supervisory position and the department head position, for which commensurate pay is authorized, and is responsible principally for management and/or command duties. The middle management position is most commonly the rank of lieutenant or higher.

(w) "Non-sworn Personnel Performing Police Tasks" are those full-time, non-peace officer employees of participating departments for whom reimbursement may be claimed, based upon actual job assignment, as determined and approved by the Commission.

(x) "Paraprofessional" is a full time employee of a department and includes, but is not limited to, such job classifications as: community service officer, police trainee, and police cadet.

(y) "POST Administrative Manual (PAM)" is a document containing Commission Regulations, and Procedures, guidelines, laws, and forms relating to POST programs.

(z) "POST-certified Course" or "Certified Course" is a program of instruction authorized by the Commission for presentation that follows the requirements set forth in Regulations 1051-1058.

(aa) "Primary Instructor" is an individual responsible for the coordination and instruction for a particular topic. The responsibility includes oversight of topic content, logistics, and other instructors.

(bb) "Public Safety Dispatcher" is a non-peace officer who is employed full-time or part-time to perform duties which include receiving emergency calls for law enforcement service and/or dispatching law enforcement personnel.

(cc) "Quasi-supervisory Position" is a peace officer position above the first-level which is assigned limited responsibility for the supervision of subordinates, or intermittently is assigned the responsibility of first-level supervision, and is a position for which commensurate pay is authorized. The quasi-supervisory position is most commonly a rank immediately below that of sergeant.

(dd) "Records Supervisor" is a full-time, non-peace officer employee of a participating California law enforcement agency who performs law enforcement records supervising duties which include records maintenance, control, release, destruction, and security 50% or more of the time within a pay period.

(ee) "Regular Officer" is a sheriff, undersheriff, or deputy sheriff, regularly employed and paid as such, of a county, a police officer of a city, a police officer of a district authorized by statute to maintain a police department, a police officer of a department or district enumerated in Penal Code Section 13507, or a peace officer member of the California Highway Patrol.

(ff) "Reimbursement" is the financial aid allocated from the Peace Officer Training Fund, as provided in Penal Code section 13523.

(gg) "Reimbursement Program" is the financial aid allocation program provided for in Penal Code section 13523 in which the Commission makes payment for POST-certified training expenses. Departments which have been approved by the Commission and which employ full-time peace officers and/or dispatchers described in Penal Code section 13510 are eligible for financial aid.

(hh) "Reimbursement Plans" are assigned to POST-certified courses. Each plan consists of a combination of training-related expenditures approved by the Commission. The various plans are set forth in Commission Procedure B-2.

(ii) "Resident Trainee" is one who, while away from his or her departmental normal residence, attends a training course and takes lodging and meals at or near the course site for one or more days/nights.

(jj) "Specialized Law Enforcement Department" is a department or segment of a department which:

(1) has policing or law enforcement authority imposed by law and

whose employees are peace officers as defined by law; and

(2) is engaged in the enforcement of regulations or laws limited in scope or nature; or

(3) is engaged in investigative or other limited law enforcement activities in the enforcement of criminal law; and

(4) is authorized by the Commission to participate in the Specialized Law Enforcement Certificate Program.

(kk) "Specialized Peace Officer" is a peace officer employee of a specialized law enforcement agency authorized by the Commission to participate in the Specialized Law Enforcement Certificate Program.

(ll) "Three-year rule" is the rule that relates to the necessity to requalify basic training or arrest and firearms (PC-832) training. (Reference Regulations 1008 and 1080).

(mm) "Trainee" is an employee of a department who attends a POST-certified course.

NOTE: Authority cited: Sections 13506 and 13510.3, Penal Code. Reference: Sections 13503, 13507, 13510, 13510.1, 13510.3, 13510.5 and 13523, Penal Code.

HISTORY

1. Amendment filed 12-3-80; effective thirtieth day thereafter (Register 80, No. 49).
2. Amendment of subsections (h), (i) and (y) filed 5-14-82; designated effective 7-1-82 (Register 82, No. 20).
3. Amendment of subsections (c), (d), (h), (k), (n), (l) and (x) filed 2-10-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 7).
4. Amendment filed 1-9-86; effective thirtieth day thereafter (Register 86, No. 2).
5. Amendment filed 11-29-88; operative 12-29-88 (Register 88, No. 51).
6. Amendment of subsection (h) filed 1-5-93; operative 2-4-93 (Register 93, No. 2).
7. Amendment of subsections (a)-(a)(3) and NOTE filed 6-10-93; operative 7-12-93 (Register 93, No. 24).
8. New subsections (c) and (d), subsection redesignation and amendment of NOTE filed 12-22-93; operative 1-21-94 (Register 93, No. 52).
9. Editorial correction repositioning explanatory note to subsection (e) and restoring inadvertently deleted text to subsection (j) (Register 94, No. 35).
10. New subsections (h)-(h)(5) and subsection relettering filed 1-14-97; operative 2-13-97 (Register 97, No. 3).
11. Amendment of subsection (p) filed 4-23-97; operative 5-23-97 (Register 97, No. 17).
12. New subsection (y), subsection relettering and amendment of NOTE filed 1-9-98; operative 2-8-98 (Register 98, No. 2).
13. Amendment of subsection (y) filed 3-31-99; operative 4-30-99 (Register 99, No. 14).
14. Amendment filed 8-10-2000; operative 9-9-2000 (Register 2000, No. 32).
15. New subsection (aa) and subsection relettering filed 7-17-2001; operative 7-1-2002 (Register 2001, No. 29).

§ 1002. Minimum Standards for Employment. (Reference Regulation 1007 for reserve peace officer standards)

(a) Every peace officer, other than reserve peace officers, employed by a department shall be selected in conformance with the following requirements:

(1) Felony Conviction. Government Code section 1029(a)(1). Employment of convicted felons is prohibited.

(2) Fingerprint and Criminal History Check. Government Code sections 1030 and 1031(c). Fingerprinting and search of local, state and national files to reveal any criminal record.

(3) Citizenship. Government Code sections 1031(a) and 1031.5. Citizenship requirements for peace officers. Government Code section 24103. Citizenship requirements for deputy sheriffs and deputy marshals.

Vehicle Code section 2267. Citizenship requirements for California Highway Patrol officers.

(4) Age. Government Code section 1031(b). Minimum age of 18 years for peace officer employment.

(5) Moral Character. Government Code section 1031(d). Good moral character as determined by a thorough background investigation.

The background investigation shall be conducted as prescribed in the PAM Section C-1. The background investigation shall be completed on or prior to the appointment date.

(6) Education. Government Code section 1031(e). United States high school graduation, passage of the General Education Development Test

HISTORY

1. New Article 2 (Sections 1020-1056) filed 11-28-77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6-8-77 (Register 77, No. 48).
2. Repealer of Article 2 (Sections 1020-1056) and new Article 2 (Section 1020 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 4-1-80 (Register 81, No. 9).
3. Change without regulatory effect renumbering former section 1020 to section 1045, and amendment of agency street addresses, filed 2-24-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 9).
4. Amendment of section and appendix filed 12-6-95; operative 1-5-96. Approved by Fair Political Practices Commission 10-20-95. Submitted to OAL for printing only (Register 95, No. 49).

Article 3. Regulatory Procedures**§ 1051. Course Certification Program.**

- (a) The Commission administers the Course Certification Program to

provide needed and quality training to law enforcement personnel. References to a course being "POST-certified" means that the Commission has approved presentation of the course in accordance with Regulations 1052-1055.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

1. New section filed 3-25-91; operative 4-24-91 (Register 91, No. 16).
2. Amendment of section filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).

§ 1052. Requirements for Course Certification.

(a) Each request for course certification shall be evaluated in accordance with the following factors:

- (1) Course content and hours

[The next page is 65.]

(2) Qualifications of instructors, coordinators, and/or academy staff (Reference Regulations 1070 and 1071 for minimum training standards)

(3) Physical facilities appropriate for the training

(4) Cost of course

(5) Potential clientele and volume of trainees

(6) Need and justification for course

(7) Methods of course presentation

(8) Availability of staff to administer the course

(9) Course evaluation processes

(10) Instructor/trainee ratios

(11) Provisions for student safety

(b) In addition to the factors specified in Regulation 1052(a), each request for certification of a Regular Basic Course presented by an academy [as defined in Commission Procedure D-1-3(a)(5)] shall be evaluated in accordance with the following factors:

(1) Each academy shall designate an academy director whose qualifications, based upon education, experience, and training shall include a demonstrated ability to manage an academy.

(A) Academy management responsibilities shall include:

1. Integrating and sequencing instruction;
2. Managing instructional methods, testing, and remediation;
3. Hiring, assigning, and evaluating performance of the instructor(s), coordinator(s), training officer(s), and staff;
4. Coordinating, budgeting, and controlling academy resources; and
5. Maintaining academy discipline.

(2) Each academy shall designate an academy coordinator whose qualifications, based upon knowledge, experience, and training, shall include a demonstrated ability to coordinate the instruction and management of the Regular Basic Course instructional system.

(A) Regular Basic Course instructional system coordination responsibilities shall include:

1. Developing sequenced instructional schedules;
2. Overseeing and evaluating instructional, technological, testing, and evaluation methods;
3. Participating in the hiring process of instructor(s), training officer(s) and staff, and making recommendations for their selection and assignment; and
4. Evaluating instructor(s) and training officer(s) performance.

(3) Each academy shall be supervised at all times by an academy director or coordinator when instruction is being conducted.

(4) Each college academy shall institute an advisory committee of law enforcement officials to assist in providing logistical support and validation of the training.

(5) Each academy shall comply with the minimum training standards for directors, coordinators and recruit training officers as prescribed in Regulation 1071.

(c) Only those courses for which there is a identifiable and unmet need shall be certified.

(d) Courses for which POST has established curriculum requirements must comply with those requirements. (See Regulation(s) 1081, 1082 and any training specifications referenced in PAM, section D-1, which have been incorporated into regulation by reference.)

(e) Training presented in conjunction with association meetings or conferences may be certified subject to the requirements set forth in Regulations 1051-1058, along with the following conditions:

- (1) Training shall not be certified as POST reimbursable
- (2) Training presented by an association or in conjunction with an association meeting or conference shall not be certified if attendance is restricted to association members.

(f) The Commission shall only endorse or co-sponsor courses, seminars or conferences when POST has assisted in planning the event, developing the subject matter or program, and selecting instructors or speakers.

(g) No course shall be certified which restricts attendance to a single agency, unless the purpose of the course is to improve that agency and attendance by non-agency personnel would jeopardize the success of the course.

(h) The presenter of a POST-certified course shall review all audio-visual training materials prior to use in the classroom. The review of audio-visual training material shall emphasize the avoidance of materials which depict situations, tactics, and procedures that could lead a trainee to take inappropriate actions on the job. The review shall also include careful examination of depictions of law enforcement work to assure consistency with existing law and accepted practices. (For reference see "POST Guidelines for Reviewing Audio-Visual Training Materials").

(1) For the purposes of this regulation, "audio-visual training materials" are defined as: audio tapes, videotapes, films, slides, and other similar media. Classroom hand-out materials are not included.

(2) Regulation of 1052(h) shall be effective July 14, 1993 and shall apply to all audio-visual training materials being considered for use in POST-certified courses commencing after that date. The regulation shall apply to materials previously used by the course presenters only as they are considered for re-use in POST-certified courses.

(3) Audio-visual materials cataloged on the "POST-Approved Media List," maintained by the Commission on Peace Officer Standards and Training, need not be subjected to the review process described in this section.

(4) Publicly available broadcast material pertinent to current training topics need not be subjected to the review process described in this section.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

1. New section filed 3-25-91; operative 4-24-91 (Register 91, No. 16).
2. New subsections (g)-(g)(4) filed 7-14-93; operative 7-14-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 29).
3. Amendment of subsection (d) and new subsections (d)(1)-(2) filed 5-12-94; operative 5-29-94 (Register 94, No. 19).
4. New subsections (b)-(b)(4) and subsection relettering filed 10-28-96; operative 11-27-96 (Register 96, No. 44).
5. Amendment of subsections (d), (g), (h)(2) and (h)(3) filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).
6. Amendment of subsections (a)(1) and (a)(2), new subsection (b)(5) and amendment of subsection (d) filed 7-17-2001; operative 7-1-2002 (Register 2001, No. 29).

§ 1053. Course Certification Request and Review Process.

(a) Course Certification Request. Any person or organization desiring to have a course certified shall first telephonically contact a POST Training Delivery consultant for an evaluation of the factors described in Regulation 1052(a). If the evaluation is favorable, a complete course certification request package shall be submitted to POST. Submission of the following forms and related materials shall constitute a complete package:

- (1) Course Certification Request (POST 2-103, rev. 5/00)
- (2) Instructor Resume(s) which shall include the following elements: 1) Course Title, 2) Course Subjects Assigned to Instruct, 3) Relevant Experience/Training, 4) Prior Instructor Training/Experience, 5) Education/Teaching Credential, and 6) Presenter/Coordinator Approval Signature. Documentation shall be submitted for those instructors or academy staff required to meet a minimum training standard as specified in Regulations 1070 or 1071 respectively.

(3) Course Budget (POST 2-106 Rev. 7/93), if the proposed course will require a tuition. (Reference Regulation 1054, Requirements for Course Budget)

(4) Expanded course outline which minimally includes subject topics to the third level of detail to sufficiently indicate technical information in the subject areas.

(5) Hourly distribution schedule indicating, by day of the week, the instructors and topics scheduled during each course hour. (Example formats are available from POST)

(6) Student Safety policies and procedures for courses that include manipulative skills training. (Reference *POST Guidelines for Student Safety in Certified Courses*). The policies and procedures must minimally address:

- (A) Rules of Safety and Conduct,
- (B) Reporting and Handling Injuries,
- (C) Ratios of Instructional Staff to Students, and

(2) Qualifications of instructors, coordinators, and/or academy staff (Reference Regulations 1070 and 1071 for minimum training standards)

(3) Physical facilities appropriate for the training

(4) Cost of course

(5) Potential clientele and volume of trainees

(6) Need and justification for course

(7) Methods of course presentation

(8) Availability of staff to administer the course

(9) Course evaluation processes

(10) Instructor/trainee ratios

(11) Provisions for student safety

(b) In addition to the factors specified in Regulation 1052(a), each request for certification of a Regular Basic Course presented by an academy (as defined in Commission Procedure D-1-3(a)(5)) shall be evaluated in accordance with the following factors:

(1) Each academy shall designate an academy director whose qualifications, based upon education, experience, and training shall include a demonstrated ability to manage an academy.

(A) Academy management responsibilities shall include:

1. Integrating and sequencing instruction;

2. Managing instructional methods, testing, and remediation;

3. Hiring, assigning, and evaluating performance of the instructor(s), coordinator(s), training officer(s), and staff;

4. Coordinating, budgeting, and controlling academy resources; and

5. Maintaining academy discipline.

(2) Each academy shall designate an academy coordinator whose qualifications, based upon knowledge, experience, and training, shall include a demonstrated ability to coordinate the instruction and management of the Regular Basic Course instructional system.

(A) Regular Basic Course instructional system coordination responsibilities shall include:

1. Developing sequenced instructional schedules;

2. Overseeing and evaluating instructional, technological, testing, and remediation methods;

3. Participating in the hiring process of instructor(s), training officer(s) and staff, and making recommendations for their selection and assignment; and

4. Evaluating instructor(s) and training officer(s) performance.

(3) Each academy shall be supervised at all times by an academy director or coordinator when instruction is being conducted.

(4) Each college academy shall institute an advisory committee of law enforcement officials to assist in providing logistical support and validation of the training.

(5) Each academy shall comply with the minimum training standards for directors, coordinators and recruit training officers as prescribed in Regulation 1071.

(c) Only those courses for which there is a identifiable and unmet need shall be certified.

(d) Courses for which POST has established curriculum requirements must comply with those requirements. (See Regulation(s) 1081, 1082 and any training specifications referenced in PAM, section D-1, which have been incorporated into regulation by reference.)

(e) Training presented in conjunction with association meetings or conferences may be certified subject to the requirements set forth in Regulations 1051-1058, along with the following conditions:

(1) Training shall not be certified as POST reimbursable

(2) Training presented by an association or in conjunction with an association meeting or conference shall not be certified if attendance is restricted to association members.

(f) The Commission shall only endorse or co-sponsor courses, seminars or conferences when POST has assisted in planning the event, developing the subject matter or program, and selecting instructors or speakers.

(g) No course shall be certified which restricts attendance to a single agency, unless the purpose of the course is to improve that agency and attendance by non-agency personnel would jeopardize the success of the course.

(h) The presenter of a POST-certified course shall review all audio-visual training materials prior to use in the classroom. The review of audio-visual training material shall emphasize the avoidance of materials which depict situations, tactics, and procedures that could lead a trainee to take inappropriate actions on the job. The review shall also include careful examination of depictions of law enforcement work to assure consistency with existing law and accepted practices. (For reference see "POST Guidelines for Reviewing Audio-Visual Training Materials").

(i) For the purposes of this regulation, "audio-visual training materials" are defined as: audio tapes, videotapes, films, slides, and other similar media. Classroom hand-out materials are not included.

(2) Regulation of 1052(h) shall be effective July 14, 1993 and shall apply to all audio-visual training materials being considered for use in POST-certified courses commencing after that date. The regulation shall apply to materials previously used by the course presenters only as they are considered for re-use in POST-certified courses.

(3) Audio-visual materials cataloged on the "POST-Approved Media List," maintained by the Commission on Peace Officer Standards and Training, need not be subjected to the review process described in this section.

(4) Publicly available broadcast material pertinent to current training topics need not be subjected to the review process described in this section.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

1. New section filed 3-25-91; operative 4-24-91 (Register 91, No. 16).
2. New subsections (g)-(g)(4) filed 7-14-93; operative 7-14-93 pursuant to Government Code section 11346.2(d) (Register 93, No. 29).
3. Amendment of subsection (d) and new subsections (d)(1)-(2) filed 5-12-94; operative 5-29-94 (Register 94, No. 19).
4. New subsections (b)-(b)(4) and subsection relettering filed 10-28-96; operative 11-27-96 (Register 96, No. 44).
5. Amendment of subsections (d), (g), (h)(2) and (h)(3) filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).
6. Amendment of subsections (a)(1) and (a)(2), new subsection (b)(5) and amendment of subsection (d) filed 7-17-2001; operative 7-1-2002 (Register 2001, No. 29).

§ 1053. Course Certification Request and Review Process.

(a) Course Certification Request. Any person or organization desiring to have a course certified shall first telephonically contact a POST Training Delivery consultant for an evaluation of the factors described in Regulation 1052(a). If the evaluation is favorable, a complete course certification request package shall be submitted to POST. Submission of the following forms and related materials shall constitute a complete package:

(1) Course Certification Request (POST 2-103, rev. 5/00)

(2) Instructor Resume(s) which shall include the following elements: 1) Course Title, 2) Course Subjects Assigned to Instruct, 3) Relevant Experience/Training, 4) Prior Instructor Training/Experience, 5) Education/Teaching Credential, and 6) Presenter/Coordinator Approval Signature. Documentation shall be submitted for those instructors or academy staff required to meet a minimum training standard as specified in Regulations 1070 or 1071 respectively.

(3) Course Budget (POST 2-106 Rev. 7/93), if the proposed course will require a tuition. (Reference Regulation 1054, Requirements for Course Budget)

(4) Expanded course outline which minimally includes subject topics to the third level of detail to sufficiently indicate technical information in the subject areas.

(5) Hourly distribution schedule indicating, by day of the week, the instructors and topics scheduled during each course hour. (Example forms are available from POST)

(6) Student Safety policies and procedures for courses that include manipulative skills training. (Reference *POST Guidelines for Student Safety in Certified Courses*). The policies and procedures must minimally address:

(A) Rules of Safety and Conduct,

(B) Reporting and Handling Injuries,

(C) Ratios of Instructional Staff to Students, and

(D) The Presenter's Commitment to Adhere to the POST-Approved Expanded Course Outline.

(b) Course Certification Review.
 Within 14 calendar days of receipt of a course certification request, the Commission shall review the documents included in the package and notify the requestor, in writing, that the package is either complete or incomplete. In event the package is incomplete, the Commission shall inform the requestor of the document(s) which must be submitted before further action will be taken to consider certification of the course.

(2) The Commission shall review each complete course certification request package and base its decision on evaluation of those factors enumerated in Regulation 1052. Within 60 calendar days of receipt of a complete package, the requestor shall be notified, in writing, of the Commission's decision to approve or disapprove certification of the course.

(3) Any requestor not satisfied with a certification action may submit an appeal to the Commission in accordance with Regulation 1058.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

1. New section filed 3-25-91; operative 4-24-91 (Register 91, No. 16).
2. Amendment of subsection (a)(3) filed 12-22-93; operative 1-21-94 (Register 93, No. 52).
3. Change without regulatory effect amending subsection (a)(1) filed 6-2-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 22).
4. Amendment filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).
5. Amendment of subsection (a)(2) filed 7-17-2001; operative 7-1-2002 (Register 2001, No. 29).

§ 1054. Requirements for Course Budget.

The following tuition and budget requirements and limits are to be used in completing the Course Certification Request (POST 2-103, rev. 5/00) and Course Budget (POST 2-106, rev. 7/93) by a course coordinator or planning to present a POST-certified, tuition-based course. Allowable per-presentation costs for establishing tuition and course budgets are as follows:

(a) Instructional Costs. Up to \$35 per hour, except as noted below, for each hour of instruction, per instructor, may be claimed. Fringe benefits and instructor preparation shall be included in this amount. Up to \$90 per instructional hour may be approved in instances of special need for particular expertise, based upon written justification from the presenter. On those limited occasions where it may be necessary to obtain special expertise to provide training, the maximum of \$90 per instructional hour may be exceeded upon prior approval of the Executive Director.

(b) Development Costs for Tuition-Based Courses. When POST has specifically requested development of a new course or revision of an existing course, presenter development costs may be negotiated with POST. When approved by the Executive Director, such costs shall be prorated as a portion of tuition for an agreed-upon number of presentations.

(c) Coordination. Coordination costs may be requested based on the type of services performed. Coordination is categorized as:

- (1) General Coordination, and
 - (2) Presentation Coordination.
- General Coordination: General Coordination is the performance of tasks associated with the development, pre-planning, and maintenance of any certified course. Maintenance includes: scheduling, selecting instructors, eliminating duplicative subject matter, providing alternate instructors/instruction as necessary, allocating instructional time to each subject, evaluating instructors, selecting training sites, supervising support staff, and administrative reporting. General Coordination costs may be charged at the rate of \$55 per 8 hours of instruction but may not exceed \$40 per presentation.

Presentation Coordination: Presentation Coordination is the performance of tasks related to course quality control, i.e., observing and evaluating instructors at the instructional site; identifying the need and arranging the appearance of alternate instructors when assigned instructors are not available; and being responsible for the development of a positive

learning environment. It is required that the Presentation Coordinator be in the classroom, or its immediate vicinity, to resolve problems that may arise relating to the presentation of a course. Approved rates for presentation coordination, per instructional hour, may range from \$15 to \$25. Rates that exceed \$15 per hour must be supported by written justification that substantiates the higher cost of the coordinator.

(d) Clerical Support. Actual hourly rates for clerical support may be allowed up to \$15 per instructional hour in accordance with the following formula:

Course Length	Maximum Hours of Clerical Support Permitted
24 hours or less	24 hours
25 to 40	40 hours
Over 40 hours	100 hours

(e) Printing/Reproduction. The actual cost for printing of brochures and handouts may be allowed. Requests for reproduction costs shall not exceed 9 cents per page. Student workbooks are not considered handouts.

(f) Books/Films/Videotapes/Instructional Materials/Equipment. Actual expenses may be allowed, provided each expense is identified. Expendables, such as programmed texts, may be allowed in the same manner. A one-time expenditure for purchase of textbooks may be allowed, provided the textbooks will be used in future course presentations. Films, videotapes, and instructional aids should be rented or obtained without charge. When rental costs for multiple presentations will exceed the cost of acquisition, purchase may be authorized by POST. If a film/videotape, instructional material, or equipment purchase is authorized by POST in advance, such materials shall be used in future course presentations and will remain the property of POST. Purchase cost shall be prorated over a reasonable number of presentations based on the item's anticipated service life. If the course is decertified, or if the purchased books, films, videotapes, instructional materials, or equipment are no longer necessary for use in the course, they shall be delivered to POST.

(g) Paper/Office Supplies/Mailing. Actual expenses may be allowed, provided each expense is identified.

(h) Coordinator/Instructor(s) Travel. An estimate is to be made of necessary travel expenses for advance budget approval. Expenses for local area travel are allowable only when travel exceeds 25 miles one way, or if travel is necessary to an additional course site. If a course presentation is authorized outside of a 25-mile radius of the presenter's principle place of business, travel expenses may be allowed in accordance with existing State regulations covering travel and per diem.

(i) Miscellaneous. Any other cost of materials and other direct items of expense may be approved by POST, based upon documented costs.

(j) Indirect Costs. Indirect costs are allowable for expenses not assignable as direct costs. Indirect costs may not exceed 20% of the total direct costs.

(k) Calculation of tuition. All budgeted costs (direct and indirect) are added to determine the total cost. The tuition cost per student shall be determined by dividing the total cost by the maximum number of students approved per presentation (see Regulation 1055(f)). For each presentation, course presenters may exceed the maximum enrollment up to 20% to compensate for unavoidable under-enrollments due to late cancellations. However, it is the presenter's responsibility to monitor over-enrollment so that by the end of the fiscal year, the total number of students does not exceed the approved maximum number established by the terms of certification. In the event over-enrollment is not properly managed and adjusted during the fiscal year, the Commission may:

- (1) Reduce the course tuition.
 - (2) Require the presenter to conduct presentation(s) without tuition.
 - (3) Require the presenter to provide prorated refunds to trainees, or
 - (4) Decertify the course.
- (l) Subventions.

Presenters shall include on the Course Budget (POST 2-106, rev. 7/93) any outside subventions provided to support presentation of the proposed course.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

1. New section filed 3-25-91; operative 4-24-91 (Register 91, No. 16).
2. A amendment of section heading, first paragraph, subsections (b)-(c), and new subsection (h) and (m) filed 12-22-93; operative 1-21-94 (Register 93, No. 52).
3. A amendment of subsections (a), (c)(2), (d)-(f) and (j) filed 7-8-99; operative 7-8-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 28).
4. Change without regulatory effect amending first paragraph filed 6-2-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 22).
5. A amendment of first paragraph and subsections (b), (c), (e) and (h) and repealer of subsection (m) filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).

§ 1055. Requirements for Course Presentation.

(a) **Term of Certification:** Course certification shall be made on a fiscal year basis, subject to annual review. A course shall be certified for a specified number of presentations during a fiscal year. It shall be subject to the restrictions or stipulations specified by POST.

(b) **Certification Non-Transferable:** A course that has been certified is valid for presentation only by the presenter receiving the certification and is not transferable to another presenter.

(c) **Publicity:** A certified course, if publicized, must use the exact title as certified by POST. No course may be publicized prior to course certification. The POST certification number shall be shown on all materials being publicized. Presenters shall clearly indicate on any course announcements, brochures, bulletins, or publications that POST has certified the individual course offering.

(d) **Changes to Course or Course Budget:** A course, once certified under the conditions specified in the Course Certification Request, shall not be changed or modified without prior POST approval. Changes in subventions from outside sources received to support courses shall be reported in writing to POST within 30 days of the change.

(e) **Course Announcements:** A Course Announcement (POST 2-110 Rev. 8/89) shall be submitted to POST for each proposed course presentation. The Course Announcement must be submitted to POST at least 30 calendar days prior to the presentation of the course. An hourly distribution schedule must be attached to each Course Announcement. A course control number, issued by POST upon approval of the presentation, must be used when making references pertaining to a particular course offering.

(f) **Limitations on Course Enrollments:** The Commission shall designate the maximum number of students that may attend each course during a fiscal year.

(h) **Modification Procedures:** If subsequent to the Commission having approved a Course Announcement, the course coordinator becomes aware of the need to make any changes related to presentation of the course, such as dates of presentation, scheduled times, location, or hours of presentation, the Commission must be notified and approve such changes prior to the presentation.

(i) **Cheating:** Students who cheat, as defined in Commission Regulation 1001(h), shall be subject to discipline and possible dismissal in the following entry-level, mandated training courses: the Arrest & Firearms Course, Regulation 1081(a)(1); Aviation Security Course, Regulation 1081(a)(2); Reserve Peace Officer training courses; Modules A, B, and C and (D), Regulation 1081(a)(11); the School Peace Officer Course Regulation 1081(a)(20); and all basic training courses (Commission Procedure D-1-1).

(j) **Required Documents to be Submitted Upon Completion of Presentation:** A completed Course Roster (POST 2-111, Rev. 7/96) shall be prepared and submitted to the Commission after completion of each certified course presentation. The following documents shall accompany each Course Roster:

- (1) A Course Evaluation Instrument (POST 2-245, Rev. 9/81) completed by each trainee,
- (2) POST Course Evaluation Control Sheet (POST 2-291),
- (3) Any Training Reimbursement Requests (POST 2-273 Rev. 8/93) that are provided to the presenter by trainees, and

(4) A written statement from the course coordinator explaining how successful completion was accomplished when a trainee is reported as completing the course, but has missed more than five percent of the certified hours of the Regular Basic Course (or modules of any of its formal) or ten percent of the certified hours of any other POST-certified course.

All documents must be submitted to the Commission no later than 10 calendar days following the ending date of the presentation. Subsequent to submission of these documents, the coordinator shall contact the Commission about needed corrections.

(k) **Retention of Certification Documents:** For any POST-certified course, a current copy of the documents required by Regulation 1053(a) must be kept on file at the presenter's facility for inspection by POST.

(l) **Certificate of Completion:** Any presenter of a POST-certified instructor development course listed in Regulation 1070 or presenters of the Academy Director/Coordinator Workshop or Recruit Training Officer Workshop shall issue certificates to students who successfully complete the training. The certificate of completion must include title of course, dates of course, hours completed, and the POST course control number.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

1. New section filed 3-25-91; operative 4-24-91 (Register 91, No. 16).
2. Amendment of subsections (c) and (i) filed 12-22-93; operative 1-21-94 (Register 93, No. 52).
3. Amendment of subsections (i)(2)-(3) and (j) and new subsection (i)(4) filed 6-2-94; operative 7-5-94 (Register 94, No. 22).
4. New subsection (l) and subsection relating filed 1-14-97; operative 2-13-97 (Register 97, No. 3).
5. Amendment filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).
6. New subsection (h) filed 7-17-2001; operative 7-1-2002 (Register 2001, No. 29).

§ 1056. Annual Recertification.

Each certified course is reviewed prior to the beginning of a new fiscal year. Every presenter shall receive a Course Certification Report from POST for each certified course (excluding telecourses and interactive videodisc training courses which are automatically recertified). These reports shall be reviewed and signed by the presenter or presenter's designee and returned to POST to ensure certification for the proceeding fiscal year. A POST review shall include evaluation of the continuing need for the course, currency of curriculum, and adherence to requirements for course certification (See Regulation 1052) and course presentation (See Regulation 1055).

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

1. New section filed 3-25-91; operative 4-24-91 (Register 91, No. 16).
2. Amendment filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).

§ 1057. Decertification.

Courses may be decertified by action of the Commission when:

- (a) There is no longer a demonstrated need for the course; or
- (b) There is failure to comply with requirements set forth in Regulations 1052-1055; or
- (c) There are other causes warranting decertification as determined by the Commission.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

1. New section filed 3-25-91; operative 4-24-91 (Register 91, No. 16).

§ 1058. Appeals Process.

(a) Any course certification/decertification decision may be appealed to the POST Executive Director. The appeal, and all documentation the appellant believes supports the appeal, must be submitted in writing to the Executive Director within 30 calendar days of the date of the certification/decertification notice.

Within 30 calendar days of the receipt of the appeal, the Executive Director shall respond to the appellant in writing with a decision and associated reasons upon which the decision is based.

(b) The Executive Director's decision may be appealed to the Commission. The appeal, and all documentation the individual believes supports the appeal, must be submitted in writing to the Commission within 30 days of the date of the Executive Director's decision. Appeals received at least 45 calendar days prior to the next scheduled Commission meeting will be heard at that meeting. Appeals received less than 45 days remaining prior to the next scheduled Commission meeting will be heard at a subsequent meeting. The Commission shall notify the appellant of the date, time, and location of the hearing within 30 calendar days of the receipt of the appeal to the Commission. The appellant or appellant's designated representative(s) shall have the right to present evidence at the hearing. The Executive Director shall notify the appellant in writing of the Commission's decision within 10 calendar days following the conclusion of the hearing.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

New section filed 8-8-91; operative 9-9-91 (Register 91, No. 50).

1060. Requirements for Verifying Successful Completion of a Non POST Certified Course.

An individual who has successfully completed a Commission-accepted, non POST-certified course may receive credit for the maximum hours specified in Commission Procedure D-2-3 for the course attended. Successful completion is defined as the award of a "Certificate of Completion" or a "Letter of Completion" issued by the training institution. Of the total number of hours credited for course attendance, 24 hours (unless the course is less than 24 hours) will be applied toward the Continuing Professional Training Requirement.

To receive credit for the successful completion of a Commission-accepted, non POST-certified course, the individual must submit the following POST:

- A copy of the Certificate of Course Completion (please reduce certificate copy to 8 1/2 x 11 inches) or,
- If no certificate is routinely issued, a letter signed by the presenting institution chief officer attesting to the trainee's successful completion of the course, and
- A completed POST Form TF 2-213 (8/2000), POST Non-Certified Training.

NOTE: Authority cited: Sections 13503, 13506 and 13510, Penal Code. Reference: Sections 13503, 13506 and 13510, Penal Code.

HISTORY

New section filed 10-12-2000; operative 11-11-2000 (Register 2000, No. 41).

1070. Minimum Training Standards for Instructors of POST-Certified Specialized Training Courses.

(a) Minimum training standards. Effective July 1, 2002, primary instructors of any POST-certified specialized training course listed below shall complete the specified training standard, or its equivalent, prior to leading instruction in the POST-certified course. Instructors other than primary instructors must complete the appropriate training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002. "Primary instructor" is defined in Regulation 1001, and the equivalency process is defined in Regulation 1070(b).

The courses listed below under "Training Standard" may refer to prerequisites which are stated in the *POST Catalog of Certified Courses*.

CERTIFIED COURSE

Arrest and Control Techniques

Impact Weapons

Chemical Agents

Defensive Tactics Update

TRAINING STANDARD (Content for the following courses is in Regulation 1082).

Arrest and Control Instructor or Defensive Tactics Instructor
 Baton/Impact Weapons Instructor or Defensive Tactics Instructor
 Chemical Agents Instructor
 Defensive Tactics Instructor or Arrest and Control Instructor and Baton/Impact Weapons Instructor

CERTIFIED COURSE

Diversionary Devices
 Driver Training Update
 Driver Training-Simulator
 Firearms (As a stand-alone course or as part of a larger course)
 First Aid/CPR
 Force Options Simulator
 Hazardous Materials-First Responder
 Institute for Criminal Investigation
 Less Lethal Weapons
 Motorcycle Training
 Physical Training (Basic Course)
 Supervisory Leadership Institute

TRAINING STANDARD (Content for the following courses is in Regulation 1082).

Diversionary Devices Instructor
 Driver Training Instructor
 Driver Training Simulation Instructor
 Firearms Instructor
 First Aid/CPR Instructor
 Force Options Simulator Instructor
 Hazardous Materials Train-the-Trainer
 Institute for Criminal Investigation Instructor
 Less Lethal Force Instructor
 Motorcycle Training Instructor
 Physical Training Instructor
 Supervisory Leadership Institute Instructor

(b) Equivalency Process. The training standard specified in (a) above may be satisfied through an equivalency evaluation performed by the presenter. An individual requesting an evaluation of non-POST-certified training to meet the minimum training standard shall submit to the presenter an expanded course outline for each course to be considered in the evaluation. Additionally, each course outline must indicate the name of the course, dates of training, and the name of the training presenter. Presenters will base their evaluations on a comparison of the submitted expanded course outline(s) against the content specified in Regulation 1082 for the required course. Documentation for approved equivalencies shall be retained by the presenter.

(c) Proof of Completed Training Standard. Presenters of the POST-certified courses specified in (a) above are required to maintain documentation which demonstrates satisfaction of the minimum training standard by their instructors who teach any of the certified courses listed in subsection (a). Documentation shall be a copy of the certificate of course completion issued by the training presenter of the required training standard in (a) above, or a POST training record (as maintained in the POST data base) for the instructor, or the expanded course outline(s) used in conducting an equivalency per (b) above. Documentation must be made available for POST inspection upon request.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

1. New section filed 7-17-2001; operative 7-1-2002 (Register 2001, No. 29).

§ 1071. Minimum Training Standards for Basic Academy Directors, Coordinators, and Recruit Training Officers.

