ITEM 15

TEST CLAIM
FINAL STAFF ANALYSIS

Labor Code section 3212.8

Statutes 2000, chapter 490
Statutes 2001, chapter 833

Hepatitis Presumption (K-14)
(02-TC-17)

Santa Monica Community College District, Claimant

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Hearing Date: September 27, 2007
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EXECUTIVE SUMMARY

Background

This test claim addresses an evidentiary presumption in workers' compensation cases given to certain members of school district police departments that develop hepatitis and other blood-borne infectious diseases.

Generally, before an employer is liable for payment of workers' compensation benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury was proximately caused by the employment. The burden of proof is normally on the employee to show proximate cause by a preponderance of the evidence.

The Legislature eased the burden of proving industrial causation for certain public employees that provide vital and hazardous services by establishing a series of evidentiary presumptions for certain "injuries."

In 2000, the Legislature enacted Labor Code section 3212.8, which provides a rebuttable presumption that hepatitis developed during the period of employment for certain law enforcement officers and firefighters arose out of and in the course of employment. If the school district employer decides to dispute the claim, the burden of proving the hepatitis did not arise out of and in the course of employment is shifted to the employer. In 2001, the Legislature amended Labor Code section 3212.8 by replacing "hepatitis" with "blood-borne infectious disease," thus expanding the types of blood related illness covered by the presumption.

Staff Analysis

Staff finds that the test claim statute is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts within the meaning of article XIII B, section 6. The express language of Labor Code section 3212.8 does not impose any state-mandated requirements on school districts. Rather, the decision to dispute this type of workers' compensation claim and prove that the injury did not arise out of and in the course of employment remains entirely with the school district. Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required for a statute to constitute a new program or higher level of service.

Conclusion

Staff concludes that Labor Code section 3212.8, as added and amended by Statutes 2000, chapter 490 and Statutes 2001, chapter 833; is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts.

Recommendation

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

STAFF ANALYSIS

Claimants

Santa Monica Community College District

Chronology

02/27/03	Claimant, Santa Monica Community College District, files test claim, *Hepatitis Presumption (K-14)* (02-TC-17), with the Commission on State Mandates (Commission)[1]
03/12/03	Commission staff issues completeness letter on 02-TC-17
04/14/03	The Department of Finance (Finance) files request for an extension of time for comments
04/17/03	Commission staff grants extension of time for comments to May 12, 2003
05/12/03	Finance files comments on 02-TC-17[2]
06/09/03	Claimant files response on 02-TC-17 to comments by Finance[3]
08/02/07	Commission staff issues draft staff analysis on test claim[4]
09/06/07	Commission issues final staff analysis and proposed Statement of Decision

Background

This test claim addresses an evidentiary presumption in workers' compensation cases given to certain members of school district police departments that develop hepatitis and other blood-borne infectious diseases.

In the usual workers' compensation case, before an employer can be held liable for benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury is proximately caused by the employment.[5] Although the workers' compensation law must be "liberally construed" in favor of the injured employee, the burden is normally on the employee to show proximate cause by a preponderance of the evidence.[6] If liability is established, the employee is entitled to compensation for the full hospital, surgical, and medical treatment, disability indemnity, and death benefits, as defined and calculated by the Labor Code.[7]

As early as 1937, the Legislature began to ease the burden of proof for purposes of liability for certain public employees that