(a) The minimum training standards for Academy Directors, Academy Coordinators, and Academy Recruit Training Officers apply only to those individuals appointed to those positions on or after July 1, 2002. The specified minimum standard shall be completed within one year from the date of appointment to any of the staff positions mentioned above.

STAFF POSITION (Content for the following courses is in Regulation 1082)

Academy Director

Academy Coordinator

Academy Recruit Training Officer

TRAINING STANDARD

Academy Director/Coordinator Workshop*

Academy Director/Coordinator Workshop

Recruit Training Officer Workshop

*Attendance at the Academy Director/Coordinator Workshop is not required if the director has attended as a coordinator within three years prior to appointment as director.

(b) Proof of Completed Training Standard. Academy directors shall maintain documentation which demonstrates satisfaction of the minimum training standard as required for the staff positions indicated in (a) above. Documentation shall be a certificate of course completion issued by the training presenter of the required training standard in (a) above or a POST training record (as maintained in the POST data base) for the instructor. Documentation must be made available for POST inspection upon request.

(b) The Executive Director's decision may be appealed to the Commission. The appeal, and all documentation the individual believes supports the appeal, must be submitted in writing to the Commission within 30 calendar days of the date of the Executive Director's decision.

Appeals received at least 45 calendar days prior to the next scheduled Commission meeting will be heard at that meeting. Appeals received with less than 45 days remaining prior to the next scheduled Commission meeting will be heard at a subsequent meeting. The Commission shall notify the appellant of the date, time, and location of the hearing within 10 calendar days of the receipt of the appeal to the Commission. The appellant or appellant's designated representative(s) shall have the right to present evidence at the hearing.

The Executive Director shall notify the appellant in writing of the Commission's decision within 10 calendar days following the conclusion of the hearing.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(c), Penal Code.

HISTORY

New section filed 8-8-91; operative 9-9-91 (Register 91, No. 50).

1060. Requirements for Verifying Successful Completion of a Non POST Certified Course.

An individual who has successfully completed a Commission-accepted, non POST-certified course may receive credit for the maximum hours specified in Commission Procedure D-2-3 for the course attended. Successful completion is defined as the award of a "Certificate of Completion" or a "Letter of Completion" issued by the training institutions. Of the total number of hours credited for course attendance, 24 hours (unless the course is less than 24 hours) will be applied toward the continuing Professional Training Requirement.

To receive credit for the successful completion of a Commission-accepted, non POST-certified course, the individual must submit the following to POST:

- (a) A copy of the Certificate of Course Completion (please reduce certificate copy to 8 1/2 x 11 inches) or,
- (b) If no certificate is routinely issued, a letter signed by the presenting institution chief officer attesting to the trainee's successful completion of the course, and
- (c) A completed POST-Form TF-2-213 (8/2000), POST-Non-Certified Training.

NOTE: Authority cited: Sections 13503, 13506 and 13510, Penal Code. Reference: Sections 13503, 13506 and 13510, Penal Code.

HISTORY

New section filed 10-12-2000; operative 11-11-2000 (Register 2000, No. 41).

1070. Minimum Training Standards for Instructors of POST-Certified Specialized Training Courses.

(a) Minimum training standards. Effective July 1, 2002, primary instructors of any POST-certified specialized training course listed below shall complete the specified training standard, or its equivalent, prior to leading instruction in the POST-certified course. Instructors other than primary instructors must complete the appropriate training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002. "Primary instructor" is defined in Regulation 1001, and the equivalency process is defined in Regulation 1070(b).

The courses listed below under "Training Standard" may refer to prerequisites which are stated in the *POST Catalog of Certified Courses*.

CERTIFIED COURSE

Arrest and Control Techniques

Baton/Impact Weapons

Chemical Agents

Defensive Tactics Update

TRAINING STANDARD (Content for the following courses is in Regulation 1082).

Arrest and Control Instructor or Defensive Tactics Instructor
 Baton/Impact Weapons Instructor or Defensive Tactics Instructor
 Chemical Agents Instructor
 Defensive Tactics Instructor or Arrest and Control Instructor and Baton/Impact Weapons Instructor

CERTIFIED COURSE

Diversivonary Devices
 Driver Training Update
 Driver Training-Simulator
 Firearms (As a stand-alone course or as part of a larger course)
 First Aid/CPR
 Force Oplions Simulator
 Hazardous Materials-First Responder
 Institute for Criminal Investigation
 Less Lethal Weapons
 Motorcycle Training
 Physical Training (Basic Course)
 Supervisory Leadership Institute

TRAINING STANDARD (Content for the following courses is in Regulation 1082).

Diversivonary Devices Instructor
 Driver Training Instructor
 Driver Training Simulation Instructor
 Firearms Instructor
 First Aid/CPR Instructor
 Force Oplions Simulator Instructor
 Hazardous Materials Train-the-Trainer
 Institute for Criminal Investigation Instructor
 Less Lethal Force Instructor
 Motorcycle Training Instructor
 Physical Training Instructor
 Supervisory Leadership Institute Instructor

(b) Equivalency Process. The training standard specified in (a) above may be satisfied through an equivalency evaluation performed by the presenter. An individual requesting an evaluation of non-POST-certified training to meet the minimum training standard shall submit to the presenter an expanded course outline for each course to be considered in the evaluation. Additionally, each course outline must indicate the name of the course, dates of training, and the name of the training presenter. Presenters will base their evaluations on a comparison of the submitted expanded course outline(s) against the content specified in Regulation 1082 for the required course. Documentation for approved equivalencies shall be retained by the presenter.

(c) Proof of Completed Training Standard. Presenters of the POST-certified courses specified in (a) above are required to maintain documentation which demonstrates satisfaction of the minimum training standard by their instructors who teach any of the certified courses listed in subsection (a). Documentation shall be a copy of the certificate of course completion issued by the training presenter of the required training standard in (a) above, or a POST training record (as maintained in the POST data base) for the instructor, or the expanded course outline(s) used in conducting an equivalency per (b) above. Documentation must be made available for POST inspection upon request.

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(c), Penal Code.

HISTORY

1. New section filed 7-17-2001; operative 7-1-2002 (Register 2001, No. 29).

§ 1071. Minimum Training Standards for Basic Academy Directors, Coordinators, and Recruit Training Officers.

(a) The minimum training standards for Academy Directors, Academy Coordinators, and Academy Recruit Training Officers apply only to those individuals appointed to those positions on or after July 1, 2002. The specified minimum standard shall be completed within one year from the date of appointment to any of the staff positions mentioned above.

STAFF POSITION
 (Content for the following courses is in Regulation 1082)

Academy Director
 Academy Coordinator
 Academy Recruit Training Officer

TRAINING STANDARD

Academy Director/Coordinator Workshop*
 Academy Director/Coordinator Workshop
 Recruit Training Officer Workshop

*Attendance at the Academy Director/Coordinator Workshop is not required if the director has attended as a coordinator within three years prior to appointment as director.

(b) Proof of Completed Training Standard. Academy directors shall maintain documentation which demonstrates satisfaction of the minimum training standard as required for the staff positions indicated in (a) above. Documentation shall be a certificate of course completion issued by the training presenter of the required training standard in (a) above or a POST training record (as maintained in the POST data base) for the instructor. Documentation must be made available for POST inspection upon request.

itorial correction amending subsection (a)(1) Firearms Course and repositing final paragraph (Register 94, No. 35).
 mendment of section (a)(4) filed 11-14-94; operative 12-14-94 (Register No. 46).
 ew subsections (a)(21)-(a)(21)(D) filed 11-16-94; operative 12-16-94 (Register No. 46).
 ew subsection (b) filed 4-18-95; operative 5-18-95 (Register 95, No. 16).
 ew subsections (a)(22)-(a)(23)(C) and amendment of NOTE filed 8-21-95; operative 9-20-95 (Register 95, No. 34).
 mendment of subsection (a)(5) and NOTE filed 7-26-96; operative 8-25-96 (Register 96, No. 30).
 mendment of subsection (a) filed 1-14-97; operative 2-13-97 (Register 97, No. 3).
 ew subsections (a)(24)-(a)(24)(F) and amendment of NOTE filed 7-8-97; operative 8-7-97 (Register 97, No. 28).
 mendment of subsection (a)(8), new subsections (a)(25)-(a)(25)(B) and amendment of NOTE filed 8-4-98; operative 9-3-98 (Register 98, No. 32).
 ew subsections (a)(26)-(a)(26)(F) and amendment of NOTE filed 8-5-98; operative 9-4-98 (Register 98, No. 32).
 mendment of subsections (a) and (b) and amendment of NOTE filed 3-22-99; operative 4-21-99 (Register 99, No. 13).
 mendment of subsections (a)(12)-(a)(12)(K), repealer of subsections (a)(12)(L)-(M), and amendment of NOTE filed 5-11-99; operative 6-10-99 (Register 99, No. 20).
 ew subsections (a)(27)-(a)(27)(C) and amendment of NOTE filed 6-30-99; operative 7-30-99 (Register 99, No. 27).
 Change without regulatory effect amending subsection (a)(24) and NOTE filed 7-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 10).
 New subsections (a)(28)-(a)(29)(F) filed 4-4-2000; operative 5-4-2000 (Register 2000, No. 14).
 New subsections (a)(30)-(a)(30)(G) filed 4-6-2000; operative 5-6-2000 (Register 2000, No. 14).
 Amendment of subsections (a)(20)-(a)(20)(H) and amendment of NOTE filed 6-12-2000; operative 6-12-2000 pursuant to Government Code section 1343.4(d) (Register 2000, No. 24).
 Amendment of subsections (a)(2) and (a)(2)(C), repealer and new subsections (a)(2)(D) and new subsection (a)(2)(I) filed 6-5-2001; operative 8-1-2001 (Register 2001, No. 23).
 Editorial correction of section (Register 2001, No. 38).
 Amendment of subsections (a)(26)-(a)(26)(F) and new subsections (a)(26)(G)-(H) filed 1-9-2002; operative 2-8-2002 (Register 2002, No. 2).
 New subsections (a)(31)-(a)(31)(G) filed 3-14-2002; operative 4-13-2002 (Register 2002, No. 11).

082. Minimum Content Requirements for POST-Certified Instructor and Academy Staff Courses.

(a) Minimum course content. The POST-certified courses listed in this regulation, which is responsive to Regulations 1070 and 1071, shall meet the minimum content requirements as stated below. Presenters are expected to assess student proficiency in each topic area. The assessment (written/oral examination) must be consistent with learning objectives. Requirements for certification and presentation of these courses are specified in Regulations 1052-1056.

*All instructor and academy staff courses shall include content on legal issues, performance evaluation techniques, and safety protocols.

(1) Academy Director/Coordinator Workshop:

- (A) Academy Management Guidelines
- (B) Basic Training Support System
- (C) Budgeting
- (D) Ethics and Professionalism
- (E) Instructional Planning
- (F) Instructional Quality
- (G) Instructional Resources
- (H) Learning Domain Instructional System
- (I) Testing Regulations and Management

(See above)

(2) Arrest and Control Instructor:

- (A) Body Physics and Dynamics
- (B) Control Techniques
- (C) Handcuffing

- (D) Injury Prevention
- (E) Prisoner Restraint
- (F) Searches
- (G) Use of Force
- (H) Weaponless Defense
- (I) Weapon Retention/Takeway

*(See above)

(3) Baton/Impact Weapons Instructor:

- (A) Blocking Techniques
- (B) Drawing Techniques
- (C) Patterns of Movement
- (D) Stances
- (E) Strike Zones
- (F) Striking Techniques
- (G) Use of Force

*(See above)

(4) Chemical Agents Instructor:

- (A) Decontamination
- (B) Delivery Methods
- (C) Disposal of Aerosol Devices
- (D) First Aid Protocols
- (E) Gas Mask Application
- (F) Maintenance of Aerosol Devices

*(See above)

(5) Defensive Tactics Instructor:

The content for this course is a composite of the "Arrest and Control Instructor" and "Baton/Impact Weapons Instructor" courses.

- (6) Diversionary Devices Instructor:
 - (A) Device Deployment and Ignition
 - (B) Overpressure
 - (C) Types of Devices
 - (D) Types of Diversions

*(See above)

(7) Driver Awareness Instructor:

- (A) Course Management
- (B) Defensive Driving
- (C) Pre-Shift Inspection
- (D) Reverse Driving Practical Application
- (E) Vehicle Control Techniques
- (F) Vehicle Dynamics

*(See above)

(8) Driver Training Instructor:

- (A) Defensive Driving
- (B) Pursuit Guidelines
- (C) Risk Assessment
- (D) Vehicle Control Techniques

*(See above)

(9) Driver Training Simulation Instructor:

- (A) Code 3 and Pursuit Decision Making
- (B) Driving Coordination/Communication Tactics
- (C) Scenario Design
- (D) Simulator Calibration/Troubleshooting
- (E) Simulator Orientation
- (F) Vehicle Control Techniques
- (G) Vehicle Dynamics
- (H) Work Station Operation

*(See above)

(10) Firearms Instructor:

- (A) Coaching
- (B) Firearms Maintenance
- (C) Fundamentals of Shooting
- (D) Range Preparation
- (E) Tactical Considerations

Editorial correction amending subsection (a)(1) Firearms Course and repositioning final paragraph (Register 94, No. 35).

Amendment of section (a)(4) filed 11-14-94; operative 12-14-94 (Register 94, No. 46).

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Amendment of subsection (a)(8), new subsections (a)(25)-(a)(25)(B) and amendment of NOTE filed 8-4-98; operative 9-3-98 (Register 98, No. 32).

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Change without regulatory effect amending subsection (a)(24) and NOTE filed 7-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 10).

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New subsections (a)(30)-(a)(30)(G) filed 4-6-2000; operative 5-6-2000 (Register 2000, No. 14).

Amendment of subsections (a)(20)-(a)(20)(H) and amendment of NOTE filed 6-12-2000; operative 6-12-2000 pursuant to Government Code section 1343.4(d) (Register 2000, No. 24).

Amendment of subsections (a)(2) and (a)(2)(C), repealer and new subsections (2)(F)-(H) and new subsection (a)(2)(I) filed 6-5-2001; operative 8-1-2001 (Register 2001, No. 23).

Editorial correction of section (Register 2001, No. 38).

Amendment of subsections (a)(26)-(a)(26)(F) and new subsections (26)(G)-(H) filed 1-9-2002; operative 2-8-2002 (Register 2002, No. 2).

New subsections (a)(31)-(a)(31)(G) filed 3-14-2002; operative 4-13-2002 (Register 2002, No. 11).

082. Minimum Content Requirements for POST-Certified Instructor and Academy Staff Courses.

(a) Minimum course content. The POST-certified courses listed in this regulation, which is responsive to Regulations 1070 and 1071, shall meet the minimum content requirements as stated below. Presenters are expected to assess student proficiency in each topic area. The assessment (written/oral examination) must be consistent with learning objectives. Requirements for certification and presentation of these courses are specified in Regulations 1052-1056.

All instructor and academy staff courses shall include content on the following issues, performance evaluation techniques, and safety protocols.

1) Academy Director/Coordinator Workshop:

- (A) Academy Management Guidelines
- (B) Basic Training Support System
- (C) Budgeting
- (D) Ethics and Professionalism
- (E) Instructional Planning
- (F) Instructional Quality
- (G) Instructional Resources
- (H) Learning Domain Instructional System
- (I) Testing Regulations and Management

*(See above)

(2) Arrest and Control Instructor:

- (A) Body Physics and Dynamics
- (B) Control Techniques
- (C) Handcuffing

- (D) Injury Prevention
- (E) Prisoner Restraint
- (F) Searches
- (G) Use of Force
- (H) Weaponless Defense
- (I) Weapon Retention/Takeaway

*(See above)

(3) Baton/Impact Weapons Instructor:

- (A) Blocking Techniques
- (B) Drawing Techniques
- (C) Patterns of Movement
- (D) Stances
- (E) Strike Zones
- (F) Striking Techniques
- (G) Use of Force

*(See above)

(4) Chemical Agents Instructor:

- (A) Decontamination
- (B) Delivery Methods
- (C) Disposal of Aerosol Devices
- (D) First Aid Protocols
- (E) Gas Mask Application
- (F) Maintenance of Aerosol Devices

*(See above)

(5) Defensive Tactics Instructor:

The content for this course is a composite of the "Arrest and Control Instructor" and "Baton/Impact Weapons Instructor" courses.

- (6) Diversionary Devices Instructor:
 - (A) Device Deployment and Ignition
 - (B) Overpressure
 - (C) Types of Devices
 - (D) Types of Diversions

*(See above)

(7) Driver Awareness Instructor:

- (A) Course Management
- (B) Defensive Driving
- (C) Pre-Shift Inspection
- (D) Reverse Driving Practical Application
- (E) Vehicle Control Techniques
- (F) Vehicle Dynamics

*(See above)

(8) Driver Training Instructor:

- (A) Defensive Driving
- (B) Pursuit Guidelines
- (C) Risk Assessment
- (D) Vehicle Control Techniques

*(See above)

(9) Driver Training Simulation Instructor:

- (A) Code 3 and Pursuit Decision Making
- (B) Driving Coordination/Communication Tactics
- (C) Scenario Design
- (D) Simulator Calibration/Troubleshooting
- (E) Simulator Orientation
- (F) Vehicle Control Techniques
- (G) Vehicle Dynamics
- (H) Work Station Operation

*(See above)

(10) Firearms Instructor:

- (A) Coaching
- (B) Firearms Maintenance
- (C) Fundamentals of Shooting
- (D) Range Preparation
- (E) Tactical Considerations

- (F) Target Analysis
- (G) Use of Force Guidelines

(See above)

First Aid/CPR Instructor:

- (A) Abdominal/Chest Injuries
- (B) Bleeding
- (C) Burns
- (D) Cardiovascular System
- (E) Communicable Diseases
- (F) CPR Techniques
- (G) Dressings/Bandages
- (H) Environmental Emergencies
- (I) Fractures
- (J) Obstetric/Pediatric Emergencies
- (K) Patient Assessments
- (L) Respiratory System
- (M) Shock
- (N) Wounds

*(See above)

(12) Force Options Simulator Instructor:

- (A) Force Options
- (B) Scenarios Application
- (C) Simulator Weapons Familiarization
- (D) Tactics

*(See above)

(13) Hazardous Materials Instructor (Train-the-Trainer):

- (A) Haz Mat Containment
- (B) Haz Mat Identification and Assessment
- (C) Incident Management
- (D) Notification Protocols
- (E) Tagging/Labeling
- (F) Responder Awareness Actions
- (G) Simulated Incidents

*(See above)

(14) Institute for Criminal Investigation (ICI) Instructor:

- (A) Workshop on adult experience-based learning
- (B) Workshop for instructional competency verification
- (C) Student teaching in a classroom environment, under the observation of a Master Instructor

*(See above)

(15) Less Lethal Force Instructor:

- (A) Apprehension Techniques

- (B) Level of Effectiveness
- (C) Medical Treatment Protocol
- (D) Precautions
- (E) Projectile Specification
- (F) Psychological Effects
- (G) Reporting Procedures

*(See above)

(16) Motorcycle Training Instructor:

- (A) Apexing
- (B) Braking Demonstrations
- (C) Cone Patterns
- (D) Defensive Riding
- (E) Enforcement Stops
- (F) Incline Work
- (G) Motorcycle Maintenance
- (H) Pullouts
- (I) Street Riding Techniques

*(See above)

(17) Physical Training Instructor:

- (A) Anatomy/Physiology
- (B) Biomechanics
- (C) Calisthenics
- (D) Circuit Training
- (E) Conditioning Principles
- (F) Exercise Prescription
- (G) Injury Prevention and Assessment
- (H) Motivation
- (I) Nutrition

*(See above)

(18) Recruit Training Officer Workshop:

- (A) Basic Training Delivery System
- (B) Counseling Techniques
- (C) Ethics and Professionalism
- (D) Functions of the Recruit Training Officer
- (E) POST Administration/Organization
- (F) Special Training Issues

(19) Supervisory Leadership Institute (SLI) Instructor:

- (A) Workshop on experience-based learning and facilitation skills
- (B) Competency verification/evaluation session.

*(See above)

NOTE: Authority cited: Sections 13503 and 13506, Penal Code. Reference: Section 13503(e), Penal Code.

HISTORY

1. New section filed 7-17-2001; operative 7-1-2002 (Register 2001, No. 29).

* * *



DEPARTMENT OF
FINANCE

EXHIBIT B

GRAY DAVIS, GOVERNOR

115 L STREET ■ SACRAMENTO, CA ■ 95814-9706 ■ WWW.DOF.CA.GOV

September 13, 2002

RECEIVED

SEP 13 2002

COMMISSION ON
STATE MANDATES

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 August 13, 2002, the Department of Finance has reviewed the test claim submitted by the Sacramento County (claimant) asking the Commission to determine whether specified costs incurred under California Code of Regulations, Title No. 2, Section Number(s) 1001, 1052, 1053, 1055, 1070, 1071, and 1082, last amended August 17, 2001, are reimbursable state mandated costs (Claim No. CSM-02-TG-03 "Training Requirements for Instructors of Academy Staff"). Commencing with Page 9, Section D, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- Staff time required to advise and make certain that all instructors and key academy staff meet the new minimum training standards, review of instructor and staff resumes, evaluation of documents, and the implementation of a process to ensure that new instructors and/or staff meet the revised minimum training standard criteria.

As the result of our review, we have concluded that the statute may have resulted in a higher level of service for an existing program. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

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 August 6, 2002 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 Marcia Caballin, Principal Program Budget Analyst or Keith Gmelnder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

Attachments

DECLARATION OF MARCIA CABALLIN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-03

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the California Code of Regulations, Title No. 2, Section Number(s) 1001, 1052, 1053, 1055, 1070, 1071, and 1082, last amended August 17, 2001, relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

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.

9-13-02
at Sacramento, CA

Marcia Caballin
Marcia Caballin

PROOF OF SERVICE

Test Claim Name: Training Requirements for Instructors of Academy Staff
Test Claim Number: CSM-02-TC-03

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, 8th Floor, Sacramento, CA 95814.

On September 13, 2002, 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, 8th 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: Michael Harvey
3301 C Street, Room 500
Sacramento, CA 95816

Ms. Nancy Gust
Sheriff's Department
County of Sacramento
711 G Street, Room 405
Sacramento, CA 95814

Ms. Harneet Barksohat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street #924
Folsom, CA 95630

Mandated Cost Systems, Inc.
Attention: Steve Smith
11130 Sun Center Drive Suite 100
Rancho Cordova, CA 95670

Mr. Leonard Kaye, Esq.,
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Executive Director,
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Mr. Steve Keil,
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Mr. Keith Gmeinder, Principal Analyst
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Paul Minney,
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. Andy Nichols
Centration, Inc.,
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

Mr. Kenneth J. O'Brien, Executive Director
Commission on Peace Officers
Standards and Training
1601 Alhambra Blvd.
Sacramento, CA 95816

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Klefer Blvd, 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, and that this declaration was executed on September 13, 2002 at Sacramento, California.


Mary Latorre

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities.

EXHIBIT C

October 30, 2002



Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RECEIVED

OCT 31 2002

COMMISSION ON
STATE MANDATES

Gray Davis
Governor

Bill Lockyer
Attorney General

Dear Ms. Opie:

In response to your request, we would like to provide the following response to Test Claim 02-TC-03 concerning POST's regulations establishing training requirements for instructors and academy staff.

We do not believe POST regulations 1001, 1052, 1053, 1055, 1070, 1071, and 1082 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 for all the following reasons.

First, under Penal Code sections 13503, 13506, and 13510 (attached), POST is a voluntary program in which agencies may or may not participate. Any agency choosing to not participate is not subject to POST's requirements. However, when a law enforcement agency commits to participate by local ordinance it is obliged to adhere to program requirements. The voluntary nature of the POST program negates any claim under Government Code section 17514 or the California Constitution. The POST program contains numerous training and selection mandates—none of which are subject to the requirements of state-mandated local programs.

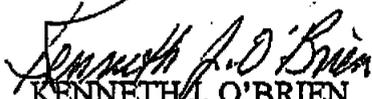
Secondly, any law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. The point here is that there is no requirement for a participating agency to have POST-certified training courses. Since the instructor/academy staff training requirements only apply to POST-certified training institutions, there is no "requirement" for the state to reimburse for such costs under the meaning of Government Code section 17514 or the California Constitution. See attached POST Regulation 1051.

Third, POST's training requirements for instructors and academy staff are worded in such a way that they are directed to the individual instructor and academy staff members, not the training institutions. POST-certified training institutions are free to require applicants to complete this training on their own at their own expense. Just because POST-certified training institutions voluntarily provide their staff with this training is no reason to expect the state to reimburse for these costs.

As a matter of practicality, POST has facilitated the ready availability of this instructor/academy staff training by certifying the training to virtually any POST-certified training institution (including law enforcement agencies) that can demonstrate a need and capability. In other words, law enforcement trainers in the POST program can conduct much of this required training within their own facilities without sending their personnel away.

If you have further questions, please call Assistant Executive Director Dick Reed at (916) 227-2809.

Sincerely,


KENNETH J. O'BRIEN
Executive Director

Attachments

§ 13503. Powers

In carrying out its duties and responsibilities, the commission shall have all of the following powers:

- (a) To meet at such times and places as it may deem proper;
- (b) To employ an executive secretary and pursuant to civil service, such clerical and technical assistants as may be necessary;
- (c) To contract with such other agencies, public or private, or persons as it deems necessary, for the rendition and affording of such services, facilities, studies, and reports as the commission as will best assist it to carry out its duties and responsibilities;
- (d) To cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and in performing its other functions;
- (e) To develop and implement programs to increase the effectiveness of law enforcement and when such programs involve training and education courses to cooperate with, and secure the cooperation of, state-level officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs;

(f) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the state government;

(g) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it by statute. (Added by Stats 1967, c. 1846, p. 1993; Stats 1977, c. 1022, p. 4333, § 2; Amended by Stats 1967, c. 1846, p. 1993; Stats 1977, c. 1022, p. 4333, § 2)

Cross References

Adherence to standards, investigation by commission, see Penal Code § 13512.

Adoption and amendment of minimum standards, see Penal Code sections 13506, 13510.

§ 13506. Regulations

The commission may adopt such regulations as are necessary to carry out the purposes of this chapter. (Added by Stats 1959, c. 1823, p. 4333, § 2.)

Cross References

Adoption of rules of minimum standards for training, see Penal Code § 13510.

§ 13510. Rules of minimum standards; adoption; amendment

(a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a municipal court, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, or housing authority police departments.

The commission also shall adopt, and may from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, marshals or deputy marshals of a municipal court, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, and housing authority police departments.

These rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter and shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability. Job-related standards that are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall present with local entities during the conducting of related research proposed job-related selection standards affecting law enforcement agencies. (Added by Stats 1977, c. 1022, p. 4333, § 2)

(c) For the purpose of raising the level of competence of local public safety dispatchers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing fire-fighting services to local law enforcement agencies described in subdivision (a); which standards shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. These standards also shall apply to consolidated dispatch centers operated by an independent public joint powers agency established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code when providing dispatch services to the law enforcement personnel listed in subdivision (a). These rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, primary responsibility refers to the performance of law enforcement dispatching duties for a minimum of 50 percent of the time worked within a pay period.

(d) Nothing in this section shall prohibit a local agency from establishing selection and training standards that exceed the minimum standards established by the commission. (Added by Stats 1959, c. 1823, p. 4333, § 2; Amended by Stats 1965, c. 372, p. 1161, § 4; Stats 1969, c. 1072, p. 2058, § 2; Stats 1973, c. 1073, p. 2166, § 2; Stats 1977, c. 987, p. 2970, § 4; Stats 1980, c. 654, § 1; Stats 1980, c. 1180, § 1, operative Jan. 1, 1981; Stats 1981, c. 710, § 1; Stats 1981, c. 966, § 3; Stats 1987, c. 971, § 3; Stats 1990, c. 335 (A.B. 2306), § 1; Stats 1990, c. 477 (S.B. 2457), § 1; Stats 1991, c. 910 (S.B. 249), § 7; Stats 1996, c. 950 (A.B. 574), § 4; Stats 1999, c. 301 (A.B. 1336), § 1; Stats 2000, c. 135 (A.B. 2539), § 142.)

Cross References

Authority for regulations, see Penal Code § 13506.
Course of training prescribed by commission on peace officer standards and training, see Penal Code § 832.
State aid for training of certain local public safety dispatchers, see Penal Code § 13525.

POST Regulation 1051

1051. Course Certification Program.

- (a) The Commission administers the Course Certification Program to provide needed and quality training to law enforcement personnel. References to a course being "POST-certified" means that the Commission has approved presentation of the course in accordance with Regulations 1052-1055.

**AMEND COMMISSION REGULATION 1001, 1010, and DELETE 1009
PARTICIPATION IN THE POST PROGRAM**

1001. Definitions.

[(a) through (k) continued ***]

- (l) "Department or Participating Department" is any law enforcement entity or independent communications agency which has made application to and been accepted by the Commission to participate in POST programs and receive services. Eligibility ~~for and participation requirements are in POST programs~~ is set forth in Regulations 1009 and 1010. ~~Any department may participate in the POST Certificate Programs, however, only those departments eligible for state aid may participate in the POST Reimbursement Program.~~

[(m) through (ii) continued ****]

- (j) "Specialized Law Enforcement Department" is a department or segment of a department which:

(1) has policing or law enforcement authority imposed by law and whose employees are peace officers as defined by law; and

(2) ~~is engaged in the enforcement of regulations or laws limited in scope or nature; or~~

(3) is engaged in investigative or other limited law enforcement activities in the enforcement of criminal law, ~~and~~

~~(4) is authorized by the Commission to participate in the Specialized Law Enforcement Certificate Program.~~

- (kk) "Specialized Peace Officer" is a peace officer employee of a specialized law enforcement agency ~~authorized by the Commission to participate in the Specialized Law Enforcement Certificate Program.~~

[(ll) through (mm) continued ***]

NOTE: Authority cited: Sections 13506 and 13510.3, Penal Code.

Reference: Sections 13503, 13507, 13510, 13510.1, 13510.3, 13510.5 and 13523, Penal Code.

Commission on Peace Officer Standards and Training

**AMEND COMMISSION REGULATION 1001, 1010, and DELETE 1009
PARTICIPATION IN THE POST PROGRAM**

1010. Eligibility for Participation in the POST Program.

- (a) Eligibility: To be eligible for participation in the POST Program, a ~~jurisdiction or department must~~ shall agree to comply with and continue to adhere to the minimum standards for selection and training standards and all Commission Regulations as defined in Regulations 1002, 1005, and 1009 for every peace officer, and in Regulation 1018 for every dispatcher, specified in the POST Administrative Manual (Section B) and the California Code of Regulations, Title 11, Division 2, employed by a jurisdiction or department. The minimum standards for selection and training of peace officers and/or public safety dispatchers shall apply only to jurisdictions or departments that have pledged to adhere to these standards.
-
- (b) Inspection of Records: Participation in any POST program requires that the department/dispatch center allow the Commission to make inquiries and inspect records as may be necessary to verify claims for reimbursement or to confirm whether the department or dispatch center is, in fact, adhering to Commission Regulations.

- (c) Requests to Participate in POST Program: Participation in the POST Program is voluntary. A department desiring to participate in the POST Program shall present the Commission with a letter of request to participate, and if eligible, a request to receive aid. The letter shall be accompanied by a certified copy of an ordinance, or in instances where an ordinance is not appropriate, a resolution or letter of intent adopted by its governing body. The document, e.g., ordinance, shall state that while participating in the POST Program, the department will adhere to minimum selection and training standards and Commission Regulations. If a group of peace officers become a part of a department via a merger or through new legislation, e.g. coroner's merging with a sheriff's department, and this group of officers were not included in the initial request to participate, an additional request and accompanying documents shall be required as described above.
- (1) Initial Compliance: When a department has notified the Commission of its intent to participate, POST staff will work with the department to ensure officers are compliant. Incumbent officers' records will be reviewed to determine compliance with minimum selection and training standards specified in the Penal, Government, Education, or Vehicle Codes that were applicable at the time of each officer's appointment. Officers hired on or after the date an agency enters the POST Program shall be required to meet Commission Regulations which may be the same or higher standards than the standards in the aforementioned codes.
- (2) Basic Certificate Compliance: A participating department shall require every peace officer, appointed on or after the department's entry into the POST Program, to acquire the POST Basic Certificate upon completion of probation, but not later than 24 months after appointment to a peace officer position, (except when the department's probation period is 24 months, an additional three months shall be allowed).
- (3) Commission Confirmation: When the department is in full compliance as described in section (c)(1), participation of the department will be confirmed by the Executive Director and an effective date of entry established. Eligibility for a department's participation in the POST Reimbursement Program will also be determined.
- (d) Requests to Participate in Public Safety Dispatcher Program: Participation in the Public Safety Dispatcher Program is voluntary. A department desiring to participate in the POST Public Safety Dispatcher Program shall present the Commission with a letter of request to participate, and if

eligible, a request to receive aid. The letter shall be accompanied by a certified copy of an ordinance; or in instances where an ordinance is not appropriate, a resolution or letter of intent adopted by its governing body. The document, e.g., ordinance, shall state that while participating in the POST Public Safety Dispatcher Program, the department will adhere to the minimum selection and training standards and other requirements specified in Regulation 1018. A dispatch center employing dispatchers who primarily provide services to both fire and police and which is not a part of a local law enforcement department, i.e. independent communication service agencies, may apply to participate in the POST Public Safety Dispatcher Program.

- (1) Compliance: Dispatchers hired after the agency enters the Public Safety Dispatcher Program shall meet the requirements applicable to dispatchers specified in Commission Regulations. Incumbent dispatchers will not be required to meet selection and entry-level training standards. Any incumbent dispatcher who transfers to another participating department will be considered a new hire and shall be required to meet selection and training standards.
- (2) Commission Confirmation: Participation of the department will be confirmed by the Executive Director and an effective date of entry established. Eligibility for a department's participation in the POST Reimbursement Program will also be determined.

~~(b) A jurisdiction or department shall be ineligible to participate if it:~~

- ~~(1) Employs one or more peace officers or dispatchers who do not meet the minimum standards for employment, or~~
- ~~(2) Does not require that every peace officer or dispatcher satisfactorily completes the required training as prescribed in these Regulations; or~~
- ~~(3) Has in its employ any Regular Program peace officer hired after January 1, 1971, but before January 1, 1988, who has not acquired the Basic Certificate within six months of completion of 12 months of satisfactory service from the date first hired as a peace officer, or as otherwise determined by the Commission in PAM, Section P-1-5-a; or~~
- ~~(4) Has in its employ any regular or specialized program peace officer hired after January 1, 1988 who has not acquired the Basic Certificate upon completion of probation, but not later than 24 months after employment (except when the department probation~~

period is 24 months, an additional three months shall be allowed);
or

(5) ~~Effective upon entry into the Specialized Law Enforcement Certification Program, has in its employ any specialized peace officer hired before January 1, 1988 who has not acquired the Basic Certificate within six months after date of completion of 12 months of satisfactory service from the date first hired as a peace officer; or~~

(6) ~~Fails to permit the Commission to make such inquiries and inspection of records as may be necessary to verify claims for reimbursement or to determine whether the jurisdiction or department is, in fact, adhering to the Commission's Regulations.~~

(ee) Noncompliance and Ineligibility To Receive Services and Benefits: If it appears to the Commission that a department jurisdiction or agency has failed to adhere to Commission Regulations, including but not limited to the inspection of records, the minimum standards for recruitment, selection or training, the Commission shall notify the department jurisdiction or agency of its concern and of the jurisdiction or agency's department's probable ineligibility possible removal from for participation the Program(s). The Commission shall request that the department agency or jurisdiction comply with the minimum standards correct the problems causing non-compliance with the Regulations.

(f) Appeal Process: In the event that the jurisdiction or agency department fails to comply disagrees with the Commission's findings of non-compliance, the Commission shall afford the concerned affected jurisdiction or agency official department representatives the opportunity to appear before the Commission and present appropriate evidence or testimony.

(g) Denial of Services/Benefits: If the Commission finds that the standards Regulations have not been adhered to, it must-shall, beginning with a date determined by the Commission, reject all of the jurisdiction or agency's department's requests for services or and benefits (reference Penal Code section 13523). A jurisdiction or agency department may be reinstated in the program and again become eligible for participation services and benefits when, in the opinion of the Commission, the jurisdiction or agency department has demonstrated that it will adhere to the prescribed Regulations standards. The period during which the jurisdiction or agency department shall remain ineligible for services or and benefits shall be at the discretion of determined by the Commission.

PAM Section F-1-5-a adopted effective 10-23-88 is herein incorporated by reference.

NOTE: Authority cited: Section 13506, Penal Code.

Reference: Sections 13503 and 13523, Penal Code

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 900

SACRAMENTO, CA 95814

TE: (916) 323-3682

FAX: (916) 446-0278

E-mail: cominfo@com.ca.gov

December 8, 2006

Ms. Nancy Gust
SB-90 Sheriff's Department
County of Sacramento
711 G Street, Room 405
Sacramento, CA 95814

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

RE: Draft Staff Analysis and Hearing Date
Training Requirements for Instructors and Academy Staff, 02-TC-03
California Code of Regulations, Title 11, Sections 1001, 1052, 1053, 1055, 1070, 1071,
and 1082 (Register 2001, No. 29)

Dear Ms. Gust:

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

Written Comments

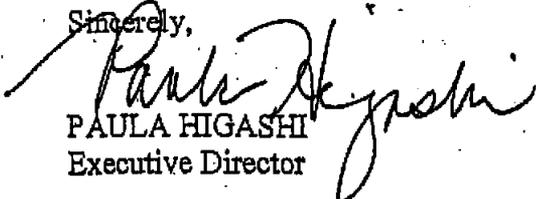
Any party or interested person may file written comments on the draft staff analysis by Friday January 5, 2007. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (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 25, 2007** at 9:30 a.m. in Room 126, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about January 11, 2007. 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 Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,


PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis

MAILED: _____
FAXED: _____
DATE: 12/1/00 INITIAL: LD
FILE: _____
WORKING BINDER: _____

ITEM _____

**TEST CLAIM
DRAFT STAFF ANALYSIS**

California Code of Regulations, Title 11,
Sections 1001, 1052, 1053, 1055, 1070, 1071, and 1082
(Register 2001, No. 29)

Training Requirements for Instructors and Academy Staff
(02-TC-03)

County of Sacramento, Claimant

EXECUTIVE SUMMARY

This test claim addresses regulations adopted by the Commission on Peace Officer Standards and Training ("POST") that require specified training of certain POST instructors and key staff of POST training academies.

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.

The test claim poses the following question:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

The Test Claim Regulations Do Not Impose a State-Mandated Program on Local Agencies

Although the test claim regulations require specified persons involved in POST training to engage in certain activities, staff finds that the requirements flow from an initial discretionary decision by the local agency to participate in POST, and another discretionary decision to provide POST-certified training or establish an academy and employ training staff. Therefore, the test claim regulations do not constitute a state-mandated program and are not subject to article XIII B, section 6.

Conclusion

Staff finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

*02-TC-03 Training Requirements for Instructors and Academy Staff
Draft Staff Analysis*

STAFF ANALYSIS

Claimant

County of Sacramento

Chronology

- 08/06/02 County of Sacramento filed test claim with the Commission on State Mandates ("Commission")
- 09/13/02 The Department of Finance submitted comments on test claim with the Commission.
- 10/31/02 The Commission on Peace Officer Standards and Training ("POST") submitted comments on the test claim with the Commission
- 12/08/06 Commission staff issued draft staff analysis

Background

This test claim addresses POST regulations that require specified training of certain POST instructors and key staff of POST training academies.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.¹ The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.² Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.³

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.⁴ POST states the following:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement.⁵

A POST participating agency can offer its own in-house POST-certified training, or send its personnel to POST-certified training institutions operated by other entities, such as community colleges or other law enforcement agencies.⁶

¹ Penal Code section 13500 et seq.

² *About California POST*, <<http://www.POST.ca.gov>>.

³ Penal Code sections 13522 and 13523.

⁴ Penal Code sections 13510, 13510.1, 13510.5, and 13511; California Code of Regulations, Title 11, section 1053.

⁵ *Training, Certificates & Services: Overview*, <<http://www.POST.ca.gov>>.

⁶ Letter from POST to the Commission, dated October 30, 2002.

On March 26, 2001, POST issued Bulletin number 01-05 entitled "Proposed Regulatory Action: Training Requirements for Instructors and Academy Staff of Specialized Training Courses." In that bulletin, POST stated:

For years, the training community has shared an informal expectation that persons who instruct in certain high risk/liability areas should attend a POST-certified instructor development course (or an equivalent one) on the related subject area. The same expectation has been maintained for certain key academy staff, and has, in fact, been formalized in the *POST Basic Course Management Guide*. The pertinent POST-certified instructor development courses are listed in the *POST Catalog of Certified Courses*. The proposed regulations also include provisions for equivalency determinations and exemptions from the training requirements.

Test Claim Regulations

POST subsequently adopted the regulations proposed in Bulletin number 01-05, which are the subject of this test claim.⁷ The regulations require that, effective July 1, 2002, primary instructors⁸ of designated specialized training courses complete a specified training standard, or its equivalent, prior to instructing in the specialized subject.⁹ Instructors of specialized training that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.¹⁰ A process was also established to allow presenters of the specialized courses to perform an equivalency evaluation of non-POST-certified training to meet the minimum training standard for the specialized subject.¹¹ Presenters of the specialized courses are required to maintain documentation demonstrating satisfaction of the minimum training standard by their instructors who teach any of the specialized courses.¹²

The test claim regulations also require that Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete specified minimum training standards within one year from the

⁷ The test claim was filed with the Commission on August 6, 2002, on regulations in effect at that time. The subject regulations have subsequently been modified, however, those modified regulations have not been claimed and, thus, Commission staff makes no finding with regard to them.

⁸ "Primary instructor" is an individual responsible for the coordination and instruction for a particular topic. The responsibility includes oversight of topic content, logistics, and other instructors. (Cal. Code Regs., tit. 11, § 1001, subd. (aa))

⁹ California Code of Regulations, Title 11, section 1070, subdivision (a).

¹⁰ *Ibid.*

¹¹ California Code of Regulations, Title 11, section 1070, subdivision (b).

¹² California Code of Regulations, Title 11, section 1070, subdivision (c).

date of appointment to the position.¹³ Academy Directors are required to maintain documentation demonstrating satisfaction of the minimum training standard for the designated staff position.¹⁴

Three additional requirements are set forth in the test claim regulations with regard to specialized course instructors and Academy instructors. First, qualifications of certain academy staff, in addition to other instructors and coordinators, must now be evaluated by POST in requests for course certification.¹⁵ Second, specified elements of instructor resumes must now be provided for course certification requests.¹⁶ And third, certificates of completion must be issued by presenters to students who successfully complete POST-certified instructor development courses listed in section 1070, the Academy Director/Coordinator Workshop and the Recruit Training Officer Workshop.¹⁷

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Claimant's Position

The claimant asserts that the test claim regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that development costs commencing in fiscal year 2001-2002 for the following activities will be incurred and are reimbursable:

1. Staff time to complete or update any necessary general, operations, or special orders as required.

¹³ California Code of Regulations, Title 11, section 1071, subdivision (a). Content for the courses for each staff position is specified in section 1082.

¹⁴ California Code of Regulations, Title 11, section 1071, subdivision (b).

¹⁵ California Code of Regulations, Title 11, section 1052, subdivision (a)(2).

¹⁶ California Code of Regulations, Title 11, section 1053, subdivision (a)(2).

¹⁷ California Code of Regulations, Title 11, section 1055, subdivision (f).

2. Staff time to compile information to be distributed to instructors and key staff informing them of changes in regulations and what information they need to provide such as updated resumes, completed class certificates, etc.
3. Staff time to collect, review for completeness and evaluate contents of current, and any new, instructor and key academy staff information packages turned in.
4. Staff time to review information submitted for equivalency evaluation as instructor or key staff.
5. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
6. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
7. Staff time to provide required Basic Instructor Development course to new instructors.
8. Purchase of necessary computer hardware, software and any necessary programming services to set up database or modify existing database to track information on #6 above.
- 9. Staff time to enter information into database to track class, individual, instructor, academy staff, certificate information and any other data required by POST. Database to be used for annual renewals, to provide POST information as necessary and during any audits of the program.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Develop or update training for data entry, report management and required notices in the database.
13. Meet and confer with POST representatives.
14. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, estimated costs for staff time are \$26,298 and estimated costs for computer hardware, software and programming services are "unknown at this time but could range from \$5,000 - \$20,000."

Claimant asserts that the following ongoing costs will be incurred and are reimbursable:

1. Staff time to collect, review for completeness and evaluate contents of new instructor and key academy staff resumes.
2. Staff time to collect, review for completeness and evaluate contents of annual renewal packages of instructor and key academy staff resumes.
3. Staff time to review information submitted for equivalency evaluation as instructor or key academy staff.
4. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.

5. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
6. Staff time to provide required Basic Instructor Development course to new instructors.
7. Staff time to compile information to be distributed to instructors and key staff informing them of any changes to these regulations.
8. Staff time to enter information into database to track class, individual, instructor, academy staff and certificate information and any other data required by POST.
9. Staff time to fill out required certificates.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Staff time to meet and confer with POST representatives.
13. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, claimant estimates ongoing costs of \$25,000 per year.

Position of Department of Finance

The Department of Finance stated in its comments that:

As the result of our review, we have concluded that the [test claim regulations] may have resulted in a higher level of service for an existing program. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

Position of POST

POST stated in its comments that it believes the test claim regulations do not impose a new program or higher level of service within an existing program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

First, under Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

Second, any law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. There is no requirement for a participating agency to have POST-certified training courses. Since the test claim regulations affecting instructor/academy staff training requirements only apply to POST-certified training institutions, there is no requirement for the state to reimburse for such costs under the Government Code or the California Constitution.

Third, the new POST training requirements for instructors and academy staff are worded in such a way that they are directed to the individual instructor and academy staff members, not the training institutions. POST-certified training institutions are free to require applicants to complete this training on their own at their own expense. If POST-certified training institutions voluntarily provide their staff with this training, it is no reason to expect the state to reimburse for these costs.

Since POST has facilitated the ready availability of this instructor/academy staff training by certifying the training to virtually any POST-certified training institution that can demonstrate a need and capability, law enforcement trainers in the POST program can conduct much of this required training within their own facilities without sending their personnel away.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution¹⁸ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁹ "Its 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."²⁰ 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.²¹ In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.²²

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

¹⁸ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

¹⁹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²¹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Hontig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

state policy, but does not apply generally to all residents and entities in the state.²³ 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.²⁴ A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."²⁵

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁶

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 6.²⁷ 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."²⁸

The analysis addresses the following issue:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

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

In order for the test claim regulations to impose a reimbursable state-mandated program under article XIII B, section 6, the language must order or command a local agency to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered.

Do the test claim regulations mandate any activities?

The test claim regulations require the following activities:

1. As of July 1, 2002, primary instructors of designated specialized POST training courses must complete a specified training standard, or its equivalent, prior to instructing in the subject.

²³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874; (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

²⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

²⁶ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

²⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551; 17552.

²⁸ *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

2. Instructors of designated specialized POST training courses that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.
3. Presenters of specialized courses must maintain documentation demonstrating their instructors who teach any of the specialized courses have satisfied the minimum training standard, and such documentation shall be made available for POST inspection upon request.
4. Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete the specified minimum training standards for their positions within one year from the date of appointment.
5. Academy Directors shall maintain documentation demonstrating satisfaction of the minimum training standard for each designated staff position, and such documentation shall be made available for POST inspection upon request.
6. Any person or organization desiring to have a course certified by POST shall now provide instructor resumes in addition to other information previously required.
7. Any presenter of a POST-Certified instructor development course, or any presenter of the Academy Director/Coordinator Workshop or Recruit Training Officer Workshop, shall issue certificates to students who successfully complete the training.

Thus, the plain language of the test claim regulations does require specified persons involved in POST training to engage in certain activities. However, based on the following analysis, staff finds that the requirements flow from the *initial discretionary decision* by the local agency to become a member of POST, and the choice to provide POST-certified training or establish a POST training academy. Therefore, the test claim regulations do not constitute a state-mandated program within the meaning of article XIII B, section 6.

POST was created in 1959 "[f]or the purpose of raising the level of competence of local law enforcement officers ..."²⁹ To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the physical, mental, and moral fitness of peace officers, and for the training of peace officers. However, these rules apply only to those cities, counties, and school districts that participate in the POST program and apply for state aid.³⁰ If the local agency decides to file an application for state aid, the agency must adopt an ordinance or regulation agreeing to abide by POST rules and regulations.³¹ Not all local agencies have applied for POST membership,³² nor do all local agencies provide POST-certified training. Nor is there any state statute, or other state law, that requires local agencies to participate in the POST program or provide POST-certified

²⁹ Penal Code section 13510.

³⁰ Penal Code section 13520.

³¹ Penal Code section 13522.

³² POST's website at http://www.post.ca.gov/library/other/agency_page.asp lists law enforcement agencies and participation status.

training. Moreover, consistent with POST's long standing interpretation of the Penal Code, POST's regulations state that participation in the POST program is voluntary.³³ POST stated the following in its comments on this test claim:

[U]nder Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

With regard to providing training, section 13511, subdivision (a), states that, "[i]n establishing standards for training, [POST] shall, so far as consistent with the purposes of this chapter, permit required training to be obtained at institutions approved by [POST]." On its website at <http://www.post.ca.gov/training/default.asp>, POST gives an overview of Training, Certificates & Services it provides which states:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement....

In comments on this test claim, POST also stated that:

[A]ny law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies.

The point here is that there is no requirement for a participating agency to have POST-certified training courses....³⁴

Thus, according to the Penal Code, and as the Penal Code provisions are interpreted by POST, participating in the POST program,³⁵ obtaining POST certification of training courses and providing POST-certified training are discretionary decisions on the part of the training provider. The courts have found it is a well-established principle that "contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; and courts will not depart

³³ California Code of Regulations, title 11, section 1010, subdivision (c).

³⁴ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

³⁵ California Code of Regulations, title 11, section 1010, subdivision (c).

from such construction unless it is clearly erroneous or unauthorized.³⁶ Staff finds no other provision in statute or regulation to contradict POST's interpretation of the Penal Code.

In the *Kern High School Dist.* case, the California Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant's participation in the underlying program is voluntary.³⁷ The court stated:

[T]he core point ... is that activities undertaken at the option or discretion of a local governmental 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 obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice. [Citing *City of Merced v. State of California* (1984) 153 Cal.app.3d 777, 783.]³⁸

The cases have further found that, in the absence of strict legal compulsion, a local agency might be "practically" compelled to take an action thus triggering costs that would be reimbursable. In the case of *San Diego Unified School Dist.*, the test claim statutes required school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.³⁹ The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.⁴⁰ Regarding expulsion recommendations that were discretionary on the part of the district, the court acknowledged the school district's arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement to provide safe schools.⁴¹ Ultimately, however, the Supreme Court decided the discretionary expulsion issue on an alternative basis.⁴²

In summary, where no "legal" compulsion is set forth in the plain language of a test claim statute or regulation, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. Here, as noted above, participation in the underlying POST program and providing POST-certified training is voluntary, i.e., no legal compulsion exists. Nor does staff find any support for the notion that "practical" compulsion is applicable in the instant case. The test claim regulations do not address a situation in any way similar to the circumstances in *San Diego Unified School Dist.*, where the expulsion of a student might

³⁶ *State Compensation Insurance Fund v. Workers' Compensation Appeals Board* (1995) 37 Cal.App.4th 675, 683 (citing *Industrial Indemnity Co. v. Workers' Comp. Appeals Board* (1985) 165 Cal.App.3d 633, 638).

³⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

³⁸ *Id.* at page 742.

³⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 866.

⁴⁰ *Id.* at pages 881-882.

⁴¹ *Id.* at page 887, footnote 22.

⁴² *Id.* at page 888.

be needed to comply with the constitutional requirement for safe schools. In fact, the circumstances here are substantially similar to those in the *Kern High School Dist.* case, where the district was denied reimbursement because its participation in the underlying program was voluntary, and no "substantial penalty" would result if local agencies fail to participate in POST or provide their own POST-certified training.

The Supreme Court in *San Diego Unified School Dist.* underscored the fact that a state mandate is found when the state, rather than a local official, has made the decision to require the costs to be incurred.⁴³ In this case, the state has not required the local public agency to participate in POST or provide POST-certified training; the local agency has made that decision. Moreover, the court in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 (*County of Los Angeles II*), in interpreting the holding in *Lucia Mar*,⁴⁴ noted that where local entities have alternatives under the statute other than paying the costs in question, the costs do not constitute a state mandate.⁴⁵ Here, local agencies have alternatives available in that they can: 1) choose not to become members of POST; 2) elect not to present training courses in-house and instead send their law enforcement officers to POST-certified training institutions operated by other entities such as community colleges or other law enforcement agencies; or 3) hire only those individuals who are already POST-certified peace officers. Therefore, the activities do not constitute a state mandate within the meaning of article XIII B, section 6.

Conclusion

Staff finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

⁴³ *Id.* at page 880.

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

⁴⁵ *County of Los Angeles II*, *supra*, 32 Cal.App. 4th 805, page 818.



Training, Certificates & Services

Overview



To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement. This section of the POST Home Page provides links to the following information.

- [Basic and Entry-Level Training](#)
- [Basic Course Waiver Process and Requalification](#)
- [Training](#)
- [Leadership Development](#)
- [Specialty Training Programs](#)
- [Instructional Technology](#)
- [Instructional Resources](#)
- [POST Certificates](#)
- [Consulting Services](#)

Basic and Entry-Level Training

[Basic Course Instructional System](#)

The Basic Course Instructional System provides links to a Map of California Basic Academies, a List of Academies, how to Order Workbooks for the Basic Course, and others links to assist in locating various courses in the Basic Training System.

[Basic Training Academies](#)

Provides a list, with links, of institutions certified by POST to provide basic law enforcement training.

[Field Training Program](#)

Describes the program that guides a peace officer's transition from an academic setting or custody assignment to general law enforcement patrol duties.

[PC 832 Arrest and Firearms Course](#)

Describes curriculum, tests and requalification requirement (three-year rule).

[Public Safety Dispatchers' Basic Course](#)

Describes curriculum and student preparation.

[Regular Basic Course](#)

Describes course formats, curriculum, student workbooks and preparation.

Reserve Peace Officer Program (RPOP)

Provides information on the Reserve Peace Officer Program (RPOP) including significant dates, legislation, various laws, commission bulletins, training, frequently asked questions, glossary, and related links.

Specialized Investigators' Basic Course

Describes curriculum, student workbooks and preparation, and requalification requirement (three-year rule).

Training and Testing Specifications for Peace Officer Basic Courses

Contains the minimum, mandated curriculum and testing for the POST-mandated basic courses.

Workbook Educational Objectives

Contains more than 1,400 educational objectives that appear in the Basic Course Student Workbook series. Presented by learning domain, each list also includes any required scenario tests, exercise tests and instructional activities.

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Basic Course Waiver Process and Requalification

Basic Course Waiver Process

Describes the process for using prior law enforcement training and experience for comparison with the California POST basic course training standard.

POST Requalification Course

Describes the course designed for previously trained individuals who either have a three-year or longer absence from California law enforcement or who must satisfy requirements for the Basic Course Waiver process.

PC 832 Arrest and Firearm Requalification

Describes the requalifying options and available exemptions for individuals who previously met the required training standard, but who have a three-year or longer absence from California law enforcement or who were not employed within three years of their course completion date.

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Training

Catalog of Certified Courses

Provides a current, online catalog of all POST-certified training courses.

Course Certification Process (doc)

Describes the process for obtaining course certification. Includes a list of factors to address in a certification request.

Course Presenters

Provides links to presenters who deliver POST-certified training courses.

Field Management Training

Describes the program that assists local agencies with their administrative, management, or operational problems or

projects, when no formal training is available.

Legislative Training Mandates

Provides a "quick-reference" table of legislative training mandates. Information is provided in an abbreviated format and is not intended to be regulatory language. Users of the table are advised to reference the complete text in law (code sections are linked).

Management Course

Describes the course that must be completed within 12 months of promotion or appointment to a middle management position.

Supervisory Course

Describes the course that must be completed within 12 months of promotion or appointment to a first-level supervisory position.

Team Building Workshop Program

Describes the program that offers consultant services to assist the management team of a local agency with planning, problem solving, goal setting, or team building.

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Leadership Development

Command College

Provides information on the Command College Program including program requirements, application process, article objectives and article guidelines, frequently asked questions, the CC Network, class profiles, and the alumni association.

Executive Development Course

Describes the course that provides training on the roles of leaders in their respective organizations.

Sherman Block Supervisory Leadership Institute

Describes the Institute designed to enhance the leadership abilities of first-line peace officer supervisors in California.

Executive Training Seminars

Describes seminars requested by a local chief or sheriffs association that focus on problem solving or address a variety of training topics.

West Point Leadership Program

Describes the leadership program offered by the Los Angeles Police Department. Includes contact information.

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Specialty Training Programs

Course Administrator Seminar

Provides training on the entire course certification process, including practical training on the responsibilities of the

course administrator.

Cultural Diversity Program

Describes POST diversity training, including racial profiling and police response to persons with mental and developmental disabilities.

Instructor Development

o Academy Instructor Certificate Program

Describes the voluntary instructor development program that is designed to build instructor competency within the regular basic course academies.

o Instructor Symposium

Describes the annual Public Safety Instructor Symposium, conducted by POST in collaboration with the California Community Colleges Chancellor's Office and other public safety entities and colleagues.

o Master Instructor Development Program (MIDP)

Describes the yearlong program that prepares instructors to develop and present effective training for law enforcement statewide.

o Specialized Training Certification

Describes the requirement for completing subject-specific instructor training prior to presenting specialized instruction.

o Regional Skills Training Centers (RSTC)

Describes the Regional Skills Training Centers that provide perishable skills training to peace officers. Includes training locations.

Robert Presley Institute of Criminal Investigation (ICI)

Describes the voluntary program designed to improve the effectiveness of individual investigators.

Violence Against Women Act (VAWA) Program

Describes the program which provides domestic violence and sexual assault training courses for peace officers and dispatchers.

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Instructional Technology

California POST Television Network (CPTN)

Describes the video program that delivers high quality, in-service training VHS and DVD to California law enforcement agencies in the POST program and its subscribers. Related links include a monthly CPTN program guide, POST-certified telecourse training, video catalog and subscriber information, and a link to information about receiving Continuing Professional Training credit.

Multimedia Training Program

Describes the program that uses a variety of media such as video, sound, computer graphics, and text to present POST training.

o Contact Information

Provides several methods for requesting additional information about POST instructional technology programs.

- o [Courses](#)
Lists available CD-ROM training courses and information about obtaining a copy.
- o [Downloads](#)
Provides information about downloadable files related to POST CD-ROM courses.
- o [Multimedia Program Help](#)
Provides more than 40 questions and answers about the POST multimedia program.
- o [Online Multimedia Reference \(OMR\)](#)
Provides technical and administrative information about the POST multimedia-training program.

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Instructional Resources

[Gameshow Pro 3](#)

Describes the product that allows trainers to use different game formats to develop an interactive learning experience.

[Quiz Factory 2](#)

Describes the product that allows trainers to create a test or survey on any topic, deliver it electronically, then track results and measure learning.

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POST Certificates

[Professional Certificate Program](#)

Provides information about the Professional Certificate Program and the certificates awarded by POST.

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Consulting Services

[Management Studies](#)

Provides information about the management studies conducted by POST at the request of a local agency executive.

[Peace Officer Feasibility Studies](#)

Provides information about the requirements for the study conducted by POST to determine whether peace officer status or a change in peace officer status is justified for a position under consideration by the legislature.

[Regional Consultant Boundaries Map](#)

Provides a map showing the ten POST Regional Consultant assignments, with an email link to each consultant.

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[Conditions of Use](#)

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H

State Compensation Ins. Fund v.
 W.C.A.B. Cal.App.2.Dist.STATE COMPENSATION
 INSURANCE FUND, Petitioner,
 v.
 WORKERS' COMPENSATION APPEALS BOARD
 and SAM WELCHER, Respondents.
 No. B086372.

Court of Appeal, Second District, Division 3,
 California.
 Aug 8, 1995.

SUMMARY

A workers' compensation judge found that Lab. Code, § 5402 (failure to reject liability for workers' compensation injury claim within 90 days after filing of claim creates presumption that injury is compensable; presumption is rebuttable only by evidence discovered subsequent to 90-day period), barred evidence offered by a workers' compensation insurer concerning its admitted noncompliance with the statute and determined that an applicant was 100 percent permanently disabled due to industrial injury. The Workers' Compensation Appeals Board denied the insurer's petition for reconsideration.

The Court of Appeal affirmed the order denying reconsideration, holding that the Workers' Compensation Appeals Board correctly upheld the ruling of the workers' compensation judge. Once the statutory presumption attached due to the insurer's failure to respond to the applicant's timely claim within 90 days, the insurer had the burden of proof on the primary issue of causation. The insurer offered four medical reports to show that the applicant's diseases were not work related, but they had not been obtained during the 90-day statutory period. The presumption operates to bar the presentation of evidence which could have been obtained with the exercise of reasonable diligence and all of the records could have reasonably been obtained within the 90-day period. Thus, the insurer never established that it had exercised reasonable diligence in investigating the claim. Further, the workers' compensation judge properly excluded the testimony of the insurer's claims adjuster as to when the claim had been rejected, pursuant to Lab. Code, § 5502, subd. (d)(3),

since she had not been identified as a witness at the mandatory settlement conference or in the settlement conference statement, and no explanation had been given at trial for the failure to so identify her. (Opinion by Klein, P. J., with Croskey and Aldrich, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Statutes § 21--Construction--Legislative Intent--Purpose of Law.

A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. When the meaning of a statute is uncertain, resort may be had to the history of the legislation, including legislative and other reports, to resolve such ambiguities as exist.

(2a, 2b) Workers' Compensation § 67--Proceedings Before Workers' Compensation Appeals Board--Claims--Failure to Reject Claim of Injury Within Specified Time as Creating Presumption of Compensability--Statutory Purpose--Presumption as Affecting Burden of Proof.

The purpose of the 1989 amendment to Lab. Code, § 5402, providing that failure to reject liability for a workers' compensation injury claim within 90 days after the filing of the claim creates a rebuttable presumption that the injury is compensable, was to expedite the entire claims process in workers' compensation cases by limiting the time during which the employer's investigation of an injured worker's claim could be undertaken-90 days-without being penalized for delay. The rebuttable presumption of § 5402 was intended to affect the burden of proof rather than the burden of producing evidence, because it was created by the Legislature to implement the public policy of expediting workers' compensation claims. As such, once the underlying facts have been established, the statute's effect in workers' compensation litigation is to place on the defendant employer/carrier the burden of proving that the employee/applicant does not have a compensable injury; in the absence of such proof, the

(Cite as: 37 Cal.App.4th 675)

consequences are adverse to the employer/carrier.
[See 2 Witkin, Summary of Cal. Law (9th ed. 1987) Workers' Compensation, § 380.]

(3) Evidence § 20—Presumptions—Affecting Burden of Proof—As Implementing Public Policy.

While a presumption affecting the burden of producing evidence concerns only the particular litigation in which it applies, a presumption affecting the burden of proof is established to implement some public policy other than to facilitate the particular action in which it applies.

(4a, 4b) Workers' Compensation § 67—Proceedings Before Workers' Compensation Appeals Board—Claims—Failure to Reject Claim *677 of Injury Within Specified Time as Creating Presumption of Compensability—Admissibility of Evidence to Rebut Presumption.

The Workers' Compensation Appeals Board correctly upheld the rulings of a workers' compensation judge that Lab. Code, § 5402 (failure to reject liability for workers' compensation injury claim within 90 days after filing of claim creates presumption that injury is compensable; presumption is rebuttable only by evidence discovered subsequent to 90-day period); barred evidence offered by a workers' compensation insurer concerning its admitted noncompliance with the statute and that the applicant was disabled due to industrial injury. Once the presumption attached due to the insurer's failure to respond to the applicant's timely claim within 90 days, the insurer had the burden of proof on the primary issue of causation. The insurer offered four medical reports to show that the applicant's diseases were not work related, but they had not been obtained during the 90-day statutory period. The presumption operates to bar the presentation of evidence which could have been obtained with the exercise of reasonable diligence and all of the records could have reasonably been obtained in the 90-day period. Thus, the insurer never established that it had exercised reasonable diligence in investigating the claim. Further, the workers' compensation judge properly excluded the testimony of the insurer's claims adjuster as to when the claim had been rejected, pursuant to Lab. Code, § 5502, subd. (d)(3), since she had not been identified as a witness at the mandatory settlement conference or in the settlement conference statement, and no explanation had been given at trial for the failure to so identify her.

(5) Statutes § 44—Construction—Aids—Contemporaneous Administrative Construction. Contemporaneous administrative construction of a

statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight, and courts will not depart from such construction unless it is clearly erroneous or unauthorized.

COUNSEL

Krimen, Klein, Da Silva, Daneri & Bloom and Don E. Clark for Petitioner.

Dennis J. O'Sullivan and David D. Robin for Respondents. *678

KLEIN, P. J.

A workers' compensation judge (WCJ), applying the rebuttable presumption of compensability provided in Labor Code section 5402,^{FN1} barred evidence offered by defendant State Compensation Insurance Fund (SCIF) concerning its admitted noncompliance with the statute and determined that an applicant was 100 percent permanently disabled due to industrial injury. SCIF petitioned for reconsideration, and the Workers' Compensation Appeals Board (Board) denied reconsideration, upholding the WCJ. SCIF sought review in this court, contending that the WCJ had erred in finding applicant's injuries compensable in view of the extensive medical record demonstrating nonindustrial causation. Both the applicant and applicant's health care provider (Kaiser Permanente, The 4600 Group, referred to herein as Kaiser) answered the petition, contending that failure to apply Labor Code section 5402 in this instance would render the legislation, enacted as part of Legislature's effort in 1989 and 1990 to reform the workers' compensation system, meaningless. We agree, and affirm the determination of the Board.

FN1 The statute provides as follows: "Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400. If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division. The presumption is rebuttable only by evidence discovered subsequent to the 90-day period."

Facts and Procedural History

Applicant Sam Welcher, born June 25, 1930, worked from January 1965 to February 26, 1991, first as a truck driver and then a dispatcher, for defendant employer Cook & Cooley, insured by defendant SCIF. Applicant left the job because he was no longer able to work due to health problems, and in March 1991 underwent major aortic bypass surgery at Kaiser during which a kidney was removed and some toes were amputated. Applicant, suffering from renal failure, receives dialysis frequently, and the medical expenses in this case are large. ^{FN2} He filed his claim for workers' compensation benefits on August 30, 1991, alleging an industrial continuous trauma injury to his kidneys, right lower leg, to his internal system, to his heart and psyche, and that he had industrially caused hypertension as well.

^{FN2} At trial, Kaiser submitted a lien claim of \$277,902.17, not a final lien.

SCIF did not deny liability in this case until January 2, 1992, almost four months after the date of knowledge of the injury, which constituted noncompliance with Labor Code section 5402. *679

At trial, applicant testified that during his daily employment as a radio dispatcher, he was often awakened in the night by calls concerning gasoline deliveries. He was in effect always "on call." Applicant missed very little time from work until he became sick in February 1991. Applicant felt stress on the job caused his illness, but would have continued to work if his illness had not intervened. Applicant further testified that the hypertension was diagnosed when he was 55 years old, and that his doctor had advised him to stop smoking, but said nothing about alcohol consumption.

The WCJ issued findings and award, determining that applicant had sustained industrial injury to his kidneys, his right lower extremity, his internal system, and his heart, and had work-related hypertension, "for the period 1/65 to 2/26/91 (pursuant to Labor Code Section 5402)." The WCJ found that applicant was permanently and totally disabled, and that there was need for further medical treatment for the applicant's renal and hypertensive conditions.

In her opinion on decision, the WCJ discussed applicant's medical history in detail, relying on the

report dated March 25, 1991, by Kaiser physician Mark Saroyan, M.D., and on Kaiser's medical records. (The records, designated exhibit 20, which were extensive, were admitted at trial after being subpoenaed by defendant SCIF. Dr. Saroyan's reporting was included.) The WCJ's summary included the following: "In 1980, the applicant became a radio dispatcher. At that same time he was diagnosed as having hypertension and high cholesterol. This hypertension was not under control since the applicant stopped taking his medicine. During the period of 1984 to 1986, applicant had various polyps and possible cancerous growth[s] of his vocal cords with subsequent operations [o]n 6/8/84, 5/85, 4/86. During this time the applicant was [a] 2-pack a day smoker and possible alcohol user. The record is very vague about applicant's use of alcohol. Thus by 4/89, the applicant was diagnosed with uncontrollable hypertension, gallstones, hiatal hernia and chest pains. As for the chest pains, it was determined that the applicant had a normal EKG and no cardiac problems. Also at that time, applicant's care was transferred to Kaiser HMO. Eventually by 1991, the applicant had a renal failure which eventually resulted in dialysis with subsequent complication of amputation of his right first and second toes. Subsequent to 1991, the applicant had a history of unidentified G.I. bleeding with severe vascular disease. At the present time, the applicant is on dialysis for his total renal or kidney failure."

The WCJ elaborated further. "Applicant had a renal vascular hypertension which is the narrowing of the arteries to the kidneys. The kidneys, to *680 compensate for the restricted flow of blood, produce[d] renin, a hormone which increase[d] blood pressure, hence renal vascular hypertension, as indicated by the Kaiser records. Thus, the applicant's hypertension was not a stress-related hypertension. This hypertension and the narrowing of arteries eventually [led] to ... applicant's renal failure. A stress-related hypertension is a hereditary condition which is exacerbated by a person's diet, weight, smoking habits, alcohol use and other contributory factors. In this case, the applicant's smoking contributed to his vascular narrowing disease of his arteries to his kidneys.... [¶] Applicant had renal vascular hypertension as opposed to stress caused hypertension. This is the reason why the applicant's hypertension was uncontrollable by the usual medications, which did not benefit him at all. The proper treatment for renal vascular hypertension is aorta-bi-iliac bypass and/or aorta-left-renal bypass.... Thus, it is found that the renal vascular hypertension

with eventual renal failure and dialysis and amputation of the applicant's toes is non-industrial."

Finally, the WCJ declared: "Now, comes the interesting part of the case ..., the 90-day presumption applies. However, this presumption is rebutted by evidence discovered subsequent to the 90-day period. The Labor Code is not clear as to what type of evidence, i.e., medical or testimonial evidence for the delay. In this case, defense attorney wanted to present the testimony of the adjuster Amanda Corral-Cortez as to why the objection was not timely served on the applicant and his attorney within the 90 days. The WCJ had ruled that the testimony was inadmissible since her name as a witness was not listed either on his 7/23/93 MSC Statement [(Mandatory Settlement Conference Statement)] and [sic] the 8/4/93 Settlement Conference Summary. Because of the operation of Labor Code Section 5402, it is found the applicant's injury is industrial under the 90 day rule."

SCIF petitioned for reconsideration, pointing out what it deemed the "inconsistent" findings made by the WCJ. The WCJ recommended denial of reconsideration in her report and recommendation to the Board, because SCIF had not denied the injury in timely fashion. "The primary purpose of this Labor Code Section was that the defendants expeditiously investigate all claims in a timely manner so that the applicant will not be held in limbo as to the compensability of his injury. Defendants admitted that their denial was not timely" As to barring the testimony of SCIF's claims adjuster, the *681 WCJ pointed out that by the time of the mandatory settlement conference "defendants had had approximately two years in which to investigate the applicant's claim," and discovery had closed on that date pursuant to Labor Code section 5502, subdivision (d)(3).^{FN3}

FN3 Labor Code section 5502 is a procedural statute, governing hearings and calendaring of workers' compensation matters, among other things. In pertinent part, subdivision (d)(3) provides "[d]iscovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference."

The Board denied SCIF's petition for reconsideration without further discussion. SCIF filed a verified, timely petition for writ of review in this court on September 2, 1994, observing there had been no published appellate opinion on what Labor Code section 5402 means, what kind of presumption has been created, and most particularly, what kind of evidence effectively rebuts the presumption created by the statute. SCIF argued that all its medical reports constituted evidence which rebutted the presumption, but did not submit the reports upon which it relied with the writ petition. (They are included in the Board record, however, and have been part of our review.) Kaiser filed opposition to the issuance of a writ, contending there have been several Board panel opinions in recent years taking the position the only rebuttal evidence admissible to combat the presumption of section 5402, once noncompliance by the employer/carrier has been established, is evidence that was not reasonably obtainable within the 90-day period, and that these opinions had stated the dispositive rule in this case. This court issued a writ of review.

Discussion

I. Statutory Intent

(1) "A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [20 Cal.Rptr.2d 523, 853 P.2d 978].) When the meaning of a statute is uncertain, resort may be had to the history of the legislation, including legislative and other reports, to resolve such ambiguities as exist. (*Id.* at p. 393.)

(2a) In the case of Labor Code section 5402, the 1989 amendment to the section was one result of attempts "by representatives of organized labor, management and the insurance industry following several years of negotiation intended to streamline and improve the workers' compensation benefit *682 delivery system...." (Enrolled Bill Rep., Assem. Bill No. 276 (Sept. 19, 1989) Dept. Industrial Relations, p. 4.) Its primary purpose, as the WCJ correctly stated, was to expedite the entire claims process in workers' compensation by limiting the time during which investigation by the employer of a claim by an injured worker could be undertaken—90 days—without

being penalized for delay. The "penalty" provided for delay was that a rebuttable presumption of compensability would attach to the claim.

II. The Nature of the Presumption Created

We consider what sort of "rebuttable presumption" the Legislature intended to create in Labor Code section 5402. "A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence." (Evid. Code, § 600, subd. (a), italics added.) "A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof." (Evid. Code, § 601.)

"A presumption affecting the burden of producing evidence requires the ultimate fact to be found from proof of the predicate facts in the absence of other evidence. If contrary evidence is introduced then the presumption has no further effect and the matter must be determined on the evidence presented." (Evid. Code, § 604.) (*In re Heather B.* (1992) 9 Cal.App.4th 535, 861 [11 Cal.Rptr.2d 891].) A presumption affecting the burden of proof has a more substantial impact in determining the outcome of litigation. The effect of a presumption affecting the burden of proof is "to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact." (Evid. Code, § 606.) (3) While a presumption affecting the burden of producing evidence concerns only the particular litigation in which it applies, a presumption affecting the burden of proof "is established to implement some public policy other than to facilitate the particular action in which it applies. [Citations.]" (*In re Heather B.*, *supra*, at p. 561; Evid. Code, § 605.)

(2b) We have concluded that the rebuttable presumption of Labor Code section 5402 was intended to affect the burden of proof rather than the burden of producing evidence, because it was created by the Legislature to implement the public policy of expediting workers' compensation claims. As such, once the underlying facts have been established, its effect in workers' compensation litigation is to place upon the defendant employer/carrier the burden of proving the employee/applicant does not have a compensable *683 injury; in the absence of such proof, the consequences are adverse to the

employer/carrier.

(4a) In this case, "the underlying facts" were that applicant had made a timely claim to which SCIF had not responded for approximately four months, instead of the ninety days permitted by the statute. The WCJ's ruling barring the testimony of the SCIF claims adjuster was highly significant, in that SCIF was thus unable to avoid the application of the presumption. SCIF then had to assume the burden of proof on the primary issue in the case, which was industrial causation. Resolution of this issue required medical evidence, usually presented through medical reports from examining, treating or evaluating doctors. At trial, SCIF did offer, and the WCJ admitted, the reports of four defense doctors, obtained after January 2, 1992, including those prepared on August 2, 1993, and August 4, 1993, by internist and cardiologist Richard Hyman, M.D., in which he diagnosed hypertension and atherosclerotic peripheral vascular disease and concluded that neither were work-related. All of these reports, however, were offered without explanation as to why they had not been obtained during the 90-day investigation period allowed by Labor Code section 5402.

III. What Constitutes Evidence Which Will Rebut the Presumption of Compensability

Once the presumption has attached to a claim, at issue is what evidence may be admitted on behalf of the employer/carrier to rebut the presumption. Labor Code section 5402 states that the evidence be only that "discovered subsequent to the 90-day period." While there is as yet no appellate discussion of this issue, the Board has spoken to it in a number of panel decisions. (5) We adhere to "the well-established principle that contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; and courts will not depart from such construction unless it is clearly erroneous or unauthorized." (Industrial Indemnity Co. v. Workers' Comp. Appeals Board (1985) 165 Cal.App.3d 633, 638 [211 Cal.Rptr. 683].)

(4b) In *Napier v. Royal Insurance Co.* (1992) SAC 174290, 20 Cal. Workers' Comp. Rptr. 124 (writ den.), ^{FNA} a Board panel rejected an extremely broad interpretation of Labor Code section 5402 which would have barred all further discovery once the

presumption applied, but said: "While the *684 presumption of compensability will preclude the defendant from disputing its liability for injury with evidence which could have been obtained with the exercise of reasonable diligence within the initial 90 day period, defendant is not thereafter permanently prevented from seeking evidence on corollary and related issues." The conclusion that the Labor Code section 5402 presumption operates to bar the presentation of evidence which "could have been obtained with the exercise of reasonable diligence" was also reached by the Board in *Finess v. American Motorists Ins. Co.* (1992) SAC 173856, 20 Cal. Workers' Comp. Rptr. 303 and *Casey v. CIGNA* (1993) GRO 7572, 5718, 6593, 21 Cal. Workers' Comp. Rptr. 248. What constitutes "reasonable diligence" is being decided on a case-by-case basis.

FN4 A board panel decision reported in the California Workers' Compensation Reporter is regarded as a properly citable authority, particular on the issue of contemporaneous administrative construction of statutory language. (*Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [257 Cal.Rptr. 813].)

The Board has also identified at least one area where the presumption does not operate as a bar against the admission of evidence which may rebut compensability of a claim. An applicant's testimony at a hearing may rebut the presumption, if the WCJ does not find the applicant credible on the issue of compensability; the Board has reasoned that such testimony could not reasonably have been discovered in the 90-day period. (*Davis v. Workers' Comp. Appeals Bd.* (1994) 59 Cal.Comp.Cases 1066.) Following the same reasoning, the testimony of other witnesses at trial or by deposition on behalf of the applicant may rebut the presumption. (*Wetherell v. Workers' Comp. Appeals Bd.* (1994) 59 Cal.Comp.Cases 1128, writ den.; and see *Pinson v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 141.)

None of these decisions assist SCIF in its contention that it should have been permitted to rebut the presumption with the evidence contained in its medical reports, or the evidence discussed by the WCJ which was contained in the records of lien claimant Kaiser, all of which could have reasonably been obtained in the 90-day period after August 30, 1991. In short, SCIF never established that it had

exercised reasonable diligence in investigating this claim.

IV. The WCJ's Labor Code Section 5502, Subdivision (d)(3), Ruling

SCIF did offer the testimony of its claims adjuster Corral-Cortez at trial, although she had not been identified as a witness at the mandatory settlement conference or in the settlement conference statement. The WCJ ruled that this circumstance operated to exclude the evidence, pursuant to Labor Code section 5502, subdivision (d)(3). This statute, which was enacted in 1989 and has undergone amendment on several occasions since, was considered by the Board in *Zenith Insurance Co. v. Ramirez* (1992) 57 Cal.Comp.Cases 719. The Board (in bank) upheld and applied the mandatory settlement *685 procedure including the provision closing discovery to a number of cases, noting that it was established "to guarantee a productive dialogue leading, if not to expeditious resolution of the whole dispute, to thorough and accurate framing of the stipulations and issues for hearing." (*Id.* at p. 727.)

In *Rodriguez v. Workers' Comp. Appeals Bd.* (1994) 30 Cal.App.4th 1425, 1433 [35 Cal.Rptr.2d 713], the Court of Appeal held that pursuant to Labor Code section 5402, "... it is the rejection [of liability] which must occur within the 90-day period, not the receipt of notice of that rejection." (Italics added.) In view of *Rodriguez*, the WCJ's ruling excluding the adjuster's testimony was particularly significant, because the testimony would very likely have been relevant concerning whether SCIF had in fact rejected the claim within the 90-day period but had simply not communicated its decision to the claimant. The WCJ, in the case before us, defended her ruling on this issue in her report to the Board, pointing out no explanation had been given at trial why the adjuster's identity had not been disclosed at the mandatory settlement conference, and emphasizing there had been inexcusable delay in this case. We conclude that the type of delay demonstrated herein was of the sort that Labor Code section 5402 was designed to discourage. The Board correctly upheld the WCJ's ruling.

Disposition

The Board's order dated July 21, 1994, denying reconsideration, is affirmed.

37 Cal.App.4th 675
37 Cal.App.4th 675, 43 Cal.Rptr.2d 660, 60 Cal. Comp. Cases 717, 95 Cal. Daily Op. Serv. 6300, 95 Daily Journal
D.A.R. 10,685
(Cite as: 37 Cal.App.4th 675)

Croskey, J., and Aldrich, J., concurred.
Petitioner's application for review by the Supreme
Court was denied November 2, 1995. *686

Cal.App.2.Dist.
State Compensation Ins. Fund v. Workers' Comp.
Appeals Bd.
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Comp. Cases 717, 95 Cal. Daily Op. Serv. 6300, 95
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Blythe Police Department
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Brea Police Department
Brentwood Police Department
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Burbank Police Department
Burlingame Police Department
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Butte County District Attorney
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CA Alcohol Beverage Control
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CA Attorney General (not a POST participating agency)
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CA Department of Consumer Affairs, Division of Investigations
CA Department of Consumer Affairs, Medical Board of California
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Callisto Police Department
Campbell Police Department
Capitola Police Department
Carlsbad Police Department
Carmel Police Department
Cathedral City Police Department
Ceres Department of Public Safety
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Chaffey Community College District Police Department
Chapman University Department of Public Safety (not a POST participating agency)
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Chino Police Department
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Chula Vista Police Department
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Clayton Police Department
Clearlake Police Department
Cloverdale Police Department
Clovis Police Department
Clovis Unified School District Police Department
Coalinga Police Department
Colma Police Department
Cotton Police Department
Colusa County District Attorney
Colusa County Sheriff's Department
Colusa Police Department
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Compton Unified School District Police Department
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Concordia University Department of Campus Safety and Security (not a POST participating agency)
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Corning Police Department
Corona Police Department
Coronado Police Department
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Costa Mesa Police Department
Cosumnes River College Police Department (Los Rios CCD)
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CPSU Pomona Department of Public Safety
CPSU San Luis Obispo Police Department
Crescent City Police Department
CSU Bakersfield Police Department
CSU Channel Islands Police Department
CSU Chico Police Department
CSU Dominguez Hills Police Department
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CSU Los Angeles Police Department
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CSU Northridge Police Department
CSU Sacramento Police Department
CSU San Bernardino Police Department
CSU San Diego Police Department
CSU San Francisco Police Department
CSU San Jose Police Department
CSU San Marcos Police Department
CSU Sonoma Police Department
CSU Stanislaus Police Department
Cuesta College Department of Public Safety
Culver City Police Department
Cypress Police Department

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- Dixon Police Department
- Das Palms Police Department
- Downey Police Department

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- East Bay Regional Parks District Department of Public Safety
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- El Camino Community College District Police Department
- El Centro Police Department
- El Cerrito Police Department
- El Dorado County District Attorney
- El Dorado County Sheriff's Department
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- Escalon Police Department
- Escondido Police Department
- Etna Police Department
- Eureka Police Department
- Exeter Police Department

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- Fairfax Police Department
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- Fresno Yosemite International Airport
- Fullerton Police Department

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- Galt Police Department
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- Gardena Police Department

Gavilan College Campus Security Department (not a POST participating agency)
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Glendale Police Department
Glendale Police Department Park Rangers
Glendora Police Department
Glenn County District Attorney
Glenn County Sheriff's Department/Coroner
Gonzales Police Department
Grant Joint Union High School District Police Department
Grass Valley Police Department
Greenfield Police Department
Gridley Police Department
Grossmont-Cuyamaca Community College District Police Department
Grover Beach Police Department
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Hacienda - La Puente School District Police and Safety Department
Half Moon Bay Police Department
Hanford Police Department
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Haselburg Police Department
Hemet Police Department
Hercules Police Department
Hermosa Beach Police Department
Hesperia Unified School District Police Department
Hillsborough Police Department
Hollister Police Department
Holtville Police Department
Humboldt County Coroner
Humboldt County District Attorney
Humboldt County Sheriff's Department
Humboldt Department of Welfare/Investigations
Huntington Beach Police Department
Huntington Park Police Department
Huron Police Department

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Imperial County District Attorney
Imperial County Sheriff's Department
Imperial Police Department
Indio Police Department
Inglewood Police Department
Inglewood Unified School District Police Department
Inyo County District Attorney
Inyo County Sheriff's Department
Ione Police Department
Irvine Police Department
Irvine Valley Community College District Police Department
Irwindale Police Department
Isleton Police Department (not a POST participating agency)

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Jackson Police Department

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Kensington Police Department
Kerman Police Department
Kern County District Attorney
Kern County District of Parks & Recreation Police Department
Kern County Sheriff's Department

Kern High School District Police Department
Kings City Police Department
Kings County District Attorney
Kings County Sheriff's Department
Kings County Human Services Agency, Fraud Bureau
Kingsburg Police Department

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La Habra Police Department
La Mesa Police Department
La Palma Police Department
La Verne Police Department
Laguna Beach Police Department
Lake County District Attorney
Lake County Sheriff's Department
Lake Hemet Municipal Water District
Lake Shastina District Police Department
Lakeport Police Department
Lassen County District Attorney
Lassen County Sheriff's Department
Lemoore Police Department
Lincoln Police Department
Lindsay Department of Public Safety
Livermore Police Department
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Los Angeles County Sheriff's Department
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Los Gatos Police Department
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Madera County District Attorney
Madera County Sheriff's Department
Madera Police Department
Mammoth Lakes Police Department
Manhattan Beach Police Department
Manteca Police Department
Maricopa Police Department
Marin Community College District Police Department
Marin County Coroner
Marin County District Attorney
Marin County Sheriff's Department
Marina Department of Public Safety
Mariposa County District Attorney
Mariposa County Sheriff's Department
Martinez Police Department

Marysville Police Department
Maywood Police Department
Mendocino County District Attorney
Mendocino County Sheriff's Department
Menlo Park Police Department
Merced County District Attorney
Merced County Sheriff's Department
Merced Police Department
Mills Valley Police Department
Millbrae Police Department
Mills College Department of Public Safety (not a POST participating agency)
Milpitas Police Department
Mira Costa Community College District Police Department
Modesto Police Department
Modoc County District Attorney
Mono County Sheriff's Department
Mono County District Attorney
Mono County Sheriff's Department
Monrovia Police Department
Montclair Police Department
Montebello Police Department
Montebello Unified School District Police Department
Monterey County District Attorney
Monterey County Emergency Communication
Monterey County Sheriff's Department
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Monterey Peninsula Airport District Police Department
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Morgan Hill Police Department
Morris Bay Police Department
Mount San Jacinto Community College District Police Department
Mt. Shasta Police Department
Mountain View Emergency Communications
Mountain View Police Department
Murrieta Police Department

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Napa County District Attorney
Napa County Sheriff's Department
Napa Police Department
Napa Valley College Department of Public Safety
National City Police Department
Nevada City Police Department
Nevada County District Attorney
Nevada County Sheriff's Department
Newark Police Department
Newman Police Department
Newport Beach Police Department
Novato Police Department

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Oakdale Police Department
Oakland City Housing Authority Police Department
Oakland Park Rangers
Oakland Police Department
Occidental College Department of Campus Safety (not a POST participating agency)
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Oceanside Small Craft Harbor District
Ohlone Community College District Police Department
Ontario International Airport
Ontario Police Department
Orange County Auto Theft Task Force (OCATT) (not a POST participating agency)
Orange County District Attorney
Orange County District Attorney Welfare Fraud
Orange County Probation Department (not a POST participating agency)

Orange County Sheriff's Department/Coroner
Orange Police Department
Oriand Police Department
Oroville Police Department
Oxnard Police Department

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Pacific Grove Police Department
Pacific Union College Department of Public Safety (not a POST participating agency)

Pacifica Police Department
Palm Springs Police Department
Palo Alto Police Department
Palomar Community College District Police Department
Palos Verdes Estates Police Department
Paradise Police Department
Parlier Police Department
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Pasadena Police Department
Pasadena Unified School District Police Department
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Pineole Police Department
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Placer County Probation Department (not a POST participating agency)
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Ramona Police Department
Rancho Unified School District Police Department
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Porterville Police Department

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Red Bluff Police Department
Redding Police Department
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Reedley Police Department
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Rio Vista Police Department
Ripon Police Department
Riverside Community College District Police Department
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Riverside Police Department
Rocklin Police Department
Rohnert Park Police Department
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Ross Police Department

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Sacramento City College Police Department

Sacramento County Coroner
Sacramento County District Attorney
Sacramento County Department of Human Assistance
Sacramento County Sheriff's Department
Sacramento Police Department
Saddleback Community College Police Department
Saint Helena Police Department
Salinas Police Department
San Anselmo Police Department
San Benito Department of Emergency Services
San Benito County District Attorney
San Benito County Marshal
San Benito County Sheriff's Department
San Bernardino County Coroner (not a POST participating agency)
San Bernardino County District Attorney
San Bernardino County Sheriff's Department
San Bernardino Police Department
San Bernardino Unified School District Police Department
San Bruno Police Department
San Carlos Police Department
San Diego Community College District Police Department
San Diego City Schools Police Department
San Diego County District Attorney
San Diego County Medical Examiner (not a POST participating agency)
San Diego County Probation Department (not a POST participating agency)
San Diego County Sheriff's Department
San Diego Harbor Police Department, Port Of
San Diego Police Department
San Fernando Police Department
San Francisco Community College District Police Department
San Francisco County District Attorney
San Francisco County Emergency Communications
San Francisco County Medical Examiner
San Francisco County Sheriff's Department
San Francisco Municipal Railway Police Department
San Francisco Police Department
San Gabriel Police Department
San Jacinto Police Department
San Joaquin County District Attorney
San Joaquin County Sheriff's Department
San Joaquin Delta College Police Department
San Joaquin County Probation Department (not a POST participating agency)
San José Police Department
San José Unified School District Police Department
San José/Evergreen Community College District Police Department
San Leandro Police Department
San Luis Obispo County District Attorney
San Luis Obispo County Sheriff's Department
San Luis Obispo Police Department
San Marino Police Department
San Mateo County Coroner
San Mateo County District Attorney
San Mateo County Public Safety Communications Center
San Mateo County Sheriff's Department
San Mateo Police Department
San Pablo Police Department
San Rafael Police Department
San Ramon Police Department (not a POST participating agency)
Sand City Police Department
Sanger Police Department
Santa Ana Police Department
Santa Ana Unified School District Police Department
Santa Barbara County District Attorney
Santa Barbara County Sheriff's Department
Santa Barbara County District Attorney, Welfare Fraud Unit
Santa Barbara Police Department
Santa Clara City Communications Department
Santa Clara County Communications Department
Santa Clara County District Attorney
Santa Clara County District Attorney, Welfare Fraud Unit
Santa Clara County Sheriff's Department
Santa Clara Police Department

- Santa Clara University Department of Campus Safety (not a POST participating agency)
- Santa Cruz County District Attorney
- Santa Cruz County Sheriff's Department
- Santa Cruz Police Department
- Santa Fe Springs Police Services (not a POST participating agency)
- Santa Maria Police Department
- Santa Monica Community College District Police Department
- Santa Monica Police Department
- Santa Paula Police Department
- Santa Rosa Junior College Police Department
- Santa Rosa Police Department
- Sausalito Police Department
- Scotts Valley Police Department
- Seal Beach Police Department
- Seaside Police Department
- Sebastopol Police Department
- Selma Police Department
- Sequoias College of the Police Department
- Shafter Police Department
- Shasta Area Safety Communications Agency
- Shasta County District Attorney
- Shasta County Marshal
- Shasta County Sheriff's Department
- Sierra County District Attorney (not a POST participating agency)
- Sierra County Sheriff's Department
- Sierra Madre Police Department
- Signal Hill Police Department
- Simi Valley Police Department
- Siskiyou County District Attorney
- Siskiyou County Sheriff's Department
- Snowline Joint Unified School District Police Department
- Solano Community College Police Department
- Solano County District Attorney
- Solano County Sheriff's Department
- Soledad Police Department
- Sonoma County District Attorney
- Sonoma County Human Services Department
- Sonoma County Probation Department (not a POST participating agency)
- Sonoma County Sheriff's Department
- Sonoma Police Department
- Sonoma Police Department
- South Bay Regional Public Communications Authority
- South Gate Police Department
- South Lake Tahoe Police Department
- South Pasadena Police Department
- South San Francisco Police Department
- Southwestern Community College Police Department
- Stallion Springs Police Department
- Stanford University Department of Public Safety (not a POST participating agency)
- Stanislaus County District Attorney
- Stanislaus County Sheriff's Department
- Stanislaus Regional 9-1-1
- State Center Community College District Police Department
- Stockton Police Department
- Stockton Unified School District Police Department
- Suisun City Police Department
- Sunnyvale Department of Public Safety
- Supreme Court of California
- Susanville Police Department
- Sutter County District Attorney
- Sutter County Sheriff's Department
- Sutter Creek Police Department

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- Taft Police Department
- Tehama County Coroner
- Tehama County District Attorney
- Tehama County Sheriff's Department
- Temecula Police Department (contracted through Riverside County Sheriff's)

Department)
Tiburon Police Department
Torrance Police Department
Tracy Police Department
Trinidad Police Department
Trinity County District Attorney
Trinity County Marshal
Trinity County Sheriff's Department
Trupkes Police Department
Tulare County District Attorney
Tulare County Probation Department (not a POST participating agency)
Tulare County Sheriff's Department
Tulare Police Department
Tulelake Police Department
Tuolumne County District Attorney
Tuolumne County Sheriff's Department
Turlock Police Department
Tustin Police Department
Twin Cities Police Department

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UC Berkeley Police Department
UC Davis Police Department
UC Irvine Police Department
UC Los Angeles Police Department
UC Merced Police Department
UC Riverside Police Department
UC San Diego Police Department
UC San Francisco Police Department
UC Santa Barbara Police Department
UC Santa Cruz Police Department
Ukiah Police Department
Union City Police Department
Union Pacific Railroad
University of La Verne Campus Safety Department (not a POST participating agency)
Upland Police Department
U.S. Attorney for the Central District of California (not a POST participating agency)
University of San Diego Public Safety Department (not a POST participating agency)

University of San Francisco Public Safety Department (not a POST participating agency)
University of Southern California Department of Public Safety (not a POST participating agency)

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Vacaville Police Department
Vallejo Police Department
Ventura County Community College District Police Department
Ventura County Medical Examiner (not a POST participating agency)
Ventura County District Attorney
Ventura County Sheriff's Department
Ventura Harbor Patrol (not a POST participating agency)
Ventura Police Department
Vernon Police Department
Visalia Police Department

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Walnut Creek Police Department
Walnut Valley Unified School District Police Department (not a POST participating agency)
Watsonville Police Department
Weed Police Department
West Cities Police Communications Center
West Contra Costa Unified School District Police Department (not a POST participating agency)

- [West Covina Communications District](#)
- [West Covina Police Department](#)
- [West Sacramento Police Department](#)
- [West Valley-Mission Community College District Police Department](#)
- [Westminster Police Department](#)
- [Westmorland Police Department](#)
- [Wheatland Police Department](#)
- [Whittier College Police Department \(not a POST participating agency\)](#)
- [Whittier Police Department](#)
- [Williams Police Department](#)
- [Willits Police Department](#)
- [Willows Police Department](#)
- [Windsor Police Department \(not a POST participating agency\)](#)
- [Winters Police Department](#)
- [Woodlake Police Department](#)
- [Woodland Police Department](#)

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- [Yolo County Communications Emergency Services Agency](#)
- [Yolo County District Attorney](#)
- [Yolo County Sheriff's Department](#)
- [Yreka Police Department](#)
- [Yuba City Police Department](#)
- [Yuba County Sheriff's Department](#)
- [Yuba Community College District Police Department](#)
- [Yucalpa Police Department \(not a POST participating agency\)](#)

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Commission on State Mandates

Original List Date: 8/6/2002 Mailing Information: Draft Staff Analysis
Last Updated: 7/19/2006
List Print Date: 12/08/2006 Mailing List
Claim Number: 02-TC-03
Issue: Training Requirements for Instructors and Academy Staff

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.)

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Klefer Blvd, Suite 121
Sacramento, CA 95826
Tel: (916) 368-9244
Fax: (916) 368-5723

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816
Tel: (916) 454-7310
Fax: (916) 454-7312

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814
Tel: (916) 323-5849
Fax: (916) 327-0832

Ms. Nancy Gust
County of Sacramento
711 G Street
Sacramento, CA 95814
Claimant
Tel: (916) 874-6032
Fax: (916) 874-5263

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012
Tel: (213) 974-8564
Fax: (213) 617-8106

Executive Director
California Peace Officers' Association
1456 Response Road, Suite 190
Sacramento, CA 95815
Tel: (916) 263-0541
Fax: (916) 000-0000

Mr. Steve Kell
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Tel: (916) 327-7523

Fax: (916) 441-6507

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 323-9584

Mr. Kenneth J. O'Brien
Peace Officers Standards and Training
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

Tel: (916) 227-2809

Fax: (916) 227-3895

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

Tel: (858) 514-8605

Fax: (858) 514-8645

Mr. Rick Oules
Department of Justice
Division of Law Enforcement
1102 Q Street, 6th Floor
Sacramento, CA 95814

Tel: (916) 319-8200

Fax:

Ms. Donna Ferabee
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 323-9584

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102

Fax: (916) 485-0111

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 324-4888

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Tel: (949) 644-3127

Fax: (949) 644-3339

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

Tel: (916) 677-4233

Fax: (916) 677-2283

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

Tel: (909) 386-8850

Fax: (909) 386-8830

Ms. Beth Hunter
Centratlon, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621

Fax: (866) 481-2682

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About California POST

What is POST?

The Commission on Peace Officer Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. The POST organization, with more than 130 staff members, functions under the direction of an Executive Director appointed by the Commission.

POST funding comes from the Peace Officers' Training Fund (POTF). The POTF receives monies from the State Penalty Assessment Fund, which in turn receives monies from penalty assessments on criminal and traffic fines. Therefore, the POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce. No tax dollars are used to fund the POST program.

The POST program is voluntary and incentive-based. Participating agencies agree to abide by the standards established by POST. The more than 600 agencies in the POST program are eligible to receive the Commission's services and benefits, such as job-related assessment tools, research into improved officer selection standards, management counseling services, the development of new training courses, reimbursement for training, and quality leadership training programs. POST also awards professional certificates to recognize peace officer achievement and proficiency.

The [POST Strategic Plan 2006](#), developed with extensive input from representatives of California law enforcement, aligns POST's activities and priorities with the needs and expectations of POST's clients and partners. Prior POST Strategic Plans are archived in the [POST library online catalog](#).

Additional information about POST can be found at the following links, or by visiting the [POST site map](#) for a complete index of topics.



- [POST Directory & Reference Guide](#)
- [Job Opportunities at POST](#)
- [Participating Agencies](#)
- [Strategic Plan 2004](#)
 - [Updated Goals and Objectives \(doc\)](#)
- [Strategic Plan 2006](#)
- [Vision, Mission, Values](#)

Awards & Recognition

- [Governor's Award for Excellence in Peace Officer Training](#)
- [POST Honors Law Enforcement Officers Killed in the Line of Duty](#)

POST Commission & Advisory Committee

- [Commissioners](#)
- [Commission Meetings](#)
 - [Dates, Agendas, Minutes](#)
- [Advisory Committee Members](#)
- [Legislation of Interest to POST](#)
- [Administrative Progress Report](#)

POST Organization/Bureau Homepages

- [POST Organizational Structure](#)
- [Administrative Services](#)
- [Basic Training](#)
- [Center For Leadership Development/Homeland Security](#)
- [Computer Services](#)
- [Information Services](#)
- [Management Counseling Services](#)
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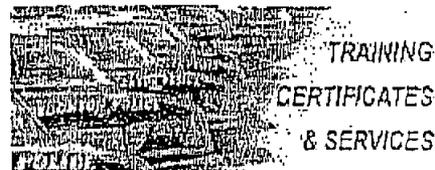
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POST Website

Training, Certificates & Services

Overview



To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement. This section of the POST Home provides links to the following information.

- [Basic and Entry-Level Training](#)
- [Basic Course Waiver Process and Requalification](#)
- [Training](#)
- [Leadership Development](#)
- [Specialty Training Programs](#)
- [Instructional Technology](#)
- [Instructional Resources](#)
- [POST Certificates](#)
- [Consulting Services](#)

Basic and Entry-Level Training

- [Basic Course Instructional System](#)
The Basic Course Instructional System provides links to a Map of California Basic Academies, a List of Academies, how to Order Workbooks for the Basic Course, and others links to assist in locating various courses in the Basic Training System.
- [Basic Training Academies](#)
Provides a list, with links, of institutions certified by POST to provide basic law enforcement training.
- [Field Training Program](#)
Describes the program that guides a peace officer's transition from an academic setting or custody assignment to general law enforcement patrol duties.
- [PC 832 Arrest and Firearms Course](#)

• Describes curriculum, tests and requalification requirement (three-year rule).

• Public Safety Dispatchers' Basic Course

Describes curriculum and student preparation.

• Regular Basic Course

Describes course formats, curriculum, student workbooks and preparation.

• Reserve Peace Officer Program (RPOP)

Provides information on the Reserve Peace Officer Program (RPOP) including significant dates, legislation, various laws, commission bulletins, training, frequently asked questions, glossary, and related links.

• Specialized Investigators' Basic Course

Describes curriculum, student workbooks and preparation, and requalification requirement (three-year rule).

• Training and Testing Specifications for Peace Officer Basic Courses

Contains the minimum, mandated curriculum and testing for the POST-mandated basic courses.

• Workbook Educational Objectives

Contains more than 1,400 educational objectives that appear in the Basic Course Student Workbook series. Presented by learning domain, each list also includes any required scenario tests, exercise tests and instructional activities.

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Basic Course Waiver Process and Requalification

• Basic Course Waiver Process

Describes the process for using prior law enforcement training and experience for comparison with the California POST basic course training standard.

• POST Requalification Course

Describes the course designed for previously trained individuals who either have a three-year or longer absence from California law enforcement or who must satisfy requirements for the Basic Course Waiver process.

• PC 832 Arrest and Firearm Requalification

Describes the requalifying options and available exemptions for individuals who previously met the required training standard, but who have a three-year or longer absence from California law enforcement or who were not employed within three years of their course completion date.

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Training

- [Catalog of Certified Courses](#)
Provides a current, online catalog of all POST-certified training courses.
 - [Course Certification Process \(doc\)](#)
Describes the process for obtaining course certification. Includes a list of factors to address in a certification request.
 - [Course Presenters](#)
Provides links to presenters who deliver POST-certified training courses.
 - [Field Management Training](#)
Describes the program that assists local agencies with their administrative, management, or operational problems or projects, when no formal training is available.
 - [Legislative Training Mandates](#)
Provides a "quick-reference" table of legislative training mandates. Information is provided in an abbreviated format and is not intended to be regulatory language. Users of the table are advised to reference the complete text in law (code sections are linked).
 - [Management Course](#)
Describes the course that must be completed within 12 months of promotion or appointment to a middle management position.
 - [Supervisory Course](#)
Describes the course that must be completed within 12 months of promotion or appointment to a first-level supervisory position.
-
- [Team Building Workshop Program](#)
Describes the program that offers consultant services to assist the management team of a local agency with planning, problem solving, goal setting, or team building.

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Leadership Development

- [Command College](#)
Provides information on the Command College Program including program requirements, application process, article objectives and article guidelines, frequently asked questions, the CC Network, class profiles, and the alumni association.
- [Executive Development Course](#)
Describes the course that provides training on the roles of leaders in their respective organizations.
- [Sherman Block Supervisory Leadership Institute](#)

Describes the institute designed to enhance the leadership abilities of first-line peace officer supervisors in California.

- Executive Training Seminars

Describes seminars requested by a local chief or sheriff's association that focus on problem solving or address a variety of training topics.

- West Point Leadership Program

Describes the leadership program offered by the Los Angeles Police Department. Includes contact information.

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Specialty Training Programs

- Course Administrator Seminar

Provides training on the entire course certification process, including practical training on the responsibilities of the course administrator.

- Cultural Diversity Program

Describes POST diversity training, including racial profiling and police response to persons with mental and developmental disabilities.

- Instructor Development

- Academy Instructor Certificate Program

Describes the voluntary instructor development program that is designed to build instructor competency within the regular basic course academies.

- Instructor Symposium

Describes the annual Public Safety Instructor Symposium, conducted by POST in collaboration with the California Community Colleges Chancellor's Office and other public safety entities and colleges.

- Master Instructor Development Program (MIDP)

Describes the yearlong program that prepares instructors to develop and present effective training for law enforcement statewide.

- Specialized Training Certification

Describes the requirement for completing subject-specific instructor training prior to presenting specialized instruction.

- Regional Skills Training Centers (RSTC)

Describes the Regional Skills Training Centers that provide perishable skills training to peace officers. Includes training locations.

- [Robert Presley Institute of Criminal Investigation \(ICI\)](#)

Describes the voluntary program designed to improve the effectiveness of individual investigators.

- [Violence Against Women Act \(VAWA\) Program](#)

Describes the program which provides domestic violence and sexual assault training courses for peace officers and dispatchers.

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Instructional Technology

- [California POST Television Network \(CPTN\)](#)

Describes the video program that delivers high quality, in-service training VHS and DVD to California law enforcement agencies in the POST program and its subscribers. Related links include a monthly CPTN program guide, POST-certified telecourse training, video catalog and subscriber information, and a link to information about receiving Continuing Professional Training credit.

- [Multimedia Training Program](#)

Describes the program that uses a variety of media such as video, sound, computer graphics, and text to present POST training.

- [Contact Information](#)

Provides several methods for requesting additional information about POST instructional technology programs.

- [Courses](#)

Lists available CD-ROM training courses and information about obtaining a copy.

- [Downloads](#)

Provides information about downloadable files related to POST CD-ROM courses.

- [Multimedia Program Help](#)

Provides more than 40 questions and answers about the POST multimedia program.

- [Online Multimedia Reference \(OMR\)](#)

Provides technical and administrative information about the POST multimedia-training program.

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Instructional Resources

- [Gameshow Pro 3](#)

Describes the product that allows trainers to use different game formats to develop an interactive learning experience.

- [Quiz Factory 2](#)

Describes the product that allows trainers to create a test or survey on any topic, deliver it electronically, then track results and measure learning.

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POST Certificates

- [Professional Certificate Program](#)

Provides information about the Professional Certificate Program and the certificates awarded by POST.

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Consulting Services

- [Management Studies](#)

Provides information about the management studies conducted by POST at the request of a local agency executive.

- [Peace Officer Feasibility Studies](#)

Provides information about the requirements for the study conducted by POST to determine whether peace officer status or a change in peace officer status is justified for a position under consideration by the legislature.

- [Regional Consultant Boundaries Map](#)

Provides a map showing the ten POST Regional Consultant assignments, with an email link to each consultant.

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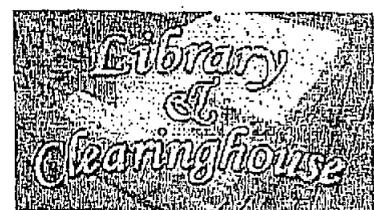
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Library, Clearinghouse & Resources

Law Enforcement Agencies



The following is a list of local California law enforcement agencies. Unless otherwise indicated, all are POST participating agencies and departments. Links are provided to those agencies with websites. These links connect to pages outside the POST website, and POST is not responsible for the content or security of these external pages.

Law enforcement agencies may notify POST of updated website information (website address, broken links, etc) by sending an email message to postmaster@post.ca.gov.

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- Related Websites
- Site Map

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- [Alameda County District Attorney](#) (not a POST participating agency)
- [Alameda County Sheriff's Office](#)
- [Alameda Police Department](#)
- [Alameda / Contra Costa Transit District Police Department](#)
- [Albany Police Department](#)
- [Alhambra Police Department](#)
- [Allan Hancock Community College District Police Department](#)
- [Alpine County District Attorney](#) (not a POST-participating-agency)
- [Alpine County Sheriff's Department](#)
- [Alturas Police Department](#)
- [Amador County District Attorney](#)
- [Amador County Sheriff's Department/Coroner](#)
- [Anaheim Police Department](#)
- [American River College Police Department](#) (not a POST participating agency)
- [Anderson Police Department](#)
- [Angels Camp Police Department](#)
- [Antioch Police Department](#)
- [Arcadia Police Department](#)
- [Arcata Police Department](#)
- [Arroyo Grande Police Department](#)
- [Arvin Police Department](#)
- [Atascadero Police Department](#)
- [Atherton Police Department](#)
- [Atwater Police Department](#)
- [Auburn Police Department](#)
- [Azusa Pacific University Campus Safety Department](#) (not a POST participating agency)
- [Azusa Police Department](#)

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- [Bakersfield Police Department](#)
- [Baldwin Park Police Department](#)
- [Banning Police Department](#)
- [Barstow Police Department](#)
- [Bay Area Rapid Transit Police Department](#)
- [Bear Valley Police Department](#)

Beaumont Police Department
Bell Gardens Police Department
Bell Police Department
Belmont Police Department
Belvedere Police Department
Benecla Police Department
Berkeley Police Department
Beverly Hills Police Department
Biola University Campus Safety Department (not a POST participating agency)
Bishop Police Department
Blue Lake Police Department
Blythe Police Department
Brawley Police Department
Brea Police Department
Brentwood Police Department
Brisbane Police Department
Broadmoor Police Department
Buena Park Police Department
Burbank Airport Authority Police Department
Burbank Police Department
Burlingame Police Department
Burlington Northern Santa Fe Railway
Butte Community College Police Department
Butte County District Attorney
Butte County Sheriff's Department/Coroner

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CA Alcoholic Beverage Control
CA Assembly Sergeant at Arms
CA Attorney General (not a POST participating agency)
CA Department of Consumer Affairs, Dental Board of California
CA Department of Consumer Affairs, Division of Investigations
CA Department of Consumer Affairs, Medical Board of California
CA Department of Corporations
CA Department of Corrections and Rehabilitation (not a POST participating agency)
CA Department of Developmental Services
CA Department of Employment Development
CA Department of Fish and Game
CA Department of Forestry and Fire Protection
CA Department of Health, Food and Drug Branch
CA Department of Health Services
CA Department of Industrial Relations
CA Department of Insurance
CA Department of Justice
CA Department of Justice, Crime and Violence Prevention Center (not a POST participating agency)
CA Department of Mental Health
CA Department of Motor Vehicles
CA Department of Parks and Recreation
CA Department of Social Services
CA Department of Toxic Substances Control
CA Franchise Tax Board
CA Governor's Office of Criminal Justice Planning (not a POST participating agency)
CA California Highway Patrol
CA Horse Racing Board
CA Office of Emergency Services
CA Secretary of State Office of Investigation
CA State Controller
CA State Fair Police Department
CA State Lottery
CA State Public Defender (not a POST participating agency)
Calaveras County Coroner (not a POST participating agency)
Calaveras County District Attorney
Calaveras County Sheriff's Department
Calxico Police Department
California City Police Department
California Criminalistics Institute (not a POST participating agency)
California Institute of Technology Police Department (not a POST participating agency)
Callpatria Police Department

Callstoga Police Department
Campbell Police Department
Capitola Police Department
Carlsbad Police Department
Carmel Police Department
Cathedral City Police Department
Ceres Department of Public Safety
Cerritos Community College District Police Department
Chaffey Community College District Police Department
Chapman University Department of Public Safety (not a POST participating agency)
Chico Police Department
Chino Police Department
Chowchilla Police Department
Chula Vista Police Department
Citrus Community College Police Department (not a POST participating agency)
Citrus Heights Police Department
Claremont College Department of Campus Safety (not a POST participating agency)
Claremont Police Department
Clayton Police Department
Clearlake Police Department
Cloverdale Police Department
Clovis Police Department
Clovis Unified School District Police Department
Coalinga Police Department
Colma Police Department
Colton Police Department
Colusa County District Attorney
Colusa County Sheriff's Department
Colusa Police Department
Compton Community College Police Department
Compton Unified School District Police Department
Concord Police Department
Concordia University Department of Campus Safety and Security (not a POST participating agency)
Contra Costa Community College District Police Department
Contra Costa County District Attorney
Contra Costa County Sheriff's Department/Coroner
Corcoran Police Department
Corning Police Department
Corona Police Department
Coronado Police Department
Costa Mesa Department of Communications
Costa Mesa Police Department
Cosumnes River College Police Department (Los Rios CCD)
Cotati Police Department
Covina Police Department
CPSU Pomona Department of Public Safety
CPSU San Luis Obispo Police Department
Crescent City Police Department
CSU Bakersfield Police Department
CSU Channel Islands Police Department
CSU Chico Police Department
CSU Dominguez Hills Police Department
CSU East Bay Police Department
CSU Fresno Police Department
CSU Fullerton Police Department
CSU Humboldt Police Department
CSU Long Beach Police Department
CSU Los Angeles Police Department
CSU Monterey Bay Police Department
CSU Northridge Police Department
CSU Sacramento Police Department
CSU San Bernardino Police Department
CSU San Diego Police Department
CSU San Francisco Police Department
CSU San José Police Department
CSU San Marcos Police Department
CSU Sonoma Police Department
CSU Stanislaus Police Department
Cuesta College Department of Public Safety
Culver City Police Department
Cypress Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

- Daly City Police Department
- Dana Point Police Department (not a POST participating agency)
- Danville Police Department (not a POST participating agency)
- Davis Police Department
- De Anza College Police Department (not a POST participating agency)
- Del Norte County District Attorney
- Del Norte County Sheriff's Department
- Del Rey Oaks Police Department
- Delano Police Department
- Desert Hot Springs Police Department
- Dinuba Police Department
- Dixon Police Department
- Dos Palos Police Department
- Downey Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

- East Bay Regional Parks District Department of Public Safety
- East Palo Alto Police Department
- El Cajon Police Department
- El Camino Community College District Police Department
- El Centro Police Department
- El Cerrito Police Department
- El Dorado County District Attorney
- El Dorado County Sheriff's Department
- Elk Grove Police Department
- El Monte Police Department
- El Rancho Unified School District Police Department (not a POST participating agency)
- El Segundo Police Department
- Emeryville Police Department
- Escalon Police Department
- Escondido Police Department
- Etna Police Department
- Eureka Police Department
- Exeter Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

- Fairfax Police Department
- Fairfield Police Department
- Farmersville Police Department
- Ferndale Police Department
- Firebaugh Police Department
- Folsom Police Department
- Fontana Police Department
- Fontana Unified School District Police Department
- Foothill/De Anza Community College District Police Department
- Fort Bragg Police Department
- Fortuna Police Department
- Foster City Police Department
- Fountain Valley Police Department
- Fowler Police Department
- Fremont Police Department
- Fresno City College Police Department (not a POST participating agency)
- Fresno County District Attorney
- Fresno County Sheriff's Department
- Fresno Police Department
- Fresno Yosemite International Airport
- Fullerton Police Department

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

- Galt Police Department
- Garden Grove Police Department
- Gardena Police Department

Gavilan College Campus Security Department (not a POST participating agency)
Gilroy Police Department
Glendale Community College District Police Department
Glendale Police Department
 Glendale Police Department Park Rangers
Glendora Police Department
Glenn County District Attorney
Glenn County Sheriff's Department/Coroner
Gonzales Police Department
Grant Joint Union High School District Police Department
Grass Valley Police Department
Greenfield Police Department
Gridley Police Department
Grossmont-Cuyamaca Community College District Police Department
Grover Beach Police Department
 Guadalupe Police Department
 Gustine Police Department

A|B|C|D|E|F|G|H|I|J|K|L|M|N|O|P|Q|R|S|T|U|V|W|X|Y|Z

Hacienda - La Puente School District Police and Safety Department
Half Moon Bay Police Department
Hanford Police Department
Hawthorne Police Department
Hayward Police Department
Healdsburg Police Department
Hemet Police Department
 Hercules Police Department
Hermosa Beach Police Department
Hesperia Unified School District Police Department
Hillsborough Police Department
Hollister Police Department
 Holtville Police Department
Humboldt County Coroner
Humboldt County District Attorney
Humboldt County Sheriff's Department
Humboldt Department of Welfare/Investigations
Huntington Beach Police Department
Huntington Park Police Department
 Huron Police Department

A|B|C|D|E|F|G|H|I|J|K|L|M|N|O|P|Q|R|S|T|U|V|W|X|Y|Z

Imperial County District Attorney
Imperial County Sheriff's Department
 Imperial Police Department
Indio Police Department
Inglewood Police Department
Inglewood Unified School District Police Department
 Inyo County District Attorney
 Inyo County Sheriff's Department
 Ione Police Department
Irvine Police Department
 Irvine Valley Community College District Police Department
 Irwindale Police Department
 Ileton Police Department (not a POST participating agency)

A|B|C|D|E|F|G|H|I|J|K|L|M|N|O|P|Q|R|S|T|U|V|W|X|Y|Z

Jackson Police Department

A|B|C|D|E|F|G|H|I|J|K|L|M|N|O|P|Q|R|S|T|U|V|W|X|Y|Z

Kensington Police Department
 Kerman Police Department
Kern County District Attorney
 Kern County District of Parks & Recreation Police Department
Kern County Sheriff's Department

Kern High School District Police Department
King City Police Department
Kings County District Attorney
Kings County Sheriff's Department
Kings County Human Services Agency, Fraud Bureau
Kingsburg Police Department

A|B|C|D|E|F|G|H|I|J|K|L|M|N|O|P|Q|R|S|T|U|V|W|X|Y|Z

La Habra Police Department
La Mesa Police Department
La Palma Police Department
La Verne Police Department
Laguna Beach Police Department
Lake County District Attorney
Lake County Sheriff's Department
Lake Hemet Municipal Water District
Lake Shastina District Police Department
Lakeport Police Department
Lassen County District Attorney
Lassen County Sheriff's Department
Lemoore Police Department
Lincoln Police Department
Lindsay Department of Public Safety
Livermore Police Department
Livingston Police Department
Lodi Police Department
Lompoc Police Department
Long Beach Police Department
Long Beach Unified School District Safety Department (not a POST participating agency)
Los Alamitos Police Department
Los Altos Police Department
Los Angeles City Department of General Services
Los Angeles City Housing Authority
Los Angeles City Department of Recreation and Parks, Park Ranger Division
Los Angeles County Coroner
Los Angeles County District Attorney
Los Angeles County Probation Department (not a POST participating agency)
Los Angeles County Office of Public Safety
Los Angeles County Sheriff's Department
Los Angeles Department of Transportation Investigations (not a POST participating agency)
Los Angeles Police Department
Los Angeles Port Police Department
Los Angeles School Police Department
Los Angeles World Airports Police Department
Los Banos Police Department
Los Gatos Police Department
Los Rios Community College District Police Department
Lovola Marymount University Office of Public Safety (not a POST participating agency)

A|B|C|D|E|F|G|H|I|J|K|L|M|N|O|P|Q|R|S|T|U|V|W|X|Y|Z

Madera County District Attorney
Madera County Sheriff's Department
Madera Police Department
Mammoth Lakes Police Department
Manhattan Beach Police Department
Manteca Police Department
Maricopa Police Department
Marin Community College District Police Department
Marin County Coroner
Marin County District Attorney
Marin County Sheriff's Department
Marina Department of Public Safety
Mariposa County District Attorney
Mariposa County Sheriff's Department
Martinez Police Department

[Marysville Police Department](#)
[Maywood Police Department](#)
[Mendocino County District Attorney](#)
[Mendocino County Sheriff's Department](#)
[Menlo Park Police Department](#)
[Merced County District Attorney](#)
[Merced County Sheriff's Department](#)
[Merced Police Department](#)
[Mill Valley Police Department](#)
[Millbrae Police Department](#)
[Mills College Department of Public Safety \(not a POST participating agency\)](#)
[Milpitas Police Department](#)
[Mira Costa Community College District Police Department](#)
[Modesto Police Department](#)
[Modoc County District Attorney](#)
[Modoc County Sheriff's Department](#)
[Mono County District Attorney](#)
[Mono County Sheriff's Department](#)
[Monrovia Police Department](#)
[Montclair Police Department](#)
[Montebello Police Department](#)
[Montebello Unified School District Police Department](#)
[Monterey County District Attorney](#)
[Monterey County Emergency Communication](#)
[Monterey County Sheriff's Department](#)
[Monterey Park Police Department](#)
[Monterey Police Department](#)
[Monterey Peninsula Airport District Police Department](#)
[Moorpark College Police Department \(not a POST participating agency\)](#)
[Moraga Police Department](#)
[Morgan Hill Police Department](#)
[Morro Bay Police Department](#)
[Mount San Jacinto Community College District Police Department](#)
[Mt. Shasta Police Department](#)
[Mountain View Emergency Communications](#)
[Mountain View Police Department](#)
[Murrieta Police Department](#)

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

[Napa County District Attorney](#)
[Napa County Sheriff's Department](#)
[Napa Police Department](#)
[Napa Valley College Department of Public Safety](#)
[National City Police Department](#)
[Nevada City Police Department](#)
[Nevada County District Attorney](#)
[Nevada County Sheriff's Department](#)
[Newark Police Department](#)
[Newman Police Department](#)
[Newport Beach Police Department](#)
[Novato Police Department](#)

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

[Oakdale Police Department](#)
[Oakland City Housing Authority Police Department](#)
[Oakland Park Rangers](#)
[Oakland Police Department](#)
[Occidental College Department of Campus Safety \(not a POST participating agency\)](#)

[Oceanside Police Department](#)
[Oceanside Small Craft Harbor District](#)
[Ohlone Community College District Police Department](#)
[Ontario International Airport](#)
[Ontario Police Department](#)
[Orange County Auto Theft Task Force \(OCATT\) \(not a POST participating agency\)](#)
[Orange County District Attorney](#)
[Orange County District Attorney Welfare Fraud](#)
[Orange County Probation Department \(not a POST participating agency\)](#)

Orange County Sheriff's Department/Coroner
Orange Police Department
Orland Police Department
Oroville Police Department
Oxnard Police Department

A|B|C|D|E|E|G|H|I|J|K|L|M|N|O|P|Q|R|S|T|U|V|W|X|Y|Z

Pacific Grove Police Department
Pacific Union College Department of Public Safety (not a POST participating agency)

Pacific Police Department
Palm Springs Police Department
Palo Alto Police Department
Palomar Community College District Police Department
Palos Verdes Estates Police Department
Paradise Police Department
Parlier Police Department
Pasadena City College District Police Department
Pasadena Police Department
Pasadena Unified School District Police Department
Paso Robles Police Department
Pepperdine University Public Safety Department (not a POST participating agency)
Petaluma Police Department
Piedmont Police Department
Pineole Police Department
Pismo Beach Police Department
Pittsburg Police Department
Placentia Police Department
Placer County District Attorney
Placer County Probation Department (not a POST participating agency)
Placer County Sheriff's Department
Placerville Police Department
Pleasant Hill Police Department
Pleasanton Police Department
Plumas County District Attorney (not a POST participating agency)
Plumas County Sheriff's Department
Pomona Police Department
Pomona Unified School District Police Department

Port Hueneme Police Department
Porterville Police Department

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Red Bluff Police Department
Redding Police Department
Redlands Police Department
Redondo Beach Police Department
Redwood City Police Department
Reedley Police Department
Rialto Police Department
Richmond Police Department
Ridgecrest Police Department
Rio Dell Police Department
Rio Vista Police Department
Ripon Police Department
Riverside Community College District Police Department
Riverside County District Attorney
Riverside County Public Social Services
Riverside County Sheriff's Department
Riverside Police Department
Rocklin Police Department
Rohnert Park Police Department
Roseville Police Department
Ross Police Department

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Sacramento City College Police Department

Sacramento County Coroner
Sacramento County District Attorney
Sacramento County Department of Human Assistance
Sacramento County Sheriff's Department
Sacramento Police Department
Saddleback Community College Police Department
Saint Helena Police Department
Salinas Police Department
San Anselmo Police Department
San Benito Department of Emergency Services
San Benito County District Attorney
San Benito County Marshal
San Benito County Sheriff's Department
San Bernardino County Coroner (not a POST participating agency)
San Bernardino County District Attorney
San Bernardino County Sheriff's Department
San Bernardino Police Department
San Bernardino Unified School District Police Department
San Bruno Police Department
San Carlos Police Department
San Diego Community College District Police Department
San Diego City Schools Police Department
San Diego County District Attorney
San Diego County Medical Examiner (not a POST participating agency)
San Diego County Probation Department (not a POST participating agency)
San Diego County Sheriff's Department
San Diego Harbor Police Department, Port Of
San Diego Police Department
San Fernando Police Department
San Francisco Community College District Police Department
San Francisco County District Attorney
San Francisco County Emergency Communications
San Francisco County Medical Examiner
San Francisco County Sheriff's Department
San Francisco Municipal Railway Police Department
San Francisco Police Department
San Gabriel Police Department
San Jacinto Police Department
San Joaquin County District Attorney
San Joaquin County Sheriff's Department
San Joaquin Delta College Police Department
San Joaquin County Probation Department (not a POST participating agency)
San José Police Department
San José Unified School District Police Department
San José/Evergreen Community College District Police Department
San Leandro Police Department
San Luis Obispo County District Attorney
San Luis Obispo County Sheriff's Department
San Luis Obispo Police Department
San Marino Police Department
San Mateo County Coroner
San Mateo County District Attorney
San Mateo County Public Safety Communications Center
San Mateo County Sheriff's Department
San Mateo Police Department
San Pablo Police Department
San Rafael Police Department
San Ramon Police Department (not a POST participating agency)
Sand City Police Department
Sanger Police Department
Santa Ana Police Department
Santa Ana Unified School District Police Department
Santa Barbara County District Attorney
Santa Barbara County Sheriff's Department
Santa Barbara County District Attorney, Welfare Fraud Unit
Santa Barbara Police Department
Santa Clara City Communications Department
Santa Clara County Communications Department
Santa Clara County District Attorney
Santa Clara County District Attorney, Welfare Fraud Unit
Santa Clara County Sheriff's Department
Santa Clara Police Department

Santa Clara University Department of Campus Safety (not a POST participating agency)
Santa Cruz County District Attorney
Santa Cruz County Sheriff's Department
Santa Cruz Police Department
Santa Fe Springs Police Services (not a POST participating agency)
Santa Maria Police Department
Santa Monica Community College District Police Department
Santa Monica Police Department
Santa Paula Police Department
Santa Rosa Junior College Police Department
Santa Rosa Police Department
Sausalito Police Department
Scotts Valley Police Department
Seal Beach Police Department
Seaside Police Department
Sebastopol Police Department
Selma Police Department
Sequoias College of the Police Department
Shafter Police Department
Shasta Area Safety Communications Agency
Shasta County District Attorney
Shasta County Marshal
Shasta County Sheriff's Department
Sierra County District Attorney (not a POST participating agency)
Sierra County Sheriff's Department
Sierra Madre Police Department
Signal Hill Police Department
Simi Valley Police Department
Siskiyou County District Attorney
Siskiyou County Sheriff's Department
Snowline Joint Unified School District Police Department
Solano Community College Police Department
Solano County District Attorney
Solano County Sheriff's Department
Soledad Police Department
Sonoma County District Attorney
Sonoma County Human Services Department
Sonoma County Probation Department (not a POST participating agency)
Sonoma County Sheriff's Department
Sonoma Police Department
Sonora Police Department
South Bay Regional Public Communications Authority
South Gate Police Department
South Lake Tahoe Police Department
South Pasadena Police Department
South San Francisco Police Department
Southwestern Community College Police Department
Stallion Springs Police Department
Stanford University Department of Public Safety (not a POST participating agency)
Stanislaus County District Attorney
Stanislaus County Sheriff's Department
Stanislaus Regional 9-1-1
State Center Community College District Police Department
Stockton Police Department
Stockton Unified School District Police Department
Suisun City Police Department
Sunnyvale Department of Public Safety
Supreme Court of California
Susanville Police Department
Sutter County District Attorney
Sutter County Sheriff's Department
Sutter Creek Police Department

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Taft Police Department
Tehama County Coroner
Tehama County District Attorney
Tehama County Sheriff's Department
Temecula Police Department (contracted through Riverside County Sheriff's

Department)
Tiburon Police Department
Torrance Police Department
Tracy Police Department
Trinidad Police Department
Trinity County District Attorney
Trinity County Marshal
Trinity County Sheriff's Department
Truckee Police Department
Tulare County District Attorney
Tulare County Probation Department (not a POST participating agency)
Tulare County Sheriff's Department
Tulare Police Department
Tulelake Police Department
Tuolumne County District Attorney
Tuolumne County Sheriff's Department
Turlock Police Department
Tustin Police Department
Twin Cities Police Department

A|B|C|D|E|F|G|H|I|J|K|L|M|N|O|P|Q|R|S|T|U|V|W|X|Y|Z

UC Berkeley Police Department
UC Davis Police Department
UC Irvine Police Department
UC Los Angeles Police Department
UC Merced Police Department
UC Riverside Police Department
UC San Diego Police Department
UC San Francisco Police Department
UC Santa Barbara Police Department
UC Santa Cruz Police Department
Ukiah Police Department
Union City Police Department
Union Pacific Railroad
University of La Verne Campus Safety Department (not a POST participating agency)
Upland Police Department
U.S. Attorney for the Central District of California (not a POST participating agency)
University of San Diego Public Safety Department (not a POST participating agency)

University of San Francisco Public Safety Department (not a POST participating agency)
University of Southern California Department of Public Safety (not a POST participating agency)

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Vacaville Police Department
Vallejo Police Department
Ventura County Community College District Police Department
Ventura County Medical Examiner (not a POST participating agency)
Ventura County District Attorney
Ventura County Sheriff's Department
Ventura Harbor Patrol (not a POST participating agency)
Ventura Police Department
Vernon Police Department
Visalia Police Department

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Walnut Creek Police Department
Walnut Valley Unified School District Police Department (not a POST participating agency)
Watsonville Police Department
Weed Police Department
West Cities Police Communications Center
West Contra Costa Unified School District Police Department (not a POST participating agency)

- West Covina Communications District
- West Covina Police Department
- West Sacramento Police Department
- West Valley-Mission Community College District Police Department
- Westminster Police Department
- Westmorland Police Department
- Wheatland Police Department
- Whittier College Police Department (not a POST participating agency)
- Whittier Police Department
- Williams Police Department
- Willits Police Department
- Willows Police Department
- Windsor Police Department (not a POST participating agency)
- Winters Police Department
- Woodlake Police Department
- Woodland Police Department

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- Yolo County Communications Emergency Services Agency
- Yolo County District Attorney
- Yolo County Sheriff's Department
- Yreka Police Department
- Yuba City Police Department
- Yuba County Sheriff's Department
- Yuba Community College District Police Department
- Yucalpa Police Department (not a POST participating agency)

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37 Cal.App.4th 675

37 Cal.App.4th 675, 43 Cal.Rptr.2d 660, 60 Cal. Comp. Cases 717, 95 Cal. Daily Op. Serv. 6300, 95 Daily Journal

D.A.R. 10,685

(Cite as: 37 Cal.App.4th 675)

H

State Compensation Ins. Fund v.
 W.C.A.B. Cal.App.2.Dist. STATE COMPENSATION
 INSURANCE FUND, Petitioner,
 v.
 WORKERS' COMPENSATION APPEALS BOARD
 and SAM WELCHER, Respondents.
 No. B086372.

Court of Appeal, Second District, Division 3,
 California.
 Aug 8, 1995.

SUMMARY

A workers' compensation judge found that Lab. Code, § 5402 (failure to reject liability for workers' compensation injury claim within 90 days after filing of claim creates presumption that injury is compensable; presumption is rebuttable only by evidence discovered subsequent to 90-day period), barred evidence offered by a workers' compensation insurer concerning its admitted noncompliance with the statute and determined that an applicant was 100 percent permanently disabled due to industrial injury. The Workers' Compensation Appeals Board denied the insurer's petition for reconsideration.

The Court of Appeal affirmed the order denying reconsideration, holding that the Workers' Compensation Appeals Board correctly upheld the ruling of the workers' compensation judge. Once the statutory presumption attached due to the insurer's failure to respond to the applicant's timely claim within 90 days, the insurer had the burden of proof on the primary issue of causation. The insurer offered four medical reports to show that the applicant's diseases were not work related, but they had not been obtained during the 90-day statutory period. The presumption operates to bar the presentation of evidence which could have been obtained with the exercise of reasonable diligence and all of the records could have reasonably been obtained within the 90-day period. Thus, the insurer never established that it had exercised reasonable diligence in investigating the claim. Further, the workers' compensation judge properly excluded the testimony of the insurer's claims adjuster as to when the claim had been rejected, pursuant to Lab. Code, § 5502, subd. (d)(3),

since she had not been identified as a witness at the mandatory settlement conference or in the settlement conference statement, and no explanation had been given at trial for the failure to so identify her. (Opinion by Klein, P. J., with Croskey and Aldrich, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Statutes § 21--Construction--Legislative Intent--Purpose of Law.

A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. When the meaning of a statute is uncertain, resort may be had to the history of the legislation, including legislative and other reports, to resolve such ambiguities as exist.

(2a, 2b) Workers' Compensation § 67--Proceedings Before Workers' Compensation Appeals Board--Claims--Failure to Reject Claim of Injury Within Specified Time as Creating Presumption of Compensability--Statutory Purpose--Presumption as Affecting Burden of Proof.

The purpose of the 1989 amendment to Lab. Code, § 5402, providing that failure to reject liability for a workers' compensation injury claim within 90 days after the filing of the claim creates a rebuttable presumption that the injury is compensable, was to expedite the entire claims process in workers' compensation cases by limiting the time during which the employer's investigation of an injured worker's claim could be undertaken 90 days without being penalized for delay. The rebuttable presumption of § 5402 was intended to affect the burden of proof rather than the burden of producing evidence, because it was created by the Legislature to implement the public policy of expediting workers' compensation claims. As such, once the underlying facts have been established, the statute's effect in workers' compensation litigation is to place on the defendant employer/carrier the burden of proving that the employee/applicant does not have a compensable injury; in the absence of such proof, the

(Cite as: 37 Cal.App.4th 675)

consequences are adverse to the employer/carrier.

[See 2 Witkin, Summary of Cal. Law (9th ed. 1987) Workers' Compensation, § 380.]

(3) Evidence § 20--Presumptions--Affecting Burden of Proof--As Implementing Public Policy.

While a presumption affecting the burden of producing evidence concerns only the particular litigation in which it applies, a presumption affecting the burden of proof is established to implement some public policy other than to facilitate the particular action in which it applies.

(4a, 4b) Workers' Compensation § 67--Proceedings Before Workers' Compensation Appeals Board--Claims--Failure to Reject Claim *677 of Injury Within Specified Time as Creating Presumption of Compensability--Admissibility of Evidence to Rebut Presumption.

The Workers' Compensation Appeals Board correctly upheld the rulings of a workers' compensation judge that Lab. Code, § 5402 (failure to reject liability for workers' compensation injury claim within 90 days after filing of claim creates presumption that injury is compensable; presumption is rebuttable only by evidence discovered subsequent to 90-day period), barred evidence offered by a workers' compensation insurer concerning its admitted noncompliance with the statute and that the applicant was disabled due to industrial injury. Once the presumption attached due to the insurer's failure to respond to the applicant's timely claim within 90 days, the insurer had the burden of proof on the primary issue of causation. The insurer offered four medical reports to show that the applicant's diseases were not work related, but they had not been obtained during the 90-day statutory period. The presumption operates to bar the presentation of evidence which could have been obtained with the exercise of reasonable diligence and all of the records could have reasonably been obtained in the 90-day period. Thus, the insurer never established that it had exercised reasonable diligence in investigating the claim. Further, the workers' compensation judge properly excluded the testimony of the insurer's claims adjuster as to when the claim had been rejected, pursuant to Lab. Code, § 5502, subd. (d)(3), since she had not been identified as a witness at the mandatory settlement conference or in the settlement conference statement, and no explanation had been given at trial for the failure to so identify her.

(5) Statutes § 44--Construction--Aids--Contemporaneous Administrative Construction.
Contemporaneous administrative construction of a

statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight, and courts will not depart from such construction unless it is clearly erroneous or unauthorized.

COUNSEL

Krimen, Klein, Da Silva, Daneri & Bloom and Don E. Clark for Petitioner.

Dennis J. O'Sullivan and David D. Robin for Respondents. *678

KLEIN, P. J.

A workers' compensation judge (WCJ), applying the rebuttable presumption of compensability provided in Labor Code section 5402,^{FN1} barred evidence offered by defendant State Compensation Insurance Fund (SCIF) concerning its admitted noncompliance with the statute and determined that an applicant was 100 percent permanently disabled due to industrial injury. SCIF petitioned for reconsideration, and the Workers' Compensation Appeals Board (Board) denied reconsideration, upholding the WCJ. SCIF sought review in this court, contending that the WCJ had erred in finding applicant's injuries compensable in view of the extensive medical record demonstrating nonindustrial causation. Both the applicant and applicant's health care provider (Kaiser Permanente, The 4600 Group, referred to herein as Kaiser) answered the petition, contending that failure to apply Labor Code section 5402 in this instance would render the legislation, enacted as part of Legislature's effort in 1989 and 1990 to reform the workers' compensation system, meaningless. We agree, and affirm the determination of the Board.

FN1 The statute provides as follows: "Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400. If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division. The presumption is rebuttable only by evidence discovered subsequent to the 90-day period."

Facts and Procedural History

Applicant Sam Welcher, born June 25, 1930, worked from January 1965 to February 26, 1991, first as a truck driver and then a dispatcher, for defendant employer Cook & Cooley, insured by defendant SCIF. Applicant left the job because he was no longer able to work due to health problems, and in March 1991 underwent major aortic bypass surgery at Kaiser during which a kidney was removed and some toes were amputated. Applicant, suffering from renal failure, receives dialysis frequently, and the medical expenses in this case are large. ^{FN2} He filed his claim for workers' compensation benefits on August 30, 1991, alleging an industrial continuous trauma injury to his kidneys, right lower leg, to his internal system, to his heart and psyche, and that he had industrially caused hypertension as well.

^{FN2} At trial, Kaiser submitted a lien claim of \$277,902.17, not a final lien.

SCIF did not deny liability in this case until January 2, 1992, almost four months after the date of knowledge of the injury, which constituted noncompliance with Labor Code section 5402. *679

At trial, applicant testified that during his daily employment as a radio dispatcher, he was often awakened in the night by calls concerning gasoline deliveries. He was in effect always "on call." Applicant missed very little time from work until he became sick in February 1991. Applicant felt stress on the job caused his illness, but would have continued to work if his illness had not intervened. Applicant further testified that the hypertension was diagnosed when he was 55 years old, and that his doctor had advised him to stop smoking, but said nothing about alcohol consumption.

The WCJ issued findings and award, determining that applicant had sustained industrial injury to his kidneys, his right lower extremity, his internal system, and his heart, and had work-related hypertension, "for the period 1/65 to 2/26/91 (pursuant to Labor Code Section 5402)." The WCJ found that applicant was permanently and totally disabled, and that there was need for further medical treatment for the applicant's renal and hypertensive conditions.

In her opinion on decision, the WCJ discussed applicant's medical history in detail, relying on the

report dated March 25, 1991, by Kaiser physician Mark Saroyan, M.D., and on Kaiser's medical records. (The records, designated exhibit 20, which were extensive, were admitted at trial after being subpoenaed by defendant SCIF. Dr. Saroyan's reporting was included.) The WCJ's summary included the following: "In 1980, the applicant became a radio dispatcher. At that same time he was diagnosed as having hypertension and high cholesterol. This hypertension was not under control since the applicant stopped taking his medicine. During the period of 1984 to 1986, applicant had various polyps and possible cancerous growth[s] of his vocal cords with subsequent operations [o]n 6/8/84, 5/85, 4/86. During this time the applicant was [a] 2-pack a day smoker and possible alcohol user. The record is very vague about applicant's use of alcohol. Thus by 4/89, the applicant was diagnosed with uncontrollable hypertension, gallstones, hiatal hernia and chest pains. As for the chest pains, it was determined that the applicant had a normal EKG and no cardiac problems. Also at that time, applicant's care was transferred to Kaiser HMO. Eventually by 1991, the applicant had a renal failure which eventually resulted in dialysis with subsequent complication of amputation of his right first and second toes. Subsequent to 1991, the applicant had a history of unidentified G.I. bleeding with severe vascular disease. At the present time, the applicant is on dialysis for his total renal or kidney failure."

The WCJ elaborated further. "Applicant had a renal vascular hypertension which is the narrowing of the arteries to the kidneys. The kidneys, to *680 compensate for the restricted flow of blood, produce[d] renin, a hormone which increase[d] blood pressure, hence renal vascular hypertension, as indicated by the Kaiser records. Thus, the applicant's hypertension was not a stress-related hypertension. This hypertension and the narrowing of arteries eventually [led] to ... applicant's renal failure. A stress-related hypertension is a hereditary condition which is exacerbated by a person's diet, weight, smoking habits, alcohol use and other contributory factors. In this case, the applicant's smoking contributed to his vascular narrowing disease of his arteries to his kidneys.... [¶] Applicant had renal vascular hypertension as opposed to stress caused hypertension. This is the reason why the applicant's hypertension was uncontrollable by the usual medications, which did not benefit him at all. The proper treatment for renal vascular hypertension is aorta-bi-iliac bypass and/or aorta-left-renal bypass.... Thus, it is found that the renal vascular hypertension

with eventual renal failure and dialysis and amputation of the applicant's toes is non-industrial."

Finally, the WCJ declared: "Now, comes the interesting part of the case ..., the 90-day presumption applies. However, this presumption is rebutt[ed] by evidence discovered subsequent to the 90-day period. The Labor Code is not clear as to what type of evidence, i.e., medical or testimonial evidence for the delay. In this case, defense attorney wanted to present the testimony of the adjuster Amanda Corral-Cortez as to why the objection was not timely served on the applicant and his attorney within the 90 days. The WCJ had ruled that the testimony was inadmissible since her name as a witness was not listed either on his 7/23/93 MSC Statement [(Mandatory Settlement Conference Statement)] and [sic] the 8/4/93 Settlement Conference Summary. Because of the operation of Labor Code Section 5402, it is found the applicant's injury is industrial under the 90 day rule."

SCIF petitioned for reconsideration, pointing out what it deemed the "inconsistent" findings made by the WCJ. The WCJ recommended denial of reconsideration in her report and recommendation to the Board, because SCIF had not denied the injury in timely fashion. "The primary purpose of this Labor Code Section was that the defendants expeditiously investigate all claims in a timely manner so that the applicant will not be held in limbo as to the compensability of his injury. Defendants admitted that their denial was not timely" As to barring the testimony of SCIF's claims adjuster, the *681 WCJ pointed out that by the time of the mandatory settlement conference "defendants had had approximately two years in which to investigate the applicant's claim," and discovery had closed on that date pursuant to Labor Code section 5502, subdivision (d)(3).^{FN3}

FN3 Labor Code section 5502 is a procedural statute, governing hearings and calendaring of workers' compensation matters, among other things. In pertinent part, subdivision (d)(3) provides "[d]iscovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference."

The Board denied SCIF's petition for reconsideration without further discussion. SCIF filed a verified, timely petition for writ of review in this court on September 2, 1994, observing there had been no published appellate opinion on what Labor Code section 5402 means, what kind of presumption has been created, and most particularly, what kind of evidence effectively rebuts the presumption created by the statute. SCIF argued that all its medical reports constituted evidence which rebutted the presumption, but did not submit the reports upon which it relied with the writ petition. (They are included in the Board record, however, and have been part of our review.) Kaiser filed opposition to the issuance of a writ, contending there have been several Board panel opinions in recent years taking the position the only rebuttal evidence admissible to combat the presumption of section 5402, once noncompliance by the employer/carrier has been established, is evidence that was *not reasonably obtainable* within the 90-day period, and that these opinions had stated the dispositive rule in this case. This court issued a writ of review.

Discussion

I. Statutory Intent

(1) "A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." (DuBois v. Workers' Comp. Appeals Bd. (1993) 5 Cal.4th 382, 387 [20 Cal.Rptr.2d 523, 853 P.2d 978].) When the meaning of a statute is uncertain, resort may be had to the history of the legislation, including legislative and other reports, to resolve such ambiguities as exist. (*Id.* at p. 393.)

(2a) In the case of Labor Code section 5402, the 1989 amendment to the section was one result of attempts "by representatives of organized labor, management and the insurance industry following several years of negotiation intended to streamline and improve the workers' compensation benefit *682 delivery system...." (Enrolled Bill Rep., Assem. Bill No: 276 (Sept. 19, 1989) Dept. Industrial Relations, p. 4.) Its primary purpose, as the WCJ correctly stated, was to expedite the entire claims process in workers' compensation by limiting the time during which investigation by the employer of a claim by an injured worker could be undertaken-90 days-without

being penalized for delay. The "penalty" provided for delay was that a rebuttable presumption of compensability would attach to the claim.

II. The Nature of the Presumption Created

We consider what sort of "rebuttable presumption" the Legislature intended to create in Labor Code section 5402. "A presumption is an assumption of fact that the law *requires* to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence." (Evid. Code, § 600, subd. (a), italics added.) "A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof." (Evid. Code, § 601.)

"A presumption affecting the burden of producing evidence requires the ultimate fact to be found from proof of the predicate facts in the absence of other evidence. If contrary evidence is introduced then the presumption has no further effect and the matter must be determined on the evidence presented." (Evid. Code, § 604.)" (In re Heather B. (1992) 9 Cal.App.4th 535, 561 [11 Cal.Rptr.2d 891].) A presumption affecting the burden of proof has a more substantial impact in determining the outcome of litigation. The effect of a presumption affecting the burden of proof is "to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact." (Evid. Code, § 606.) (3) While a presumption affecting the burden of producing evidence concerns only the particular litigation in which it applies, a presumption affecting the burden of proof "is established to implement some public policy other than to facilitate the particular action in which it applies. [Citations.]" (In re Heather B., *supra*, at p. 561; Evid. Code, § 605.)

(2b) We have concluded that the rebuttable presumption of Labor Code section 5402 was intended to affect the burden of proof rather than the burden of producing evidence, because it was created by the Legislature to implement the public policy of expediting workers' compensation claims. As such, once the underlying facts have been established, its effect in workers' compensation litigation is to place upon the defendant employer/carrier the burden of proving the employee/applicant does not have a compensable *683 injury; in the absence of such proof, the consequences are adverse to the

employer/carrier.

(4a) In this case, "the underlying facts" were that applicant had made a timely claim to which SCIF had not responded for approximately four months, instead of the ninety days permitted by the statute. The WCJ's ruling barring the testimony of the SCIF claims adjuster was highly significant, in that SCIF was thus unable to avoid the application of the presumption. SCIF then had to assume the burden of proof on the primary issue in the case, -which was industrial causation. Resolution of this issue required medical evidence, usually presented through medical reports from examining, treating or evaluating doctors. At trial, SCIF did offer, and the WCJ admitted, the reports of four defense doctors, obtained after January 2, 1992, including those prepared on August 2, 1993, and August 4, 1993, by internist and cardiologist Richard Hyman, M.D., in which he diagnosed hypertension and atherosclerotic peripheral vascular disease and concluded that neither were work related. All of these reports, however, were offered without explanation as to why they had not been obtained during the 90-day investigation period allowed by Labor Code section 5402.

III. What Constitutes Evidence Which Will Rebut the Presumption of Compensability

Once the presumption has attached to a claim, at issue is what evidence may be admitted on behalf of the employer/carrier to rebut the presumption. Labor Code section 5402 states that the evidence be only that "discovered subsequent to the 90-day period." While there is as yet no appellate discussion of this issue, the Board has spoken to it in a number of panel decisions. (5) We adhere to "the well-established principle that contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; and courts will not depart from such construction unless it is clearly erroneous or unauthorized." (Industrial Indemnity Co. v. Workers' Comp. Appeals Board (1985) 165 Cal.App.3d 633, 638 [211 Cal.Rptr. 683].)

(4b) In Napier v. Royal Insurance Co. (1992) SAC 174290, 20 Cal. Workers' Comp. Rptr. 124 (writ den.), ^{FN4} a Board panel rejected an extremely broad interpretation of Labor Code section 5402 which would have barred all further discovery once the

presumption applied, but said: "While the *684 presumption of compensability will preclude the defendant from disputing its liability for injury with evidence which could have been obtained with the exercise of reasonable diligence within the initial 90 day period, defendant is not thereafter permanently prevented from seeking evidence on corollary and related issues." The conclusion that the Labor Code section 5402 presumption operates to bar the presentation of evidence which "could have been obtained with the exercise of reasonable diligence" was also reached by the Board in *Finess v. American Motorists Ins. Co.* (1992) SAC 173856, 20 Cal. Workers' Comp. Rptr. 303 and *Casey v. CIGNA* (1993) GRO 7572, 5718, 6593, 21 Cal. Workers' Comp. Rptr. 248. What constitutes "reasonable diligence" is being decided on a case-by-case basis.

FN4 A board panel decision reported in the California Workers' Compensation Reporter is regarded as a properly citable authority, particular on the issue of contemporaneous administrative construction of statutory language. (*Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [257 Cal.Rptr. 813].)

The Board has also identified at least one area where the presumption does not operate as a bar against the admission of evidence which may rebut compensability of a claim. An applicant's testimony at a hearing may rebut the presumption, if the WCJ does not find the applicant credible on the issue of compensability; the Board has reasoned that such testimony could not reasonably have been discovered in the 90-day period. (*Davis v. Workers' Comp. Appeals Bd.* (1994) 59 Cal.Comp.Cases 1066.) Following the same reasoning, the testimony of other witnesses at trial or by deposition on behalf of the applicant may rebut the presumption. (*Witherell v. Workers' Comp. Appeals Bd.* (1994) 59 Cal.Comp.Cases 1128, writ den.; and see *Pinson v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 141.)

None of these decisions assist SCIF in its contention that it should have been permitted to rebut the presumption with the evidence contained in its medical reports, or the evidence discussed by the WCJ which was contained in the records of lien claimant Kaiser, all of which could have reasonably been obtained in the 90-day period after August 30, 1991. In short, SCIF never established that it had

exercised reasonable diligence in investigating this claim.

IV. The WCJ's Labor Code Section 5502, Subdivision (d)(3), Ruling

SCIF did offer the testimony of its claims adjuster Corral-Cortez at trial, although she had not been identified as a witness at the mandatory settlement conference or in the settlement conference statement. The WCJ ruled that this circumstance operated to exclude the evidence, pursuant to Labor Code section 5502, subdivision (d)(3). This statute, which was enacted in 1989 and has undergone amendment on several occasions since, was considered by the Board in *Zenith Insurance Co. v. Ramirez* (1992) 57 Cal.Comp.Cases 719. The Board (in bank) upheld and applied the mandatory settlement *685 procedure including the provision closing discovery to a number of cases, noting that it was established "to guarantee a productive dialogue leading, if not to expeditious resolution of the whole dispute, to thorough and accurate framing of the stipulations and issues for hearing." (*Id.* at p. 727.)

In *Rodriguez v. Workers' Comp. Appeals Bd.* (1994) 30 Cal.App.4th 1425, 1433 [35 Cal.Rptr.2d 713], the Court of Appeal held that pursuant to Labor Code section 5402, "...it is the rejection [of liability] which must occur within the 90-day period; not the receipt of notice of that rejection." (Italics added.) In view of *Rodriguez*, the WCJ's ruling excluding the adjuster's testimony was particularly significant, because the testimony would very likely have been relevant concerning whether SCIF had in fact rejected the claim within the 90-day period but had simply not communicated its decision to the claimant. The WCJ, in the case before us, defended her ruling on this issue in her report to the Board, pointing out no explanation had been given at trial why the adjuster's identity had not been disclosed at the mandatory settlement conference, and emphasizing there had been inexcusable delay in this case. We conclude that the type of delay demonstrated herein was of the sort that Labor Code section 5402 was designed to discourage. The Board correctly upheld the WCJ's ruling.

Disposition

The Board's order dated July 21, 1994, denying reconsideration, is affirmed.

37 Cal.App.4th 675

37 Cal.App.4th 675, 43 Cal.Rptr.2d 660, 60 Cal. Comp. Cases 717, 95 Cal. Daily Op. Serv. 6300, 95 Daily Journal

D.A.R. 10,685

(Cite as: 37 Cal.App.4th 675)

Croskey, J., and Aldrich, J., concurred.

Petitioner's application for review by the Supreme Court was denied November 2, 1995. *686

Cal.App.2.Dist.

State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.

37 Cal.App.4th 675, 43 Cal.Rptr.2d 660, 60 Cal. Comp. Cases 717, 95 Cal. Daily Op. Serv. 6300, 95 Daily Journal D.A.R. 10,685

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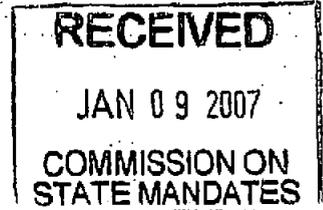
DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

EXHIBIT F

January 5, 2007

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 December 8, 2006, the Department of Finance has reviewed the draft staff analysis of Claim No.02-TC-03 "Training Requirements for Instructors and Academy Staff".

As the result of our review, we concur with the staff analysis recommendation to deny the test claim because the decision to participate in Peace Officer's Standards and Training (POST), POST-certified training, or to establish a POST training academy is discretionary.

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 December 8, 2006 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 Carlá Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Thomas E. Dithridge
Program Budget Manager

Attachments

Attachment A

DECLARATION OF CARLA CASTANEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM--02-TC-03

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the California Code of Regulations, Title 11, Sections 1001, 1052, 1053, 1055, 1070, 1071, and 1082 (register 2001, No. 29), are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

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.

115707

at Sacramento, CA

Carla Castaneda
Carla Castaneda

PROOF OF SERVICE

Test Claim Name: - Training Requirements for Instructors and Academy Staff
Test Claim Number: CSM--02-TC-03

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, 12 Floor, Sacramento, CA 95814.

On 1-5-07, 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, 12 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

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

E-8
Department of Education
School Business Services
Attention: Marie Johnson
560 J Street, Suite 170
Sacramento, CA 95814

E-8
State Board of Education
Attention: Bill Lucia, Executive Director
721 Capitol Mall, Room 532
Sacramento, CA 95814

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

California Teachers Association
Attention: Steve DePue
2921 Greenwood Road
Greenwood, CA 95635

Sacramento
711 G street, room 405
Sacramento CA 95814

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

B-08
Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Mr. Kenneth J. O'Brien
Peace Officers Standards and Training
1601 Alhambra Blvd
Sacramento, CA 95816-7083

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Ms. Nancy Gust
County of Sacramento
711 G Street
Sacramento, CA 95814

Executive Director
California's Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

A-15
Ms. Carla Castaneda
Department of Finance
915 L Street, 12th Floor
Sacramento, CA 95814

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

Mr. Rick Oules
Department of Justice
Division of Law Enforcement
1102 Q Street, 6th Floor
Sacramento, CA 95814

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

A-15
Ms. Susan Geanacou
Department of Finance
915 L Street, 12th Floor
Sacramento, CA 95814

A-15
Ms. Donna Ferebee
Department of Finance
915 L Street, 12th Floor
Sacramento, Ca 95814

B-08
Ms. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P O Box 1768
Newport Beach, CA 92659-1768

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Blvd., Suite 106
Roseville, CA 95661

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

Ms. Beth Hunter
Centration Inc.
8570 Utica Ave., Suite 100
Rancho Cucamonga, CA 91730

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 1-5-07 at Sacramento, California.



Antonio Lockett

ICC: DITHRIDGE, LYNN, CASTAÑEDA, FEREBEE, GEANACOU, FILE

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COMMISSION ON STATE MANDATES

EXHIBIT G

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

March 14, 2007

Ms. Nancy Gust
SB-90 Sheriff's Department
County of Sacramento
711 G Street, Room 405
Sacramento, CA 95814

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

RE: Final Staff Analysis, Proposed Statement of Decision, and Hearing Date
Training Requirements for Instructors and Academy Staff, 02-TC-03
California Code of Regulations, Title 11, Sections 1001, 1052, 1053, 1055, 1070, 1071,
and 1082 (Register 2001, No. 29)
County of Sacramento, Claimant

Dear Ms. Gust:

The final staff analysis and proposed Statement of Decision for this test claim are enclosed for your review.

Hearing

This test claim is set for hearing on **Thursday March 29, 2007**, at 9:30 a.m. in Room 126, State Capitol, Sacramento, CA. Please let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Deborah Borzelleri at (916) 322-4230 if you have questions.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosures

ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

California Code of Regulations, Title 11,
Sections 1001, 1052, 1053, 1055, 1070, 1071, and 1082
(Register 2001, No. 29)

Training Requirements for Instructors and Academy Staff

02-TC-03

County of Sacramento, Claimant

EXECUTIVE SUMMARY

This item was scheduled for the January 25, 2007, Commission hearing but was continued to the March 29, 2007 hearing. No part of the final staff analysis has changed since it was issued.

The test claim addresses regulations adopted by the Commission on Peace Officer Standards and Training ("POST") that require specified training of certain POST instructors and key staff of POST training academies.

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.

The test claim poses the following question:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

The Test Claim Regulations Do Not Impose a State-Mandated Program on Local Agencies

Although the test claim regulations require specified persons involved in POST training to engage in certain activities, staff finds that the requirements flow from an initial discretionary decision by the local agency to participate in POST, and another discretionary decision to provide POST-certified training or establish an academy and employ training staff. Therefore, the test claim regulations do not constitute a state-mandated program and are not subject to article XIII B, section 6.

Conclusion

Staff finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

*02-TC-03 Training Requirements for Instructors and Academy Staff
Final Staff Analysis*

STAFF ANALYSIS

Claimant

County of Sacramento

Chronology

- 08/06/02 County of Sacramento filed test claim with the Commission on State Mandates ("Commission").
- 09/13/02 The Department of Finance submitted comments on test claim with the Commission
- 10/31/02 The Commission on Peace Officer Standards and Training ("POST") submitted comments on the test claim with the Commission
- 12/08/06 Commission staff issued draft staff analysis
- 01/09/07 The Department of Finance submitted comments on the draft staff analysis with the Commission
- 01/11/07 Commission staff issued final staff analysis
- 01/25/07 Commission continued item to the March hearing
- 03/14/07 Commission staff re-issued final staff analysis

Background

This test claim addresses POST regulations that require specified training of certain POST instructors and key staff of POST training academies.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.¹ The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.² Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.³

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.⁴ POST states the following:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources

¹ Penal Code section 13500 et seq.

² *About California POST*, <<http://www.POST.ca.gov>>.

³ Penal Code sections 13522 and 13523.

⁴ Penal Code sections 13510, 13510.1, 13510.5, and 13511; California Code of Regulations, Title 11, section 1053.

and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement.⁵

A POST participating agency can offer its own in-house POST-certified training, or send its personnel to POST-certified training institutions operated by other entities, such as community colleges or other law enforcement agencies.⁶

On March 26, 2001, POST issued Bulletin number 01-05 entitled "Proposed Regulatory Action: Training Requirements for Instructors and Academy Staff of Specialized Training Courses." In that bulletin, POST stated:

For years, the training community has shared an informal expectation that persons who instruct in certain high risk/liability areas should attend a POST-certified instructor development course (or an equivalent one) on the related subject area. The same expectation has been maintained for certain key academy staff, and has, in fact, been formalized in the *POST Basic Course Management Guide*. The pertinent POST-certified instructor development courses are listed in the *POST Catalog of Certified Courses*. The proposed regulations also include provisions for equivalency determinations and exemptions from the training requirements.

Test Claim Regulations

POST subsequently adopted the regulations proposed in Bulletin number 01-05, which are the subject of this test claim.⁷ The regulations require that, effective July 1, 2002, primary instructors⁸ of designated specialized training courses complete a specified training standard, or its equivalent, prior to instructing in the specialized subject.⁹ Instructors of specialized training that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.¹⁰ A process was also established to allow presenters of the specialized courses to perform an equivalency evaluation of non-POST-certified training to meet the minimum training standard for the specialized subject.¹¹ Presenters of the specialized

⁵ *Training, Certificates & Services: Overview*, <<http://www.POST.ca.gov>>.

⁶ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

⁷ The test claim was filed with the Commission on August 6, 2002, on regulations in effect at that time. The subject regulations have subsequently been modified, however, those modified regulations have not been claimed and, thus, Commission staff makes no finding with regard to them.

⁸ "Primary instructor" is an individual responsible for the coordination and instruction for a particular topic. The responsibility includes oversight of topic content, logistics, and other instructors. (Cal. Code Regs., tit. 11, § 1001, subd. (aa))

⁹ California Code of Regulations, Title 11, section 1070, subdivision (a).

¹⁰ *Ibid.*

¹¹ California Code of Regulations, Title 11, section 1070, subdivision (b).

courses are required to maintain documentation demonstrating satisfaction of the minimum training standard by their instructors who teach any of the specialized courses.¹²

The test claim regulations also require that Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete specified minimum training standards within one year from the date of appointment to the position.¹³ Academy Directors are required to maintain documentation demonstrating satisfaction of the minimum training standard for the designated staff position.¹⁴

Three additional requirements are set forth in the test claim regulations with regard to specialized course instructors and Academy instructors. First, qualifications of certain academy staff, in addition to other instructors and coordinators, must now be evaluated by POST in requests for course certification.¹⁵ Second, specified elements of instructor resumes must now be provided for course certification requests.¹⁶ And third, certificates of completion must be issued by presenters to students who successfully complete POST-certified instructor development courses listed in section 1070, the Academy Director/Coordinator Workshop and the Recruit Training Officer Workshop.¹⁷

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

¹² California Code of Regulations, Title 11, section 1070, subdivision (c).

¹³ California Code of Regulations, Title 11, section 1071, subdivision (a). Content for the courses for each staff position is specified in section 1082.

¹⁴ California Code of Regulations, Title 11, section 1071, subdivision (b).

¹⁵ California Code of Regulations, Title 11, section 1052, subdivision (a)(2).

¹⁶ California Code of Regulations, Title 11, section 1053, subdivision (a)(2).

¹⁷ California Code of Regulations, Title 11, section 1055, subdivision (I).

Claimant's Position

The claimant asserts that the test claim regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that development costs commencing in fiscal year 2001-2002 for the following activities will be incurred and are reimbursable:

1. Staff time to complete or update any necessary general, operations, or special orders as required.
2. Staff time to compile information to be distributed to instructors and key staff informing them of changes in regulations and what information they need to provide such as updated resumes, completed class certificates, etc.
3. Staff time to collect, review for completeness and evaluate contents of current, and any new, instructor and key academy staff information packages turned in.
4. Staff time to review information submitted for equivalency evaluation as instructor or key staff.
5. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
6. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
7. Staff time to provide required Basic Instructor Development course to new instructors.
8. Purchase of necessary computer hardware, software and any necessary programming services to set up database or modify existing database to track information on #6 above.
9. Staff time to enter information into database to track class, individual, instructor, academy staff, certificate information and any other data required by POST. Database to be used for annual renewals, to provide POST information as necessary and during any audits of the program.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Develop or update training for data entry, report management and required notices in the database.
13. Meet and confer with POST representatives.
14. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, estimated costs for staff time are \$26,298 and estimated costs for computer hardware, software and programming services are "unknown at this time but could range from \$5,000 - \$20,000."

Claimant asserts that the following ongoing costs will be incurred and are reimbursable:

1. Staff time to collect, review for completeness and evaluate contents of new instructor and key academy staff resumes.
2. Staff time to collect, review for completeness and evaluate contents of annual renewal packages of instructor and key academy staff resumes.
3. Staff time to review information submitted for equivalency evaluation as instructor or key academy staff.
4. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
5. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
6. Staff time to provide required Basic Instructor Development course to new instructors.
7. Staff time to compile information to be distributed to instructors and key staff informing them of any changes to these regulations.
8. Staff time to enter information into database to track class, individual, instructor, academy staff and certificate information and any other data required by POST.
9. Staff time to fill out required certificates.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Staff time to meet and confer with POST representatives.
13. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, claimant estimates ongoing costs of \$25,000 per year.

Position of Department of Finance

The Department of Finance stated in its comments that:

As the result of our review, we have concluded that the [test claim regulations] may have resulted in a higher level of service for an existing program. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

The Department submitted subsequent comments agreeing with the conclusions in the draft staff analysis.

Position of POST

POST stated in its comments that it believes the test claim regulations do not impose a new program or higher level of service within an existing program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

First, under Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

Second, any law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. There is no requirement for a participating agency to have POST-certified training courses. Since the test claim regulations affecting instructor/academy staff training requirements only apply to POST-certified training institutions, there is no requirement for the state to reimburse for such costs under the Government Code or the California Constitution.

Third, the new POST training requirements for instructors and academy staff are worded in such a way that they are directed to the individual instructor and academy staff members, not the training institutions. POST-certified training institutions are free to require applicants to complete this training on their own at their own expense. If POST-certified training institutions voluntarily provide their staff with this training, it is no reason to expect the state to reimburse for these costs.

Since POST has facilitated the ready availability of this instructor/academy staff training by certifying the training to virtually any POST-certified training institution that can demonstrate a need and capability, law enforcement trainers in the POST program can conduct much of this required training within their own facilities without sending their personnel away.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution¹⁸ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁹ "Its 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."²⁰ 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

¹⁸ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

¹⁹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

an activity or task.²¹ In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.²²

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.²³ 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.²⁴ A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."²⁵

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁶

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 6.²⁷ 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."²⁸

The analysis addresses the following issue:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

²¹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

²³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

²⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

²⁶ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

²⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁸ *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

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

In order for the test claim regulations to impose a reimbursable state-mandated program under article XIII B, section 6, the language must order or command a local agency to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered.

Do the test claim regulations mandate any activities?

The test claim regulations require the following activities:

1. As of July 1, 2002, primary instructors of designated specialized POST training courses must complete a specified training standard, or its equivalent, prior to instructing in the subject.
2. Instructors of designated specialized POST training courses that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.
3. Presenters of specialized courses must maintain documentation demonstrating their instructors who teach any of the specialized courses have satisfied the minimum training standard, and such documentation shall be made available for POST inspection upon request.
4. Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete the specified minimum training standards for their positions within one year from the date of appointment.
5. Academy Directors shall maintain documentation demonstrating satisfaction of the minimum training standard for each designated staff position, and such documentation shall be made available for POST inspection upon request.
6. Any person or organization desiring to have a course certified by POST shall now provide instructor resumes in addition to other information previously required.
7. Any presenter of a POST-Certified instructor development course, or any presenter of the Academy Director/Coordinator Workshop or Recruit Training Officer Workshop, shall issue certificates to students who successfully complete the training.

Thus, the plain language of the test claim regulations does require specified persons involved in POST training to engage in certain activities. However, based on the following analysis, staff finds that the requirements flow from the *initial discretionary decisions* by the local agency to become a member of POST, and to provide POST-certified training or establish a POST training academy. Therefore, the test claim regulations do not constitute a state-mandated program within the meaning of article XIII B, section 6.

POST was created in 1959 "[f]or the purpose of raising the level of competence of local law enforcement officers ..."²⁹ To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the

²⁹ Penal Code section 13510.

physical, mental, and moral fitness of peace officers, and for the training of peace officers. However, these rules apply only to those cities, counties, and school districts that participate in the POST program and apply for state aid.³⁰ If the local agency decides to file an application for state aid, the agency must adopt an ordinance or regulation agreeing to abide by POST rules and regulations.³¹ Not all local agencies have applied for POST membership,³² nor do all local agencies provide POST-certified training. Nor is there any state statute, or other state law, that requires local agencies to participate in the POST program or provide POST-certified training. Moreover, consistent with POST's long standing interpretation of the Penal Code, POST's regulations state that participation in the POST program is voluntary.³³ POST stated the following in its comments on this test claim:

[U]nder Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

With regard to providing training, section 13511, subdivision (a), states that, "[i]n establishing standards for training, [POST] shall, so far as consistent with the purposes of this chapter, permit required training to be obtained at institutions approved by [POST]." On its website at <http://www.post.ca.gov/training/default.asp>, POST gives an overview of Training, Certificates & Services it provides which states:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement.

In comments on this test claim, POST also stated that:

[A]ny law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. The point here is that there is no requirement for a participating agency to have POST-certified training courses.³⁴

³⁰ Penal Code section 13520.

³¹ Penal Code section 13522.

³² POST's website at http://www.post.ca.gov/library/other/agency_page.asp lists law enforcement agencies and participation status.

³³ California Code of Regulations, title 11, section 1010, subdivision (c).

³⁴ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

Thus, according to the Penal Code, and as the Penal Code provisions are interpreted by POST, participating in the POST program,³⁵ obtaining POST certification of training courses and providing POST-certified training are discretionary decisions on the part of the training provider. The courts have found it is a well-established principle that "contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; and courts will not depart from such construction unless it is clearly erroneous or unauthorized."³⁶ Staff finds no other provision in statute or regulation to contradict POST's interpretation of the Penal Code.

In the *Kern High School Dist.* case, the California Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant's participation in the underlying program is voluntary.³⁷ The court stated:

[T]he core point ... is that activities undertaken at the option or discretion of a local governmental 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 obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice. [Citing *City of Merced v. State of California* (1984) 153 Cal.app.3d 777, 783.]³⁸

The cases have further found that, in the absence of strict legal compulsion, a local agency might be "practically" compelled to take an action thus triggering costs that would be reimbursable. In the case of *San Diego Unified School Dist.*, the test claim statutes required school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.³⁹ The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.⁴⁰ Regarding expulsion recommendations that were discretionary on the part of the district, the court acknowledged the school district's arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement to provide safe schools.⁴¹ Ultimately, however, the Supreme Court decided the discretionary expulsion issue on an alternative basis.⁴²

³⁵ California Code of Regulations, title 11, section 1010, subdivision (c).

³⁶ *State Compensation Insurance Fund v. Workers' Compensation Appeals Board* (1995) 37 Cal.App.4th 675, 683 (citing *Industrial Indemnity Co. v. Workers' Comp. Appeals Board* (1985) 165 Cal.App.3d 633, 638).

³⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

³⁸ *Id.* at page 742.

³⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 866.

⁴⁰ *Id.* at pages 881-882.

⁴¹ *Id.* at page 887, footnote 22.

⁴² *Id.* at page 888.

In summary, where no "legal" compulsion is set forth in the plain language of a test claim statute or regulation, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. Here, as noted above, participation in the underlying POST program and providing POST-certified training is voluntary, i.e., no legal compulsion exists. Nor does staff find any support for the notion that "practical" compulsion is applicable in the instant case. The test claim regulations do not address a situation in any way similar to the circumstances in *San Diego Unified School Dist.*, where the expulsion of a student might be needed to comply with the constitutional requirement for safe schools. In fact, the circumstances here are substantially similar to those in the *Kern High School Dist.* case, where the district was denied reimbursement because its participation in the underlying program was voluntary, and no "substantial penalty" would result if local agencies fail to participate in POST or provide their own POST-certified training.

The Supreme Court in *San Diego Unified School Dist.* underscored the fact that a state mandate is found when the state, rather than a local official, has made the decision to require the costs to be incurred.⁴³ In this case, the state has not required the local public agency to participate in POST or provide POST-certified training; the local agency has made that decision. Moreover, the court in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 (*County of Los Angeles II*), in interpreting the holding in *Lucia Mar*,⁴⁴ noted that where local entities have alternatives under the statute other than paying the costs in question, the costs do not constitute a state mandate.⁴⁵ Here, local agencies have alternatives available in that they can: 1) choose not to become members of POST; 2) elect not to present training courses in-house and instead send their law enforcement officers to POST-certified training institutions operated by other entities such as community colleges or other law enforcement agencies; or 3) hire only those individuals who are already POST-certified peace officers. Therefore, the activities do not constitute a state mandate within the meaning of article XIII B, section 6.

Conclusion

Staff finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

⁴³ *Id.* at page 880.

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

⁴⁵ *County of Los Angeles II*, *supra*, 32 Cal.App. 4th 805, page 818.

ITEM 6
TEST CLAIM
PROPOSED STATEMENT OF DECISION

California Code of Regulations, Title 11,
Sections 1001, 1052, 1053, 1055, 1070, 1071, and 1082
(Register 2001, No. 29)

Training Requirements for Instructors and Academy Staff

02-TC-03

County of Sacramento, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates ("Commission") is whether the Proposed Statement of Decision accurately reflects the Commission's decision on the *Training Requirements for Instructors and Academy Staff* test claim.¹

Recommendation.

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission's vote on item 5 modifies the staff analysis, staff recommends that the motion to adopt the proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. ~~Alternatively, if the changes are significant,~~ staff recommends that adoption of a proposed Statement of Decision be continued to the April 2007 Commission hearing.

¹ California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

California Code of Regulations, Title 11,
Sections 1001, 1052, 1053, 1055, 1070, 1071,
and 1082 (Register 2001, No. 29)

Filed on August 6, 2002, by the County of
Sacramento, Claimant.

Case No.: 02-TC-03

*Training Requirements for Instructors and
Academy Staff*

PROPOSED STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ.; CALIFORNIA
CODE OF REGULATIONS, TITLE 2,
DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Proposed for Adoption on March 29, 2007)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on March 29, 2007. [Witness list will be included in the final Statement of Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision] to deny this test claim.

Summary of Findings

This test claim addresses regulations adopted by the Commission on Peace Officer Standards and Training ("POST") that require specified training of certain POST instructors and key staff of POST training academies. POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.

Although the test claim regulations do mandate some activities on POST trainers, the Commission finds that those requirements flow from an initial discretionary decision by the local agency to participate in POST, and another discretionary decision to provide POST-certified training or establish an academy and employ training staff. Because the underlying decisions to participate in POST and provide POST-certified training are discretionary, and local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-

mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

BACKGROUND

This test claim addresses POST regulations that require specified training of certain POST instructors and key staff of POST training academies.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.² The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.³ Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.⁴

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.⁵ POST states the following:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement.⁶

A POST participating agency can offer its own in-house POST-certified training, or send its personnel to POST-certified training institutions operated by other entities, such as community colleges or other law enforcement agencies.⁷

On March 26, 2001, POST issued Bulletin number 01-05 entitled "Proposed Regulatory Action: Training Requirements for Instructors and Academy Staff of Specialized Training Courses." In that bulletin, POST stated:

For years, the training community has shared an informal expectation that persons who instruct in certain high risk/liability areas should attend a POST-certified instructor development course (or an equivalent one) on the related subject area. The same expectation has been maintained for certain key academy staff, and has, in fact, been formalized in the *POST Basic Course Management Guide*. The pertinent POST-certified instructor development courses are listed in the *POST Catalog of Certified*

² Penal Code section 13500 et seq.

³ *About California POST*, <<http://www.POST.ca.gov>>.

⁴ Penal Code sections 13522 and 13523.

⁵ Penal Code sections 13510, 13510.1, 13510.5, and 13511; California Code of Regulations, Title 11, section 1053.

⁶ *Training, Certificates & Services: Overview*, <<http://www.POST.ca.gov>>.

⁷ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

Courses. The proposed regulations also include provisions for equivalency determinations and exemptions from the training requirements.

Test Claim Regulations

POST subsequently adopted the regulations proposed in Bulletin number 01-05, which are the subject of this test claim.⁸ The regulations require that, effective July 1, 2002, primary instructors⁹ of designated specialized training courses complete a specified training standard, or its equivalent, prior to instructing in the specialized subject.¹⁰ Instructors of specialized training that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.¹¹ A process was also established to allow presenters of the specialized courses to perform an equivalency evaluation of non-POST-certified training to meet the minimum training standard for the specialized subject.¹² Presenters of the specialized courses are required to maintain documentation demonstrating satisfaction of the minimum training standard by their instructors who teach any of the specialized courses.¹³

The test claim regulations also require that Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete specified minimum training standards within one year from the date of appointment to the position.¹⁴ Academy Directors are required to maintain documentation demonstrating satisfaction of the minimum training standard for the designated staff position.¹⁵

Three additional requirements are set forth in the test claim regulations with regard to specialized course instructors and Academy instructors. First, qualifications of certain academy staff, in addition to other instructors and coordinators, must now be evaluated by POST in requests for course certification.¹⁶ Second, specified elements of instructor resumes

⁸ The test claim was filed with the Commission on August 6, 2002, on regulations in effect at that time. The subject regulations have subsequently been modified, however; those modified regulations have not been claimed and, thus, the Commission makes no finding with regard to them.

⁹ "Primary instructor" is an individual responsible for the coordination and instruction for a particular topic. The responsibility includes oversight of topic content, logistics, and other instructors. (Cal. Code Regs., tit. 11, § 1001, subd. (aa))

¹⁰ California Code of Regulations, Title 11, section 1070, subdivision (a).

¹¹ *Ibid.*

¹² California Code of Regulations, Title 11, section 1070, subdivision (b).

¹³ California Code of Regulations, Title 11, section 1070, subdivision (c).

¹⁴ California Code of Regulations, Title 11, section 1071, subdivision (a). Content for the courses for each staff position is specified in section 1082.

¹⁵ California Code of Regulations, Title 11, section 1071, subdivision (b).

¹⁶ California Code of Regulations, Title 11, section 1052, subdivision (a)(2).

must now be provided for course certification requests.¹⁷ And third, certificates of completion must be issued by presenters to students who successfully complete POST-certified instructor development courses listed in section 1070, the Academy Director/Coordinator Workshop and the Recruit Training Officer Workshop.¹⁸

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII, B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state-mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Claimant's Position

The claimant asserts that the test claim regulations constitute a reimbursable state-mandated program within the meaning of article XIII, B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that development costs commencing in fiscal year 2001-2002 for the following activities will be incurred and are reimbursable:

1. Staff time to complete or update any necessary general, operations, or special orders as required.
2. Staff time to compile information to be distributed to instructors and key staff informing them of changes in regulations and what information they need to provide such as updated resumes, completed class certificates, etc.
3. Staff time to collect, review for completeness and evaluate contents of current, and any new, instructor and key academy staff information packages turned in.
4. Staff time to review information submitted for equivalency evaluation as instructor or key staff.
5. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
6. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.

¹⁷ California Code of Regulations, Title 11, section 1053, subdivision (a)(2).

¹⁸ California Code of Regulations, Title 11, section 1055, subdivision (I).

7. Staff time to provide required Basic Instructor Development course to new instructors.
8. Purchase of necessary computer hardware, software and any necessary programming services to set up database or modify existing database to track information on #6 above.
9. Staff time to enter information into database to track class, individual, instructor, academy staff, certificate information and any other data required by POST. Database to be used for annual renewals, to provide POST information as necessary and during any audits of the program.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Develop or update training for data entry, report management and required notices in the database.
13. Meet and confer with POST representatives.
14. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, estimated costs for staff time are \$26,298 and estimated costs for computer hardware, software and programming services are "unknown at this time but could range from \$5,000 - \$20,000."

Claimant asserts that the following ongoing costs will be incurred and are reimbursable:

1. Staff time to collect, review for completeness and evaluate contents of new instructor and key academy staff resumes.
2. Staff time to collect, review for completeness and evaluate contents of annual renewal packages of instructor and key academy staff resumes.
3. Staff time to review information submitted for equivalency evaluation as instructor or key academy staff.
4. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
5. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
6. Staff time to provide required Basic Instructor Development course to new instructors.
7. Staff time to compile information to be distributed to instructors and key staff informing them of any changes to these regulations.
8. Staff time to enter information into database to track class, individual, instructor, academy staff and certificate information and any other data required by POST.
9. Staff time to fill out required certificates.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.

12. Staff time to meet and confer with POST representatives.
13. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, claimant estimates ongoing costs of \$25,000 per year.

Position of Department of Finance

The Department of Finance stated in its comments that:

As the result of our review, we have concluded that the [test claim regulations] may have resulted in a higher level of service for an existing program. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

The Department submitted subsequent comments agreeing with the conclusions in the draft staff analysis.

Position of POST

POST stated in its comments that it believes the test claim regulations do not impose a new program or higher level of service within an existing program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

First, under Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

Second, any law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. There is no requirement for a participating agency to have POST-certified training courses. Since the test claim regulations affecting instructor/academy staff training requirements only apply to POST-certified training institutions, there is no requirement for the state to reimburse for such costs under the Government Code or the California Constitution.

Third, the new POST training requirements for instructors and academy staff are worded in such a way that they are directed to the individual instructor and academy staff members, not the training institutions. POST-certified training institutions are free to require applicants to complete this training on their own at their own expense. If POST-certified training institutions voluntarily provide their staff with this training, it is no reason to expect the state to reimburse for these costs.

Since POST has facilitated the ready availability of this instructor/academy staff training by certifying the training to virtually any POST-certified training institution that can demonstrate a need and capability, law enforcement trainers in the POST program can conduct much of this required training within their own facilities without sending their personnel away.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution¹⁹ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²⁰ "Its 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."²¹ 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.²² In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.²³

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.²⁴ 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.²⁵ A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."²⁶

¹⁹ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

²⁰ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²² *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

²⁴ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar, supra*, 44 Cal.3d 830, 835).

²⁵ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

²⁶ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁷

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 6.²⁸ 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."²⁹

The analysis addresses the following issue:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

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

In order for the test claim regulations to impose a reimbursable state-mandated program under article XIII B, section 6, the language must order or command a local agency to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered.

Do the test claim regulations mandate any activities?

The test claim regulations require the following activities:

1. As of July 1, 2002, primary instructors of designated specialized POST training courses must complete a specified training standard, or its equivalent, prior to instructing in the subject.
2. Instructors of designated specialized POST training courses that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.
3. Presenters of specialized courses must maintain documentation demonstrating their instructors who teach any of the specialized courses have satisfied the minimum training standard, and such documentation shall be made available for POST inspection upon request.
4. Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete the specified minimum training standards for their positions within one year from the date of appointment.

²⁷ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

²⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁹ *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

5. Academy Directors shall maintain documentation demonstrating satisfaction of the minimum training standard for each designated staff position, and such documentation shall be made available for POST inspection upon request.
6. Any person or organization desiring to have a course certified by POST shall now provide instructor resumes in addition to other information previously required.
7. Any presenter of a POST-Certified instructor development course, or any presenter of the Academy Director/Coordinator Workshop or Recruit Training Officer Workshop, shall issue certificates to students who successfully complete the training.

Thus, the plain language of the test claim regulations does require specified persons involved in POST training to engage in certain activities. However, based on the following analysis, the Commission finds that the requirements flow from the *initial discretionary decisions* by the local agency to become a member of POST, and to provide POST-certified training or establish a POST training academy. Therefore, the test claim regulations do not constitute a state-mandated program within the meaning of article XIII B, section 6.

POST was created in 1959: “[f]or the purpose of raising the level of competence of local law enforcement officers ...”³⁰ To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the physical, mental, and moral fitness of peace officers, and for the training of peace officers. However, these rules apply only to those cities, counties, and school districts that participate in the POST program and apply for state aid.³¹ If the local agency decides to file an application for state aid, the agency must adopt an ordinance or regulation agreeing to abide by POST rules and regulations.³² Not all local agencies have applied for POST membership,³³ nor do all local agencies provide POST-certified training. Nor is there any state statute, or other state law, that requires local agencies to participate in the POST program or provide POST-certified training. Moreover, consistent with POST’s long standing interpretation of the Penal Code, POST’s regulations state that participation in the POST program is voluntary.³⁴ POST stated the following in its comments on this test claim:

[U]nder Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST’s requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

With regard to providing training, section 13511, subdivision (a), states that, “[i]n establishing standards for training, [POST] shall, so far as consistent with the purposes of this chapter, permit required training to be obtained at institutions approved by [POST].” On its website at

³⁰ Penal Code section 13510.

³¹ Penal Code section 13520.

³² Penal Code section 13522.

³³ POST’s website at http://www.post.ca.gov/library/other/agency_page.asp lists law enforcement agencies and participation status.

³⁴ California Code of Regulations, title 11, section 1010, subdivision (c).

<http://www.post.ca.gov/training/default.asp>, POST gives an overview of Training, Certificates & Services it provides which states:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement...

In comments on this test claim, POST also stated that:

[A]ny law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. The point here is that there is no requirement for a participating agency to have POST-certified training courses...³⁵

Thus, according to the Penal Code, and as the Penal Code provisions are interpreted by POST, participating in the POST program,³⁶ obtaining POST certification of training courses and providing POST-certified training are discretionary decisions on the part of the training provider. The courts have found it is a well-established principle that "contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; and courts will not depart from such construction unless it is clearly erroneous or unauthorized."³⁷ The Commission finds no other provision in statute or regulation to contradict POST's interpretation of the Penal Code!

In the *Kern High School Dist.* case, the California Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant's participation in the underlying program is voluntary.³⁸ The court stated:

[T]he core point ... is that activities undertaken at the option or discretion of a local governmental 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 obliged to incur costs as a result of its discretionary decision to

³⁵ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

³⁶ California Code of Regulations, title 11, section 1010, subdivision (c).

³⁷ *State Compensation Insurance Fund v. Workers' Compensation Appeals Board* (1995) 37 Cal.App.4th 675, 683 (citing *Industrial Indemnity Co. v. Workers' Comp. Appeals Board* (1985) 165 Cal.App.3d 633, 638).

³⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

participate in a particular program or practice. [Citing *City of Merced v. State of California* (1984) 153 Cal.app.3d 777, 783.]³⁹

The cases have further found that, in the absence of strict legal compulsion, a local agency might be "practically" compelled to take an action thus triggering costs that would be reimbursable. In the case of *San Diego Unified School Dist.*, the test claim statutes required school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.⁴⁰ The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.⁴¹ Regarding expulsion recommendations that were discretionary on the part of the district, the court acknowledged the school district's arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement to provide safe schools.⁴² Ultimately, however, the Supreme Court decided the discretionary expulsion issue on an alternative basis.⁴³

In summary, where no "legal" compulsion is set forth in the plain language of a test claim statute or regulation, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. Here, as noted above, participation in the underlying POST program and providing POST-certified training is voluntary, i.e., no legal compulsion exists. Nor does the Commission find any support for the notion that "practical" compulsion is applicable in the instant case. The test claim regulations do not address a situation in any way similar to the circumstances in *San Diego Unified School Dist.*, where the expulsion of a student might be needed to comply with the constitutional requirement for safe schools. In fact, the circumstances here are substantially similar to those in the *Kern High School Dist.* case, where the district was denied reimbursement because its participation in the underlying program was voluntary, and no "substantial penalty" would result if local agencies fail to participate in POST or provide their own POST-certified training.

The Supreme Court in *San Diego Unified School Dist.* underscored the fact that a state mandate is found when the state, rather than a local official, has made the decision to require the costs to be incurred.⁴⁴ In this case, the state has not required the local public agency to participate in POST or provide POST-certified training; the local agency has made that decision. Moreover, the court in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 (*County of Los Angeles II*), in interpreting the holding in *Lucia Mar*,⁴⁵ noted that where local entities have alternatives under the statute other than paying the

³⁹ *Id.* at page 742.

⁴⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 866.

⁴¹ *Id.* at pages 881-882.

⁴² *Id.* at page 887, footnote 22.

⁴³ *Id.* at page 888.

⁴⁴ *Id.* at page 880.

⁴⁵ *Lucia Mar*, *supra*, 44 Cal.3d 830.

costs in question, the costs do not constitute a state mandate.⁴⁶ Here, local agencies have alternatives available in that they can: 1) choose not to become members of POST; 2) elect not to present training courses in-house and instead send their law enforcement officers to POST-certified training institutions operated by other entities such as community colleges or other law enforcement agencies; or 3) hire only those individuals who are already POST-certified peace officers. Therefore, the activities do not constitute a state mandate within the meaning of article XIII B, section 6.

CONCLUSION

The Commission finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

⁴⁶ *County of Los Angeles II, supra*, 32 Cal.App. 4th 805, page 818.

Commission on State Mandates

Original List Date: 8/6/2002
Last Updated: 1/10/2007
List Print Date: 02/27/2007
Claim Number: 02-TC-03
Issue: Training Requirements for Instructors and Academy Staff

Mailing Information: Notice of adopted SOD

Mailing List

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.)

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

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

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

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

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

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

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

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

Ms. Nancy Gust
County of Sacramento
711 G Street
Sacramento, CA 95814

Claimant
Tel: (916) 874-6032
Fax: (916) 874-5263

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Tel: (213) 974-8564
Fax: (213) 617-8106

Executive Director

California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Tel: (916) 263-0541

Fax: (916) 000-0000

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

Ms. Carla Castaneda

Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 323-9584

Mr. Kenneth J. O'Brien

Peace Officers Standards and Training
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

Tel: (916) 227-2809

Fax: (916) 227-3895

Mr. Keith B. Petersen

SixTen & Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

Tel: (858) 514-8605

Fax: (858) 514-8645

Mr. Rick Oules

Department of Justice
Division of Law Enforcement
1102 Q Street, 6th Floor
Sacramento, CA 95814

Tel: (916) 319-8200

Fax:

Ms. Donna Ferebee

Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 323-9584

Mr. Allan Burdick

MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102

Fax: (916) 485-0111

Ms. Ginny Brummels

State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Tel: (949) 644-3127
Fax: (949) 644-3339

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

Tel: (916) 677-4233
Fax: (916) 677-2283

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

Tel: (909) 386-8850
Fax: (909) 386-8830

Ms. Beth Hunter
Centratlon, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621
Fax: (866) 481-2682

COMMISSION ON STATE MANDATES

EXHIBIT H

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

April 2, 2007

Ms. Nancy Gust
SB-90 Sheriff's Department
County of Sacramento
711 G Street, Room 405
Sacramento, CA 95814

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

RE: **Final Staff Analysis, Proposed Statement of Decision, and Notice of Additional Comment Period and New Hearing Date**
Training Requirements for Instructors and Academy Staff, 02-TC-03
California Code of Regulations, Title 11, Sections 1001, 1052, 1053, 1055, 1070, 1071, and 1082 (Register 2001, No. 29)
County of Sacramento, Claimant

Dear Ms. Gust:

The final staff analysis and proposed Statement of Decision that were issued for the March 29, 2007 hearing for this test claim are being reissued, unchanged, for your review and comment. An additional 30-day comment period has been added for the test claim in light of new testimony at yesterday's hearing.

Written Comments

Any party or interested person may file written comments by Wednesday, **May 2, 2007**. 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)

Hearing

This test claim is now set for hearing on **Thursday May 31, 2007** at 9:30 a.m. in Sacramento, CA. The final agenda item will be issued on or about May 17, 2007.

Please contact Deborah Borzelleri at (916) 322-4230 if you have questions.

Sincerely,


PAULA HIGASHI
Executive Director

Enc. Final Staff Analysis

ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

California Code of Regulations, Title 11,
Sections 1001, 1052, 1053, 1055, 1070, 1071, and 1082
(Register 2001, No. 29)

Training Requirements for Instructors and Academy Staff

02-TC-03

County of Sacramento, Claimant

EXECUTIVE SUMMARY

This item was scheduled for the January 25, 2007, Commission hearing but was continued to the March 29, 2007 hearing. No part of the final staff analysis has changed since it was issued.

The test claim addresses regulations adopted by the Commission on Peace Officer Standards and Training ("POST") that require specified training of certain POST instructors and key staff of POST training academies.

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.

The test claim poses the following question:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

The Test Claim Regulations Do Not Impose a State-Mandated Program on Local Agencies

Although the test claim regulations require specified persons involved in POST training to engage in certain activities, staff finds that the requirements flow from an initial discretionary decision by the local agency to participate in POST, and another discretionary decision to provide POST-certified training or establish an academy and employ training staff. Therefore, the test claim regulations do not constitute a state-mandated program and are not subject to article XIII B, section 6.

Conclusion

Staff finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

*02-TC-03 Training Requirements for Instructors and Academy Staff
Final Staff Analysis*

STAFF ANALYSIS

Claimant

County of Sacramento

Chronology

- 08/06/02 County of Sacramento filed test claim with the Commission on State Mandates ("Commission")
- 09/13/02 The Department of Finance submitted comments on test claim with the Commission
- 10/31/02 The Commission on Peace Officer Standards and Training ("POST") submitted comments on the test claim with the Commission
- 12/08/06 Commission staff issued draft staff analysis
- 01/09/07 The Department of Finance submitted comments on the draft staff analysis with the Commission
- 01/11/07 Commission staff issued final staff analysis
- 01/25/07 Commission continued item to the March hearing
- 03/14/07 Commission staff re-issued final staff analysis

Background

This test claim addresses POST regulations that require specified training of certain POST instructors and key staff of POST training academies.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.¹ The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.² Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.³

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.⁴ POST states the following:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources

¹ Penal Code section 13500 et seq.

² *About California POST*, <<http://www.POST.ca.gov>>.

³ Penal Code sections 13522 and 13523.

⁴ Penal Code sections 13510, 13510.1, 13510.5, and 13511; California Code of Regulations, Title 11, section 1053.

and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement.⁵

A POST participating agency can offer its own in-house POST-certified training, or send its personnel to POST-certified training institutions operated by other entities, such as community colleges or other law enforcement agencies.⁶

On March 26, 2001, POST issued Bulletin number 01-05 entitled "Proposed Regulatory Action: Training Requirements for Instructors and Academy Staff of Specialized Training Courses." In that bulletin, POST stated:

For years, the training community has shared an informal expectation that persons who instruct in certain high risk/liability areas should attend a POST-certified instructor development course (or an equivalent one) on the related subject area. The same expectation has been maintained for certain key academy staff, and has, in fact, been formalized in the *POST Basic Course Management Guide*. The pertinent POST-certified instructor development courses are listed in the *POST Catalog of Certified Courses*. The proposed regulations also include provisions for equivalency determinations and exemptions from the training requirements.

Test Claim Regulations

POST subsequently adopted the regulations proposed in Bulletin number 01-05, which are the subject of this test claim.⁷ The regulations require that, effective July 1, 2002, primary instructors⁸ of designated specialized training courses complete a specified training standard, or its equivalent, prior to instructing in the specialized subject.⁹ Instructors of specialized training that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.¹⁰ A process was also established to allow presenters of the specialized courses to perform an equivalency evaluation of non-POST-certified training to meet the minimum training standard for the specialized subject.¹¹ Presenters of the specialized

⁵ *Training, Certificates & Services: Overview*, <<http://www.POST.ca.gov>>.

⁶ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

⁷ The test claim was filed with the Commission on August 6, 2002, on regulations in effect at that time. The subject regulations have subsequently been modified, however, those modified regulations have not been claimed and, thus, Commission staff makes no finding with regard to them.

⁸ "Primary instructor" is an individual responsible for the coordination and instruction for a particular topic. The responsibility includes oversight of topic content, logistics, and other instructors. (Cal. Code Regs., tit. 11, § 1001, subd. (aa))

⁹ California Code of Regulations, Title 11, section 1070, subdivision (a).

¹⁰ *Ibid.*

¹¹ California Code of Regulations, Title 11, section 1070, subdivision (b).

courses are required to maintain documentation demonstrating satisfaction of the minimum training standard by their instructors who teach any of the specialized courses.¹²

The test claim regulations also require that Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete specified minimum training standards within one year from the date of appointment to the position.¹³ Academy Directors are required to maintain documentation demonstrating satisfaction of the minimum training standard for the designated staff position.¹⁴

Three additional requirements are set forth in the test claim regulations with regard to specialized course instructors and Academy instructors. First, qualifications of certain academy staff, in addition to other instructors and coordinators, must now be evaluated by POST in requests for course certification.¹⁵ Second, specified elements of instructor resumes must now be provided for course certification requests.¹⁶ And third, certificates of completion must be issued by presenters to students who successfully complete POST-certified instructor development courses listed in section 1070, the Academy Director/Coordinator Workshop and the Recruit Training Officer Workshop.¹⁷

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII-B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

¹² California Code of Regulations, Title 11, section 1070, subdivision (c).

¹³ California Code of Regulations, Title 11, section 1071, subdivision (a). Content for the courses for each staff position is specified in section 1082.

¹⁴ California Code of Regulations, Title 11, section 1071, subdivision (b).

¹⁵ California Code of Regulations, Title 11, section 1052, subdivision (a)(2).

¹⁶ California Code of Regulations, Title 11, section 1053, subdivision (a)(2).

¹⁷ California Code of Regulations, Title 11, section 1055, subdivision (l).

Claimant's Position

The claimant asserts that the test claim regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that development costs commencing in fiscal year 2001-2002 for the following activities will be incurred and are reimbursable:

1. Staff time to complete or update any necessary general, operations, or special orders as required.
2. Staff time to compile information to be distributed to instructors and key staff informing them of changes in regulations and what information they need to provide such as updated resumes, completed class certificates, etc.
3. Staff time to collect, review for completeness and evaluate contents of current, and any new, instructor and key academy staff information packages turned in.
4. Staff time to review information submitted for equivalency evaluation as instructor or key staff.
5. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
6. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
7. Staff time to provide required Basic Instructor Development course to new instructors.
8. Purchase of necessary computer hardware, software and any necessary programming services to set up database or modify existing database to track information on #6 above.

9. Staff time to enter information into database to track class, individual, instructor, academy staff, certificate information and any other data required by POST. Database to be used for annual renewals, to provide POST information as necessary and during any audits of the program.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Develop or update training for data entry, report management and required notices in the database.
13. Meet and confer with POST representatives.
14. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, estimated costs for staff time are \$26,298 and estimated costs for computer hardware, software and programming services are "unknown at this time but could range from \$5,000 - \$20,000."

Claimant asserts that the following ongoing costs will be incurred and are reimbursable:

1. Staff time to collect, review for completeness and evaluate contents of new instructor and key academy staff resumes.
2. Staff time to collect, review for completeness and evaluate contents of annual renewal packages of instructor and key academy staff resumes.
3. Staff time to review information submitted for equivalency evaluation as instructor or key academy staff.
4. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
5. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
6. Staff time to provide required Basic Instructor Development course to new instructors.
7. Staff time to compile information to be distributed to instructors and key staff informing them of any changes to these regulations.
8. Staff time to enter information into database to track class, individual, instructor, academy staff and certificate information and any other data required by POST.
9. Staff time to fill out required certificates.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Staff time to meet and confer with POST representatives.
13. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, claimant estimates ongoing costs of \$25,000 per year:

Position of Department of Finance

The Department of Finance stated in its comments that:

As the result of our review, we have concluded that the [test claim regulations] may have resulted in a higher level of service for an existing program. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

The Department submitted subsequent comments agreeing with the conclusions in the draft staff analysis:

Position of POST

POST stated in its comments that it believes the test claim regulations do not impose a new program or higher level of service within an existing program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

First, under Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

Second, any law enforcement agency voluntarily participating in the POST program *may* seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. There is no requirement for a participating agency to have POST-certified training courses. Since the test claim regulations affecting instructor/academy staff training requirements only apply to POST-certified training institutions, there is no requirement for the state to reimburse for such costs under the Government Code or the California Constitution.

Third, the new POST training requirements for instructors and academy staff are worded in such a way that they are directed to the individual instructor and academy staff members, not the training institutions. POST-certified training institutions are free to require applicants to complete this training on their own at their own expense. If POST-certified training institutions voluntarily provide their staff with this training, it is no reason to expect the state to reimburse for these costs.

Since POST has facilitated the ready availability of this instructor/academy staff training by certifying the training to virtually any POST-certified training institution that can demonstrate a need and capability, law enforcement trainers in the POST program can conduct much of this required training within their own facilities without sending their personnel away.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution¹⁸ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁹ "Its 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."²⁰ 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

¹⁸ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

¹⁹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

an activity or task.²¹ In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.²²

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.²³ 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.²⁴ A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."²⁵

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁶

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 6.²⁷ 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."²⁸

The analysis addresses the following issue:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

²¹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

²³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874; (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

²⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

²⁶ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

²⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁸ *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

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

In order for the test claim regulations to impose a reimbursable state-mandated program under article XIII B, section 6, the language must order or command a local agency to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered.

Do the test claim regulations mandate any activities?

The test claim regulations require the following activities:

1. As of July 1, 2002, primary instructors of designated specialized POST training courses must complete a specified training standard, or its equivalent, prior to instructing in the subject.
2. Instructors of designated specialized POST training courses that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.
3. Presenters of specialized courses must maintain documentation demonstrating their instructors who teach any of the specialized courses have satisfied the minimum training standard, and such documentation shall be made available for POST inspection upon request.
4. Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete the specified minimum training standards for their positions within one year from the date of appointment.
5. Academy Directors shall maintain documentation demonstrating satisfaction of the minimum training standard for each designated staff position, and such documentation shall be made available for POST inspection upon request.
6. Any person or organization desiring to have a course certified by POST shall now provide instructor resumes in addition to other information previously required.
7. Any presenter of a POST-Certified instructor development course, or any presenter of the Academy Director/Coordinator Workshop or Recruit Training Officer Workshop, shall issue certificates to students who successfully complete the training.

Thus, the plain language of the test claim regulations does require specified persons involved in POST training to engage in certain activities. However, based on the following analysis, staff finds that the requirements flow from the *initial discretionary decisions* by the local agency to become a member of POST, and to provide POST-certified training or establish a POST training academy. Therefore, the test claim regulations do not constitute a state-mandated program within the meaning of article XIII B, section 6.

POST was created in 1959 “[f]or the purpose of raising the level of competence of local law enforcement officers ...”²⁹ To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the

²⁹ Penal Code section 13510.

physical, mental, and moral fitness of peace officers, and for the training of peace officers. However, these rules apply only to those cities, counties, and school districts that participate in the POST program and apply for state aid.³⁰ If the local agency decides to file an application for state aid, the agency must adopt an ordinance or regulation agreeing to abide by POST rules and regulations.³¹ Not all local agencies have applied for POST membership,³² nor do all local agencies provide POST-certified training. Nor is there any state statute, or other state law, that requires local agencies to participate in the POST program or provide POST-certified training. Moreover, consistent with POST's long standing interpretation of the Penal Code, POST's regulations state that participation in the POST program is voluntary.³³ POST stated the following in its comments on this test claim:

[U]nder Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements:

With regard to providing training, section 13511, subdivision (a), states that, "[i]n establishing standards for training, [POST] shall, so far as consistent with the purposes of this chapter, permit required training to be obtained at institutions approved by [POST]." On its website at <http://www.post.ca.gov/training/default.asp>, POST gives an overview of Training, Certificates & Services it provides which states:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement....

In comments on this test claim, POST also stated that:

[A]ny law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. The point here is that there is no requirement for a participating agency to have POST-certified training courses....³⁴

³⁰ Penal Code section 13520.

³¹ Penal Code section 13522.

³² POST's website at http://www.post.ca.gov/library/other/agency_page.asp lists law enforcement agencies and participation status.

³³ California Code of Regulations, title 11, section 1010, subdivision (c).

³⁴ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

Thus, according to the Penal Code, and as the Penal Code provisions are interpreted by POST, participating in the POST program,³⁵ obtaining POST certification of training courses and providing POST-certified training are discretionary decisions on the part of the training provider. The courts have found it is a well-established principle that "contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; and courts will not depart from such construction unless it is clearly erroneous or unauthorized."³⁶ Staff finds no other provision in statute or regulation to contradict POST's interpretation of the Penal Code.

In the *Kern High School Dist.* case, the California Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant's participation in the underlying program is voluntary.³⁷ The court stated:

[T]he core point ... is that activities undertaken at the option or discretion of a local governmental 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 obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice. [Citing *City of Merced v. State of California* (1984) 153 Cal.app.3d 777, 783.]³⁸

The cases have further found that, in the absence of strict legal compulsion, a local agency might be "practically" compelled to take an action thus triggering costs that would be reimbursable. In the case of *San Diego Unified School Dist.*, the test claim statutes required school districts to afford to a student-specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.³⁹ The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.⁴⁰ Regarding expulsion recommendations that were discretionary on the part of the district, the court acknowledged the school district's arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement to provide safe schools.⁴¹ Ultimately, however, the Supreme Court decided the discretionary expulsion issue on an alternative basis.⁴²

³⁵ California Code of Regulations, title 11, section 1010, subdivision (c).

³⁶ *State Compensation Insurance Fund v. Workers' Compensation Appeals Board* (1995).

³⁷ Cal.App.4th 675, 683 (citing *Industrial Indemnity Co. v. Workers' Comp. Appeals Board* (1985) 165 Cal.App.3d 633, 638).

³⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

³⁹ *Id.* at page 742.

⁴⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 866.

⁴¹ *Id.* at pages 881-882.

⁴² *Id.* at page 887, footnote 22.

⁴³ *Id.* at page 888.

In summary, where no "legal" compulsion is set forth in the plain language of a test claim statute or regulation, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. Here, as noted above, participation in the underlying POST program and providing POST-certified training is voluntary, i.e., no legal compulsion exists. Nor does staff find any support for the notion that "practical" compulsion is applicable in the instant case. The test claim regulations do not address a situation in any way similar to the circumstances in *San Diego Unified School Dist.*, where the expulsion of a student might be needed to comply with the constitutional requirement for safe schools. In fact, the circumstances here are substantially similar to those in the *Kern High School Dist.* case, where the district was denied reimbursement because its participation in the underlying program was voluntary, and no "substantial penalty" would result if local agencies fail to participate in POST or provide their own POST-certified training.

The Supreme Court in *San Diego Unified School Dist.* underscored the fact that a state mandate is found when the state, rather than a local official, has made the decision to require the costs to be incurred.⁴³ In this case, the state has not required the local public agency to participate in POST or provide POST-certified training; the local agency has made that decision. Moreover, the court in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 (*County of Los Angeles II*), in interpreting the holding in *Lucia Mar*,⁴⁴ noted that where local entities have alternatives under the statute other than paying the costs in question, the costs do not constitute a state mandate.⁴⁵ Here, local agencies have alternatives available in that they can: 1) choose not to become members of POST; 2) elect not to present training courses in-house and instead send their law enforcement officers to POST-certified training institutions operated by other entities such as community colleges or other law enforcement agencies; or 3) hire only those individuals who are already POST-certified peace officers. Therefore, the activities do not constitute a state mandate within the meaning of article XIII B, section 6.

Conclusion

Staff finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

⁴³ *Id.* at page 880.

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

⁴⁵ *County of Los Angeles II*, *supra*, 32 Cal.App. 4th 805, page 818.

Commission on State Mandates

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Mailing List

Claim Number: 02-TC-03

Issue: Training Requirements for Instructors and Academy Staff

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.)

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Tel: (916) 939-7901

Fax: (916) 939-7801

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

Tel: (916) 368-9244

Fax: (916) 368-5723

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Tel: (916) 454-7310

Fax: (916) 454-7312

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Tel: (916) 323-5849

Fax: (916) 327-0832

Ms. Nancy Gust
County of Sacramento
711 G Street
Sacramento, CA 95814

Claimant

Tel: (916) 874-6032

Fax: (916) 874-5263

Mr. Leonard Kaya, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Tel: (213) 974-8564

Fax: (213) 617-8106

Executive Director

California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Tel: (916) 263-0541

Fax: (916) 000-0000

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

Ms. Carla Castaneda

Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 323-9584

Mr. Kenneth J. O'Brien

Peace Officers Standards and Training
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

Tel: (916) 227-2809

Fax: (916) 227-3895

Mr. Keith B. Petersen

SixTen & Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

Tel: (858) 514-8605

Fax: (858) 514-8645

Mr. Rick Oules

Department of Justice
Division of Law Enforcement
1102 Q Street, 6th Floor
Sacramento, CA 95814

Tel: (916) 319-8200

Fax:

Ms. Donna Ferebee

Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 323-9584

Mr. Allan Burdick

MAXMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102

Fax: (916) 485-0111

Ms. Ginny Brummels

State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Tel: (949) 644-3127
Fax: (949) 644-3339

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

Tel: (916) 677-4233
Fax: (916) 677-2283

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

Tel: (909) 386-8850
Fax: (909) 386-8830

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621
Fax: (866) 481-2682

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



April 17, 2007.

Ms. Nancy Gust

SB-90 Sheriff's Department

County of Sacramento

711 G Street, Room 405

Sacramento, CA 95814

*And Interested Parties and Affected State Agencies (See Enclosed Mailing List)*RE: **Transcript of March 29, 2007 Hearing***Training Requirements for Instructors and Academy Staff, 02-TC-03*California Code of Regulations, Title 11, Sections 1001, 1052, 1053, 1055, 1070, 1071,
and 1082 (Register 2001, No. 29)

County of Sacramento, Claimant

Dear Ms. Gust:

Relevant portions of the transcript for the March 29, 2007 hearing are enclosed for your consideration in providing additional comments on the final staff analysis for this test claim. As you are aware, the Commission granted an additional 30-day comment period for the test claim in light of new testimony at that hearing.

Written comments are due by **Wednesday, May 2, 2007**. 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) This test claim is now set for hearing on **Thursday, May 31, 2007** at 9:30 a.m. in Sacramento, CA. The final agenda item will be issued on or about May 17, 2007.

Please contact Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

PAULA HIGASHI
Executive Director

Enc. Excerpts from Transcript for March 29, 2007 Commission Hearing

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COMMISSION ON
STATE MANDATES

**CERTIFIED
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PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:32 a.m.

DATE: Thursday, March 29, 2007

PLACE: State Capitol, Room 126
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomat Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.

Certified Shorthand Reporters

8414 Yermo Way, Sacramento, California 95828

Telephone 916.682.9482 Fax 916.688.0723

FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

MICHAEL GENEST, Chair
Director
State Department of Finance

CYNTHIA BRYANT
Director
State Office of Planning and Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

J. STEVEN WORTHLEY
Supervisor and Chairman of the Board
County of Tulare

--oOo--

A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 15)

NANCY PATTON
Assistant Executive Director
(Items 11 and 13)

CAMILLE SHELTON
Chief Legal Counsel
(Item 14)

DEBORAH BORZELLERI
Senior Commission Counsel
(Items 4 and 5)

KERRY ORTMAN

--oOo--

PUBLIC TESTIMONY

Appearing Re Item 4:

For Co-Claimant City of Palos Verdes Estates:

JULIANA F. GMUR
Manager, Cost Services
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

For Co-Claimant County of Napa:

JACQUELINE M. GONG
Deputy County Counsel
County of Napa
1195 Third Street, Room 301
Napa, California 94559-3035

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4: continued

For California Department of Finance:

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Item 5:

For California State Association of Counties SB-90
Service:

ALLAN BURDICK
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

JULIANA F. GMUR
Manager, Cost Services
MAXIMUS

For County of Los Angeles:

LEONARD KAYE, ESQ.
Department of Auditor-Controller
County of Los Angeles
500 West Temple Street, Suite 603
Los Angeles, California 90012

For Commission on Peace Officer Standards and Training:

BRYON G. GUSTAFSON
Commission on POST
1601 Alhambra Boulevard
Sacramento, California 95816-7083

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5: continued

For the County of Sacramento:

CHERYL MacCOUN

Deputy

Sacramento County Sheriff's Department

711 G Street

Sacramento, California 95814

GAIL WILCZYNSKI

Deputy

Sacramento County Sheriff's Department

NANCY GUST

Administrative Services Officer III

Sacramento County Sheriff's Department

CHRISTINE HESS

Chief

Sacramento County Sheriff's Department

For California Department of Finance:

CARLA CASTAÑEDA

Principal Program Budget Analyst

Department of Finance

Appearing Re Item 12:

For California Department of Finance

TOM DEATHERAGE

Mandates Unit

Department of Finance

915 L Street

Sacramento, California 95814

1 MEMBER LUJANO: Second.

2 CHAIR GENEST: Do we need -- let's just see if
3 we have -- let's have a voice vote.

4 All in favor?

5 (A chorus of "ayes" was heard.)

6 CHAIR GENEST: Okay, it's adopted.

7 MS. HIGASHI: Okay, thank you.

8 MS. GMUR: Thank you so much.

9 MS. HIGASHI: Our next item is a test claim,
10 Item 5, *Training Requirements for Instructors and Academy*
11 *Staff*. This item will also be presented by
12 Ms. Borzelleri.

13 MS. BORZELLERI: Thank you.

14 This is Item 5, *Training Requirements for*
15 *Instructors and Academy Staff*.

16 We have a cast.

17 This test claim addresses regulations adopted by
18 the Commission on Peace Officers Standards and Training,
19 which we're referring to as POST, that requires
20 classified training for certain POST instructors and key
21 staff of POST-training academies.

22 POST training is provided to law enforcement
23 officers by POST-approved institutions, and POST can
24 certify training courses and curricula developed by other
25 entities as meeting required minimum training standards.

1 Staff finds that the regulations establish
2 requirements that flow from a discretionary decision by
3 the local agency to participate in POST, and a
4 discretionary decision to provide POST-certified
5 training or establish a POST-training academy. Staff
6 further finds that local agencies have alternatives to
7 providing POST-certified training or establishing a
8 POST training academy. Therefore, the test claim
9 regulations do not impose a state-mandated program on
10 local agencies within the meaning of Article XIII B,
11 Section 6, of the California Constitution.

12 Staff recommends the Commission adopt the Staff
13 Analysis to deny the test claim.

14 Will the parties please state your name for the
15 record?

16 MR. BURDICK: Allan Burdick on behalf of the
17 CSAC SB 90 Service.

18 MR. KAYE: Leonard Kaye, County of Los Angeles.

19 MS. MacCOUN: Cheryl MacCoun, Sacramento County
20 Sheriff's office.

21 MS. WILCZYNSKI: Deputy Gail Wilczynski,
22 Sacramento County Sheriff's Department.

23 MS. GUST: Nancy Gust, Sacramento County
24 Sheriff's Department.

25 MR. GUSTAFSON: Bryon Gustafson, Commission on

1 POST.

2 MS. CASTAÑEDA: Carla Castañeda, Department of
3 Finance.

4 MS. HESS: Christine Hess, Sacramento County
5 Sheriff's Department.

6 CHAIR GENEST: Okay, who wants to start? And
7 let's try to be focused on the exact question here.

8 MR. BURDICK: Yes. We'll try to be as specific
9 as we can. Some of these members are here to address
10 issues that may come up; so all of the people are not
11 providing testimony.

12 I would like to indicate that Ms. Juliana Gmur,
13 the attorney that was on the last issue, will also
14 be joining us on this particular issue.

15 Thank you very much for giving us the
16 opportunity to present this test claim today on behalf of
17 the County of Sacramento.

18 Since this issue had surfaced, a number of
19 people and agencies have called and have shown interest
20 in it because this particular test claim deals with two
21 really critical issues:

22 The first issue is the basic underlying issue
23 related to whether or not POST regulations can result in
24 a reimbursable state mandate.

25 And the second issue then is dealing with the

1 specifics of this test claim. Because in order -- it
2 appears in order to get to their position, you first have
3 to deal with a larger issue.

4 Now, we're not sure how the Commission wants to
5 proceed; but I think from a local standpoint, a critical
6 issue is the question of whether or not POST regulations
7 are reimbursable state mandates or not; and is there an
8 alternative to providing POST-certified training, or
9 whether they want to get into the very specifics of the
10 test claim.

11 So I guess that's kind of the issue that we
12 would like to raise initially is, from your standpoint,
13 how would you prefer to proceed?

14 CHAIR GENEST: Well, being a little bit new to
15 this committee, I'm going to ask for the advice of our
16 counsel.

17 MS. BORZELLERI: Well, this is all new
18 information to us. I must say, we did not receive one
19 comment on this draft staff analysis when it went out.

20 And, you know, I guess it's probably more in the
21 interest of what the Commission's time parameters are.
22 I think we have something time-certain at 10:00. You
23 know, if we want to move on with the business, it may be
24 better to push forward with the test claim.

25 That's your discretion.

1 CHAIR GENEST: Paula?

2 MS. HIGASHI: I think so. We can certainly move
3 forward with the test claim hearing, as the Commissioners
4 wish.

5 The ten o'clock time certain was set just to
6 give people an estimated time that we would get to the
7 Mandate Reform item.

8 MEMBER WORTHLEY: Mr. Chairman, as I was reading
9 the staff analysis, it strikes me that the issue, as I
10 see it, unless someone can educate me differently, is
11 that we have an issue of whether we have strict legal
12 compulsion or whether we have practical compulsion. And
13 there was a dearth of information that I could find that
14 would indicate -- I mean, I think it was agreed that all
15 the language is precatory, and it's all in "may" and
16 "wish" and "desires" and so forth; and then the issue
17 would come down to, is there a practical compulsion
18 element to this? And I don't have any information that
19 I could see that addresses this.

20 If that's the issue, we could perhaps focus on
21 that, unless some people disagree with my analysis.

22 MR. KAYE: Commissioner Worthley, I would
23 indicate that staff has provided a very nice and
24 specific and focused statement of what you just mentioned
25 in terms of two statements. They say, just before they

1 conclude, "Here, local agencies have alternatives
2 available in that they can, 1, choose not to become
3 members of POST; and 2, elect to present training courses
4 in-house and, instead, send them law enforcement officers
5 to POST-certified training institutions operated by other
6 entities such as community colleges or other law
7 enforcement agencies; or 3, hire only those individuals
8 who are already POST-certified peace officers."

9 And we have people from local law enforcement
10 agencies here today that can talk to the even theoretical
11 possibility of those other alternatives.

12 MEMBER WORTHLEY: So have I properly addressed
13 the big issue here today?

14 MR. KAYE: Yes.

15 MEMBER WORTHLEY: I mean, first and foremost,
16 that's foundational, it seems to me.

17 MR. KAYE: Yes.

18 CHAIR GENEST: Well, let's hear a little of
19 that.

20 MS. WILCZYNSKI: Yes.

21 MR. BURDICK: Let's have -- Gail is from the --
22 actually, the training academy for the County of
23 Sacramento, just as kind of a reminder, since we've
24 overwhelmed you with a number of witnesses.

25 MS. WILCZYNSKI: Thank you very much.

1 It really is a pleasure to be here today. I've
2 worked hand in hand with POST over the past ten years,
3 being a training coordinator for the Sheriff's
4 Department. And I have always appreciated POST and your
5 quality, your standard. And we appreciate this document.

6 The test claim, reading the Final Staff
7 Analysis, it's a very comprehensive document.

8 The two issues that we see as important here
9 today for your review is, number one, regarding the
10 academy instructors, while it's true that the Sheriff's
11 Department does not have to have a training academy,
12 neither does LA County Sheriff's, neither does San Luis
13 Obispo, neither does El Dorado County. But the question
14 I put in front of you is, if everybody said, "Well, not

15 one in my backyard," where would the training occur?
16 Someone has to have a training academy, whether it's a
17 law enforcement agency or a community college. And we're
18 falling under the same POST mandates.

19 It is mandated. Somewhere, someone has to
20 provide this training.

21 Now, looking at it from a citizen's point of
22 view, take Sacramento as a test case here, our citizens
23 are served best by us having an academy. We can provide
24 this training less expensive because we're not shipping
25 our officers off for the travel per diem, et cetera, to

1 go elsewhere to get training. So we help our citizens.

2 We also help our little neighbor citizens.

3 I say "little" only in population.

4 El Dorado County will send their officers to
5 our class, saving them money because we provide the
6 training nearby.

7 So that is the one issue I have for you, the
8 cost savings, and the fact that somebody, somewhere, has
9 to provide POST training to meet your POST mandates.

10 The second piece of that is -- let me just check
11 my notes. I'm sorry, I'm nervous.

12 The second part is whether or not any particular
13 sheriff's officer or peace officer has to meet your
14 standards. There really is nothing that is voluntary
15 about that anymore.

16 When POST started out 25 -- well, I'm sorry,
17 I've been around for 25 years. You were there before
18 I was. It was there to help, to guide, to suggest, to
19 put
20 us on the track. But over the 25 years of my law
21 enforcement experience, POST has stepped up to setting
22 a minimum, to now setting exact standards, to now
23 providing us exact curricula that you will meet. It's a
24 standard-of-care issue.

25 I don't believe that you could run a -- what I

1 would call a Sheriff's department or a City Police
2 Department without being POST-certified. It's just not
3 reasonable anymore. It's a standard-of-care issue, the
4 same way a medical board sets standards for doctors.

5 And it's important that people realize you can't
6 even really become a police officer, no matter what kind
7 of training you've had, without meeting POST standards.

8 And I'd like to take one second to give you a
9 personal example. My husband is an FBI agent, was for
10 25 years. And in his time, he was always assigned to
11 California. He worked in the Los Angeles FBI office and
12 the Sacramento FBI office. He is SWAT-trained, he is a
13 full investigator, he has done a numerous amount of field
14 work. He has been on task force with local law

15 enforcement across California. He is an expert marksman.
16 I'm very proud of him, with a big 10X. You put a fist
17 right through it, he didn't miss a deal. And yet,
18 with all this experience, he's worked on task force with
19 local enforcement in the street on kidnappings, murders,
20 bank robberies, car thefts, Homeland Security issues. He
21 has top-secret clearance, for heavens sakes. He's been
22 to two prison riots, and he does covert entries. And
23 yet, as he retires from the FBI, my chief here cannot
24 pick him up as a sheriff's officer because he is not
25 POST-certified. Not only that, he cannot even take the

1 equivalency. He would have to take a full-blown academy.

2 So here's a guy that can 10X a bullet; but

3 those skills he's picked up in firearms don't count

4 unless they're POST-certified.

5 So that's my example of, is it voluntary or is
6 it mandated?

7 And in conclusion, for me, I would just like to

8 say, we love POST -- I do. I really do. And the idea

9 that we want standards -- we all want those standards.

10 We just need to have everybody understand the tremendous

11 cost that goes with meeting your standards. And it isn't

12 voluntary anymore.

13 And that's my conclusion.

14 MEMBER WORTHLEY: May I ask a question,

15 Mr. Chairman?

16 I appreciate your testimony, because I think

17 you're getting to the issue, which is, is it a practical

18 compulsion as opposed to maybe perhaps a legal

19 compulsion.

20 What prevents Sacramento from having a parallel

21 track? That is, they would create -- because

22 according -- as I understand it, it's by an ordinance

23 process, whereby a county or a city would obligate itself

24 to be POST-certified.

25 MS. WILCZYNSKI: I'm sorry -- a parallel track?

1 What do you mean?

2 MEMBER WORTHLEY: The idea would be, what would
3 prevent you, Sacramento, from creating your own
4 standards -- they might parallel and look very much like
5 POST standards, but they're your own standards; and these
6 are the standards to which you require your police
7 officers to commit; and they have to meet these standards
8 in order to be hired by your agency. But they could be
9 totally separate from POST.

10 MS. MacCOUN: As law enforcement providers,
11 participation in POST in its most basic form is mandated
12 by statute.

13 If you look at 832(a), it says -- in the Penal
14 Code -- it says that every peace officer in the state of
15 California has to satisfactorily complete an introductory
16 course on training prescribed by the Commission on Peace
17 Officer Standards and Training.

18 It's not practical for us to send our people
19 outside for that training because we're a very large
20 agency, as is the City of Los Angeles.

21 It's more practical for us to provide the
22 mandated training that's mandated by statute in-house, to
23 our officers and the smaller agencies that need
24 them.

25 CHAIR GENEST: Are we sort of losing track of

1 the actual issue?

2 MS. SHELTON: Let me just mention that Penal
3 Code section 832(a), I believe is the citation, deals
4 with basic training of individuals that want to become
5 peace officers.

6 MS. WILCZYNSKI: Correct.

7 MS. SHELTON: There is a statute that does
8 mandate -- anybody that does want to become a peace
9 officer does have to go through a POST-certified training
10 to receive their basic training certificate.

11 That's not true for continuing education,
12 however.

13 CHAIR GENEST: And that mandate for being a
14 police officer predates SB 90 and --

15 MS. SHELTON: I'd have to pull the statutes. I
16 don't remember, but I think --

17 CHAIR GENEST: It's my understanding that that
18 mandate is not a reimbursable mandate under the state
19 Constitution.

20 MS. SHELTON: No.

21 MS. WILCZYNSKI: May I add --

22 CHAIR GENEST: So the question is not whether
23 participation in POST training is mandatory -- it is --
24 to become a police officer, but it's the classes beyond
25 the basic qualification that are in question; right?

1 MS. BORZELLERI: Actually, what is at issue in
2 this test claim is training of certain trainers.

3 CHAIR GENEST: Right.

4 MS. BORZELLERI: And certain academy staff and
5 qualifications.

6 CHAIR GENEST: But that's only with regard to
7 sort of extra training. It's not with regard to basic
8 training; correct?

9 MS. BORZELLERI: Correct.

10 MS. MacCOUN: But in order to put on our own
11 academy, our new instructors have to put on the new
12 requirements that POST came up with in 2001.

13 MR. GUSTAFSON: If I could speak to this from
14 the Commission's POST perspective, this is --

15 MR. BURDICK: I don't think -- I mean, aren't we
16 supposed to complete our testimony first or not,
17 Mr. Genest? I'm not sure what the --

18 CHAIR GENEST: Well, I'm trying to find out what
19 exactly we're talking about. We're not talking about
20 POST, in general, every aspect of it. We're talking
21 about a specific part of it. And that's what we're
22 trying to dig into.

23 But if you would like to continue for a moment;
24 we're past our time, so we have to hurry up.

25 MS. WILCZYNSKI: I think this is the core issue.

1 The bottom line is POST sets the standard of
2 care. It's the minimum standard by which officers and
3 instructors are able to engage in their profession.
4 That's it. You can't really anymore engage in your
5 profession without meeting these POST mandates. Call
6 them voluntary, but it's mandates.

7 That's all I want to say.

8 CHAIR GENEST: Well, let's hear from the
9 Commission staff.

10 MR. GUSTAFSON: There are several accuracies in
11 the statements that Sac County has made. However, there
12 are examples of police departments in the state of
13 California that do not participate in our program. For
14 example, the City of Isleton has a police department.

15 And for many years, the City of Los Angeles did not
16 participate in the POST program.

17 I think that it is very practical for agencies
18 to do so because we reimburse the training. So when
19 there's discussion about the costs of, for example, the
20 El Dorado County Sheriff to have to travel, those are
21 costs that are reimbursed under a training reimbursement
22 through POST. So I don't think that is actually key to
23 the issue when we're talking about this instructor
24 training. We have a plan for, what we call it, that we
25 reimburse that travel and per diem.

1 There are 44 of the 58 counties in our state
2 that do not have their own academy. So in that sense,
3 Sacramento has chosen to have their own because they can
4 have that local control; they can train their officers to
5 meet the particular needs of their community; but they
6 certainly aren't compelled to have that academy.

7 So I have examples of law enforcement agencies
8 that aren't in our program, many sheriff's departments
9 that don't have their own academy.

10 And it's true that somebody would need to have
11 the training, but those are people who choose to
12 participate in our program.

13 And to speak to Commissioner Worthley's
14 question, you could have your own standard that would
15 parallel POST. The downside of that is that we wouldn't
16 reimburse that. So the incentive, from a POST
17 perspective, is that if you join our program, we'll pay
18 for your training. And so I think there's a catch there
19 that you can't have it both ways. If you want the
20 reimbursement, then you're in the program; but there have
21 been a few that have chosen to have their own program,
22 and we don't reimburse that. And they're still law
23 enforcement agencies and they're still law enforcement
24 trainers.

25 CHAIR GENEST: Yes?

1 MS. MacCOUN: Briefly, POST does reimburse
2 agencies for some programs; but, for example, we're
3 talking about the instructor development programs that in
4 order for us to maintain our business as a law
5 enforcement training advisor -- or provider, we have to
6 send our instructors or provide that training for them.
7 It's a "plan for." Yes, they provide reimbursement for
8 travel and per diem, but they don't provide the
9 reimbursement for backfill, they don't provide the
10 reimbursement for the tuition; they don't provide the
11 reimbursement for the assistance in maintaining the
12 records and the documentation that's now required in
13 order for our instructors to maintain their certification
14 in order to continue to teach in our academies.

15 MS. WILCZYNSKI: And one other piece of that,
16 that he brought up is, yes, there may be agencies who
17 have chosen not to participate in any particular training
18 and use some outside source. That's called an
19 "equivalency." But then who measures the equivalency?
20 It's measured back to the POST standards.

21 MS. MacCOUN: Right..

22 MS. WILCZYNSKI: Does your outside class that
23 you did without any POST money or POST help meet POST
24 standards? You're right back to: Well, that was a great
25 class, but if it doesn't meet the POST standards and

1 mandates, it doesn't count as an equivalency course.

2 MS. MacCOUN: And we have to meet with our
3 consultants to determine whether or not it meets with
4 their equivalency standards.

5 MS. WILCZYNSKI: Right.

6 CHAIR GENEST: Can we see -- do the other
7 members of the committee -- and I'm not sure I do --
8 understand what the question before the Commission is?
9 Can we get that restated?

10 MS. SHELTON: And let me clarify. The analysis
11 before the Commission focuses only on one issue, on
12 whether or not the regulations constitute a
13 state-mandated program.

14 In order for the Commission to approve any test
15 claim, you have to make findings on more than just that
16 element, which has not been analyzed here. You have to
17 first find it out to be a mandate. And I'll get into
18 what the courts have said about that in just a second.

19 You'll also have to find that the new activities
20 constitute a new program or higher level of service.

21 And the third element is whether there are any
22 increased costs mandated by the state. And in that
23 issue, you would have to take into consideration any cost
24 of the training, any reimbursement from POST, and those
25 types of issues.

1 With regard to the state mandate issue, the
2 Supreme Court has given it some direction, namely that
3 either -- one, that it's not an equitable decision, it's
4 a question of law; two, it either has to be expressly
5 mandated by the statute; or, three, the courts have
6 provided exceptions, even if it's not expressly mandated
7 by statute, it has to impose certain or severe penalties,
8 such as double-taxation or other types of fiscal
9 financial penalties.

10 The other exception the courts have discussed
11 have been a public safety exception, when the entity has
12 no other choice but to perform the mandate. And you
13 would need to look at -- you know, we would need to take
14 it back to further analyze that issue. This is new
15 evidence for us here today. So I wouldn't want to give a
16 recommendation on that.

17 But the plain language of these statutes does
18 not mandate the training or the costs incurred by the
19 local agency.

20 CHAIR GENEST: Well, since we've run ten minutes
21 past our time -- and I don't know that the Commission is
22 ready to vote on this -- maybe we should put it off and
23 take up our other issue. And I suppose that means
24 putting it off until the next meeting.

25 MS. HIGASHI: Since we have no written evidence

1 in the record on this issue, as they testified to today,
2 what I would suggest that we do is, we would reissue the
3 draft analysis -- the final staff analysis as it was
4 issued for this hearing, and allow the parties an
5 additional 30 days to submit written briefs and comments,
6 and to clearly articulate what it is that they are
7 objecting to and what their new positions are.

8 CHAIR GENEST: If I don't hear any objection
9 from the other members, let's do that and let's proceed
10 to the next issue on the agenda.

11 Thank you.

12 MS. HIGASHI: Thank you very much.

13 MR. BURDICK: Thank you very much.

14 And we do concur with your decision that you
15 made today, and we look forward to discussing this in the
16 future. Thank you very much.

17 MS. HIGASHI: Item 7 and Item 8 have been
18 postponed.

19 Item 9 was adopted on consent.

20 Item 10 was adopted on consent.

21 Item 11 was adopted on consent.

22 And this brings us to Item 12.

23 This item will be introduced by Assistant
24 Executive Director Nancy Patton.

25 MEMBER PATTON: Good morning.

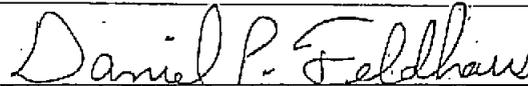
REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on April 12, 2007.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter

Commission on State Mandates

Original List Date: 8/6/2002 Mailing Information: Other
Last Updated: 1/10/2007
List Print Date: 04/17/2007
Claim Number: 02-TC-03
Issue: Training Requirements for Instructors and Academy Staff

Mailing List

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Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

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

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Klefer Blvd, Suite 121
Sacramento, CA 95826

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

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

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

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

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

Ms. Nancy Gust
County of Sacramento
711 G Street
Sacramento, CA 95814

Claimant
Tel: (916) 874-6032
Fax: (916) 874-5263

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Tel: (213) 974-8564
Fax: (213) 617-8106

Executive Director
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Tel: (916) 263-0541
Fax: (916) 000-0000

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

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Mr. Kenneth J. O'Brien
Peace Officers Standards and Training
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

Tel: (916) 227-2809
Fax: (916) 227-3895

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

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

Mr. Rick Oules
Department of Justice
Division of Law Enforcement
1102 Q Street, 6th Floor
Sacramento, CA 95814

Tel: (916) 319-8200
Fax:

Ms. Donna Ferebee
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

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

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256
Fax: (916) 323-6527

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Tel: (949) 644-3127
Fax: (949) 644-3339

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

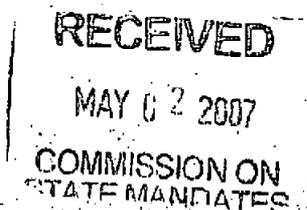
Tel: (916) 677-4233
Fax: (916) 677-2283

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

Tel: (909) 386-8850
Fax: (909) 386-8830

Ms. Beth Hunter
Centration, Inc.
8570 Utlca Avenue, Suite 100
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621
Fax: (866) 481-2682



COMMENTS ON STAFF ANALYSIS

Training Requirements for Instructors and Academy Staff (02-TC-03)

California Code of Regulations, Title 11, Sections 1001, 1052, 1053, 1055,
1070, 1071, and 1082(Register 2001, No. 29)

County of Sacramento, Claimant

INTRODUCTION:

Test claimant County of Sacramento (hereinafter "County") submits the following in response to the Final Staff Analysis reissued by Commission staff on April 2, 2007. Since the Final Staff Analysis concludes that the program is not reimbursable the debate centers around a single issue.

Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

Staff answers the above question in the negative concluding that the voluntary nature of the test claimant's participation in the program bars it from being a reimbursable state mandate. Staff's abbreviated analysis does not fully address the unique situation of the test claimant with regard to its relationship with the Commission on Peace Officers Standards and Training (POST).

Analysis

1. Staff Fails to Engage in the Proper Analysis to Support a Finding That Test Claimant's Participation was Voluntary.

In its Final Analysis, Staff concludes that the test claim regulations do mandate activities but that participation in the program is discretionary and as such the mandated activities are not reimbursable. Staff cites to *Department of Finance v Commission on State*

*Mandates*¹ regarding voluntary participation in programs. Inexplicably, Staff fails to address the more complete analysis given by the California Supreme Court in *San Diego Unified School District v. Commission on State Mandates*.² In that case, the Court provides direction to the Commission on the proper analysis to be used before finding that participation in the program is voluntary:

The District and amici curiae on its behalf (consistently with the opinion of the Court of Appeal below) argue that the holding of *City of Merced, supra*, 153 Cal.App.3d 777, should not be extended to apply to situations beyond the context presented in that case and in *Kern High School Dist., supra*, 30 Cal.4th 727. The District and amici curiae note that although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program.

Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley, supra*, 190 Cal.App.3d 521, an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.*, at pp. 537-538.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ — and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced, supra*, 153 Cal.App.3d 777, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B,

¹ (2003) 30 Cal.4th 727, often cited as *Kern High School District*.

² (2004) 33 Cal.4th 859.

section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result.³

Clearly, the Court is cautioning those who would apply *City of Merced* without regard to the end result. Staff, however, dismissively applies the law of the case without the above analysis and quickly moves on to the issue of practical compulsion. Yet, the Court calls for well-reasoned application of the rule of law: "under a strict application of the rule gleaned from *City of Merced, supra*, 153 Cal.App.3d 777, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters" — or in this case, to adopt those POST standards not already imposed on the individual officers as a matter of law (see *infra*)— "involves an exercise of discretion.... We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result...." Test claimant concurs.

2. Participation in POST is *De Facto* Compelled.

In making its finding that participation in POST is voluntary, Staff concludes in accordance with the comments filed by the POST. The POST stated that participation in the program is voluntary citing Penal Code sections 13503, 13506, and 13510 for support of that proposition. These sections, however, set forth the powers of the POST commission and do not specifically address the issue of whether participation is voluntary. Staff hastens to add that there no state statute that requires local agencies to participate in the POST program or to provide POST-certified training. Moreover, POST's regulations state that participation in the POST program is voluntary.

In what amounts to statutory double-speak, however, the officers are most certainly bound by the requirements of POST and so are the local agencies to the extent that they can hire such officers. Penal Code section 832 reads:

(a) Every person described in this chapter as a peace officer shall satisfactorily complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training. On or after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by the commission. Training in the carrying and use of firearms shall not be required of any peace officer whose employing agency prohibits the use of firearms.

(b) (1) Every peace officer described in this chapter, prior to the exercise of the powers of a peace officer, shall have satisfactorily completed the course of training described in subdivision (a).

³ *Id.* at 485-486.

(2) Every peace officer described in Section 13510 or in subdivision (a) of Section 830.2 may satisfactorily complete the training required by this section as part of the training prescribed pursuant to Section 13510.

(c) Persons described in this chapter as peace officers who have not satisfactorily completed the course described in subdivision (a), as specified in subdivision (b), shall not have the powers of a peace officer until they satisfactorily complete the course.

(d) Any peace officer who, on March 4, 1972, possesses or is qualified to possess the basic certificate as awarded by the Commission on Peace Officer Standards and Training shall be exempted from this section.

(e) (1) Any person completing the training described in subdivision (a) who does not become employed as a peace officer within three years from the date of passing the examination described in subdivision (a), or who has a three-year or longer break in service as a peace officer, shall pass the examination described in subdivision (a) prior to the exercise of the powers of a peace officer, except for any person described in paragraph (2).

(2) The requirement in paragraph (1) does not apply to any person who meets any of the following requirements:

(A) Is returning to a management position that is at the second level of supervision or higher.

(B) Has successfully requalified for a basic course through the Commission on Peace Officer Standards and Training.

(C) Has maintained proficiency through teaching the course described in subdivision (a).

(D) During the break in California service, was continuously employed as a peace officer in another state or at the federal level.

(E) Has previously met the requirements of subdivision (a), has been appointed as a peace officer under subdivision (c) of Section 830.1, and has been continuously employed as a custodial officer as defined in Section 831 or 831.5 by the agency making the peace officer appointment since completing the training prescribed in subdivision (a).

(f) The commission may charge appropriate fees for the examination required by subdivision (e), not to exceed actual costs.

(g) Notwithstanding any other provision of law, the commission may charge appropriate fees for the examination required by subdivision (a) to each applicant who is not sponsored by a local or other law enforcement agency, or is not a peace officer employed by, or under consideration for employment by, a state or local agency, department, or district, or is not a custodial officer as defined in Sections 831 and 831.5. The fees shall not exceed actual costs.

The POST asserts that participation in its program's is voluntary. The question then is: How does an agency divest itself of POST. Agency X, for example, does not want to be involved with POST. The POST would explain that since membership is voluntary, Agency X need not join; others have done so in the past. But what if Agency X wants no involvement, that is to say, it does not want its officers involved. Penal Code section 832(c) answers that quite clearly: Such action is impossible.

For an entity that has a strictly voluntary membership, the POST has undeniable control of the hiring practices of even non-participating agencies. As the declarations of Deputy Cheryl Maccoun and Deputy Gail Wilczynski (attached as Exhibits A and B and incorporated by reference herein as though fully set forth) attest, those who are intimately involved in this arena know the pervasive and inescapable control of the POST. For the POST to mandate the participation of the individual and then attempt to hide behind the alleged voluntary participation of the agency, is disingenuous at best.

The instant case is unique. In the past, the California courts have wrestled with the concept of practical compulsion; most recently with regard to the School Site Councils test claim⁴. In that case, the Court was quick to point to the fact that the school district did not have to participate in the majority of the programs.⁵ For the one program that the district was arguably required to participate in, the Court, not reaching the issue of legal or practical compulsion, concluded that "because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice and agenda related expenses."⁶ With regard to the issue of practical compulsion the Court stated, "a claimant that elects to discontinue participation in one of the programs here at issue does not face "certain and severe . . . penalties" such as "double . . . taxation" or other "draconian" consequences."⁷ In the instant case, the local agencies do not face draconian consequences but neither can they elect to fully discontinue participation due to the pervasive control of the POST. To find otherwise is to find in contravention of the facts.

3. The Prior Decisions of This Commission Have No Bearing on This Test Claim.

Staff points to a July 2004 decision by the Commission denying a consolidated test claim,⁸ filed by the County of Los Angeles and Santa Monica Community College District, on the requirements set forth in POST Bulletin 98-1 and POST Administrative Manual Procedure D-13.

The Commission has, in its prior decisions, held fast to the position that the California

⁴ *Department of Finance v. Commission* (2003) 30 Cal.4th 727.

⁵ *Id.* at 745.

⁶ *Id.* at 747.

⁷ *Id.* at 754 citing to *City of Sacramento* (1990) 50 Cal.3d 51, 74.

⁸ *Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/02-TC-06.

Supreme Court's holding in *Weiss v. State Board of Equalization*⁹ (1953) is binding on the decisions of the Commission. That case held that the failure of a quasijudicial agency to consider prior decisions on the same subject is not a violation of due process and does not constitute an arbitrary action by the agency. Moreover, in 1989, the Office of the State Attorney General issued an opinion, citing the *Weiss* case favorably and confirming that test claims previously approved by the Commission have no precedential value.¹⁰

CONCLUSION:

Based on the preceding arguments, County of Sacramento urges the Commission to find that the Training Requirements for Instructors and Academy Staff program is a reimbursable state mandate under Article XIII B, section 6 of the California Constitution.

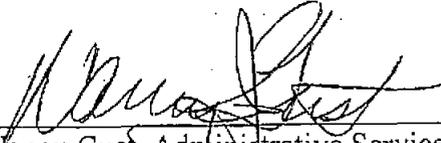
⁹ (1953) 40 Cal.2d 772.

¹⁰ 72 Opinions of the California Attorney General 173, 178, fn.2 (1989).

CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and correct, except as to those matters stated upon information and belief and as to those matters, I believe them to be true.

Executed this 2nd day of May, 2007, at Sacramento, California, by:



Nancy Gust, Administrative Services Officer III
Sacramento County Sheriff's Department
711 G Street, Room 405
Sacramento, CA 95814

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Declaration of Deputy Cheryl Maccoun

I, Deputy Cheryl Maccoun, state as follows:

1. I am a deputy with the Sacramento County Sheriff's Department and have been with the department since 1982. I have personal knowledge of the facts stated herein, and if called upon to testify, I could do so competently.

2. I have been a Sheriff's Department In-Service Training Coordinator since September 2001. During this time, I have worked regularly with POST, ensuring that Sheriff's personal and the Sheriff's training program meet POST standards. I also worked closely with POST Training and Delivery Consultant Mike Hooper, and our POST Area Consultant at the time, Frank Decker, when the change in instructor standards was being developed and implemented. I am a graduate of the POST Master Instructor Program (MIDP), and a law enforcement instructor.

3. As a law enforcement provider, participation in its most basic form is mandated by statute in Penal Code section 832. In order for us to have qualified employees, we have to either hire someone who has already been through a POST certified academy or provide our own academy and train them ourselves in order to meet the 832 PC requirement. It is not cost effective for either us as an agency or the County as a public entity to send new officers to an outside agency for training. Additionally, once an officer is hired, continuing education is required by POST in the form of perishable skills training and legislative mandates. Again, it is not cost effective for an agency as large as Sacramento County or Los Angeles County to be sending out its officers for CPT. That means that we do need to have instructors that meet the new POST standards in order to train our officers.

4. Regarding POST reimbursement of costs, most of those POST courses are a Plan IV, which does cover travel and per diem but does not cover backfill or tuition. POST also does not cover the administrative costs associated with maintaining

1 the records necessary to support the new instructor requirements. Additionally the cost
2 of completing an equivalency is not reimbursable.

3 5. The original intent of POST was that the instructors be responsible for
4 their own administrative upkeep. POST developed a website geared toward instructors
5 being able to input their own SME, training and teaching updates directly into the POST
6 system. However, as far as I am aware, that system is still not functional for use by the
7 individual instructors and it is up the agency to input that information. But even if it were
8 available, that does not relieve the individual agencies from having to maintain and
9 verify the records themselves. The POST area consultants require that agency
10 representatives verify, by signature, the information provided on the POST resumes and
11 then input the information into the POST system, which leads to duplication in record
12 keeping effort. Additionally, the POST resumes now require course control numbers
13 and dates which are usually not easily available to the instructors, and require someone
14 from the instructor's agency to research and provide that information to them.

15 6. At this time, the agency is also responsible for notifying instructors — not
16 just from their agency but any instructor who attended their AICP course — when their
17 AICP certification is about to lapse. POST sends a letter to the presenting agency and
18 posts a flag on its website, indicating that there are a certain number of instructors who
19 are out of compliance. It is the agency's responsibility to check the website, notify the
20 instructors and take the steps necessary to get them into compliance in order for them
21 to continue teaching the academy curriculum.

22 7. As a law enforcement trainer and course coordinator, I do think that it is a
23 good thing for instructors to have standards and be required to maintain certain levels of
24 expertise in their subject matter area. However, implementing and maintaining that
25 standard is not cheap. Much of the action required on the part of the agency to
26 maintain the POST standard is time consuming and expensive and also re-occurring.

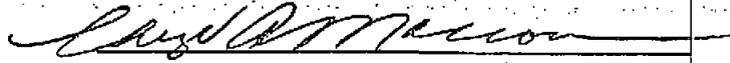
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Training Requirements for Instructors and Academy Staff
County of Sacramento Exhibit A

1 I declare under penalty of perjury under the laws of the State of California that
2 the information in this declaration is true and complete to the best of my own knowledg
3 or information or belief.

4 Executed this 2nd day of May 2007, at Sacramento, California.

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6  A handwritten signature in cursive script, appearing to read 'Cory D. Mason', is written over a horizontal line.

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Declaration of Deputy Gail Wilczynski

I, Deputy Gail Wilczynski, state as follows:

1. I have been a deputy with the Sacramento County Sheriff's Department since 1989. I have personal knowledge of the facts stated herein, and if called upon to testify, I could do so competently.

2. I was a Sheriff's Department In-Service Training Coordinator for 7½ years, from January 1997 to May 2004. During this time I worked daily with POST, ensuring that Sheriff's personnel and the Sheriff's training program met POST standards. I am also a graduate of the POST Master Instructor Program (MIDP), and a law enforcement instructor. I appreciate POST and am supportive of POST training standards and the professionalism it helps to bring to California law enforcement.

3. I have reviewed the Test Claim Final Staff Analysis and while it is comprehensive, I believe the following information will be useful to the Commission:

4. Regarding the discretion of agencies to have an academy: While it is true that the Sacramento County Sheriff's Department does not HAVE to have a training academy, and LA County does not have to have one, and Long Beach does not have to have one, nor is any community college required to have one, the training we provide is POST mandated. Surely SOMEONE has to have one. So while no individual agency is required to have a training academy, some agency or college, somewhere, has to provide the training so that officers throughout California can get their POST mandated training.

5. Sacramento County, like other jurisdictions, tries to obtain this POST mandated training at as little cost to our citizens as possible. It is a cost savings to our citizens when we can get the training at home. Larger agencies have found it cost effective to maintain a POST-certified academy and do the majority of our training "in-house". While smaller agencies, such as El Dorado County, find it cost effective to send

Training Requirements for Instructors and Academy Staff
County of Sacramento Exhibit B

1 their people to training at a nearby POST academy. In addition to the costs of running
2 an academy they can save funds that would otherwise go to travel, per diem, etc.
3 Although POST typically pays for travel and per diem, the funds still initially come out of
4 the agency's budget which may not always be allocated the reimbursed funds.
5 Therefore, for example, if a small agency like El Dorado County Sheriff's has to send
6 their officers to any training courses further than Sacramento, they have to pay out of
7 the Sheriff's budget all costs for the courses including costs for travel and per diem.
8 (Sacramento is close enough for officers to drive home at night after the class.) Then El
9 Dorado County (not the Sheriff's Department) gets reimbursed by POST who sends
10 reimbursement back to the County's general fund. Small agencies have small training
11 budgets and each time you send someone out of town for training, it bites into their
12 allotted funds for the year.

13 6. It has been asserted that we don't have to participate in POST, but POST
14 minimum standards are now an issue of "standard of care". POST sets minimum
15 standards by which officers *and instructors* are able to engage in their profession. It
16 similar to the Medical Board setting standards for doctors.

17 7. POST has changed over the years. I have been working directly with
18 POST for over 10 years. I have been in law enforcement for almost 25 years. I can
19 remember when POST was an agency that said, "It is all voluntary. We are here to help
20 you and to advise you." Then as the years passed, POST said, "We are here to set
21 minimum standards, and give guidelines." Now POST says, "These are the standards,
22 here is the curriculum you must teach by, and in some cases, here is the exact video
23 you will show in class."

24 8. Regarding officers' and instructors' requirement to obtain POST-certified
25 training: To say that POST isn't mandated because the training can be obtained
26 elsewhere or there are courses available that meet the equivalency requirements, is to
27 fail to understand that POST training is mandated. Penal Code section 832 says you
28 must meet the POST training requirements to be a peace officer. Again, POST sets the

Training Requirements for Instructors and Academy Staff
County of Sacramento Exhibit B

1 minimum standards by which officer and instructors are able to engage in their
2 profession.

3 9. A personal example: My husband has been an FBI agent for 25 years.
4 He graduated from the FBI academy and spent his entire career working in California in
5 first the LA bureau office and then the Sacramento bureau office. He was an FBI SWAT
6 officer and has worked on many task forces *in the field, working directly with California*
7 *local law enforcement officers, including CHP.* And yet with all this training and
8 experience, my Chief here today can not hire my husband as a Sheriff's Deputy
9 because he has not completed a POST-certified academy. He is not even allowed to
10 CHALLENGE portions of the POST academy by demonstrating his skills or using his
11 FBI training as "equivalent" courses. He has more training, experience, and expertise
12 than most officers working for our department, not to mention comparing his capabilities
13 to a recruit who just completed a POST-certified academy with no law enforcement
14 experience. And yet the inexperienced recruit can be hired by the Sheriff's Department,
15 but my husband can not.

16 I declare under penalty of perjury under the laws of the State of California that
17 the information in this declaration is true and complete to the best of my own knowledge
18 or information or belief.

19 Executed this 2 day of May 2007, at Sacramento, California.

20
21 Mair Wolczynski
22 Deputy, Sacramento Co S.O.
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PROOF OF SERVICE

Test Claim Name: "Training Requirements for Instructors and Academy Staff"
Test Claim Number: CSM 02-TC-03

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 711 G Street, 4th Floor, Room 405, Sacramento, CA 95814.

On May 2, 2007 I served the original and two copies of the attached Comments on Staff Analysis from the Sacramento County Sheriff's Department, in said cause, in person, to the Commission on State Mandates (980 Ninth Street, Suite 300, Sacramento, CA 95814, and one other copy in a sealed envelope to Ms. Paula Higashi, also located at that address. I also placed a true copy thereof, to the other state agencies and non-state agencies on the mailing list, enclosed in a sealed envelope, in the United States Mail at the Sacramento County's Department of General Services, Support Services Division, 9650 Goethe Road, Sacramento, CA 95827.

Mr. Keith B. Petersen, President
Sixten & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Ms. Sandy Reynolds, President
Reynolds Consulting Group, Inc.
PO Box 987
Sun City CA 92586

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.
2275 Watt Avenue, Suite C
Sacramento CA 95825

Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento CA 95814

Ms. Juliana Gmur, Legal Counsel
MAXIMUS
4320 Auburn Blvd, Suite 2000
Sacramento CA 95841

Mr. David Wellhouse
Wellhouse & Associates
9175 Keifer Blvd, Suite 121
Sacramento CA 95826

Legislative Analyst's Office
Attention: Marianne O'Malley
925 L St, Suite 100
Sacramento CA 95814

John McGinness, Sheriff
Sacramento County Sheriff's Dept
711 G St
Sacramento CA 95814

Ms. Annette Chinn
Cost Recovery System
705-2 East Bidwell Street #294
Folsom CA 95630

Ms. Harmeet Barkschat
Mandate Resource Services
8254 Heath Peak Place
Antelope CA 95843

Mr. Glenn Haas, Bureau Chief
State Controller's Office
Div of Accounting & Reporting
3301 C St, Suite 500
Sacramento CA 95816

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple St, Rm 603
Los Angeles CA 90012

Mr. Dick Reed, Asst. Exec Director
Comm on Peace Officer Standards and
Training
Administrative Services Division
1601 Alhambra Blvd
Sacramento CA 95816-7083

Mr. James Lombard, Principal Analyst
Department of Finance
915 L Street
Sacramento CA 95814

Mr. Manuel Medeiros,
Assistant Attorney General
Office of the General Attorney
PO Box 944255
Sacramento CA 95814

Mr. Steve Keil
California State Assoc of Counties
1100 K Street, Suite 101
Sacramento CA 95814-3941

Mr. Andy Nichols, Senior Manager
Centration, Inc.
8316 Red Oak, Suite 101
Rancho Cucamonga CA 91730

Assistant Director
Office of Criminal Justice Planning
1130 K Street, Suite 300
Sacramento CA 95814

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento CA 95825

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Mr. Bradley Burgess
Public Resources Management Group
1380 Lead Hill Boulevard, Suite 106
Roseville, CA 95661

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Ms. Donna Ferebee
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

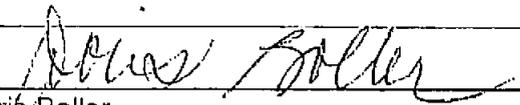
Mr. Allan Burdick
Maximus
4320 Auburn Blvd, Suite 2000
Sacramento, CA 95841

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Mr. Dan Roborsky
Assembly Budget Committee (E-24)
California State Assembly
State Capitol, Room 6026
Sacramento, CA 95814

Mr. Glenn Haas, Bureau Chief
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

I declare under penalty of perjury, under the laws of the State of California, that the forgoing is true and correct, and that this declaration was executed on May 2, 2007 at Sacramento, California.


Doris Boller



DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

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

May 2, 2007

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

RECEIVED

MAY 6 7 2007

COMMISSION ON
STATE MANDATES

Dear Ms. Higashi:

As requested in your letter of April 2, 2007, the Department of Finance has reviewed the draft staff analysis of Claim No.02-TC-03 "Training Requirements for Instructors and Academy Staff" and the transcript of the March 29, 2007 hearing related to this test claim.

As the result of our review, we concur with the staff analysis recommendation to deny the test claim because the decision to participate in training certified by the Commission on Peace Officer Standards and Training (POST), or to establish a POST training academy is discretionary.

We note several points. First, the testimony on pages 36 and 37 of the transcript of the March 29, 2007 hearing by Ms. Wilczynski suggests that a Sheriff's Department or a City Police Department could not run without being POST-certified. Mr. Gustafson testified, however, as noted on page 42 of the transcript, that there are police departments that do not participate in the POST program. Second, the testimony on page 39 by Ms. MacCoun notes that Penal Code Section 832, subdivision (a), requires every peace officer in the state of California to satisfactorily complete an introductory course on training prescribed by the POST. We do not argue that fact, but point out that the requirement is on an individual who wishes to become a peace officer not on the hiring agency. Finally, the test claim statutes do not require agencies to operate training academies, as evidenced by the testimony of Mr. Gustafson on page 43 that 44 of the 58 counties do not have their own academy. The test claim statutes only require specific activities if an agency chooses to operate an academy.

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 April 2, 2007 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 Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Thomas E. Dithridge
Program Budget Manager

Attachments

Attachment A

DECLARATION OF CARLA CASTANEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM--02-TC-03

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

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

May 2, 2007
at Sacramento, CA

Carla Castaneda
Carla Castaneda

PROOF OF SERVICE

Test Claim Name: Training Requirements for Instructors and Academy Staff
Test Claim Number: CSM--02-TC-03

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, 12 Floor, Sacramento, CA 95814.

On May 2, 2007, 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, 12 Floor, for Interagency Mail Service, addressed as follows:

B-08
Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd, Suite 2000
Sacramento, CA 95841

~~Mr. J. Bradley Burgess~~
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

A-15
Ms. Carla Castañeda
Department of Finance
915 L Street, Suite 12th Floor
Sacramento, CA 95814

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92659-1768

A-15
Ms. Donna Ferebee
Department of Finance
915 L Street, Suite 12th Floor
Sacramento, CA 95814

A-15
Ms. Susan Geanacou
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

~~Ms. Nancy Gust~~
County of Sacramento
711 G Street
Sacramento, CA 95814

A-16
Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Mr. Keith Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

B-08
Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

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

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

Executive Director
California Peace Officers' Association
1455 Response Road Suite 190
Sacramento, CA 95814

Mr. David Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Mr. Kenneth O'Brien
Peace Officers Standards and Training
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

Mr. Rick Oules
Department of Justice
Division of Law Enforcement
1102 Q Street, 6th Floor
Sacramento, CA 95814

On 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 May 2, 2007, at Sacramento, California.


Ann Slaughter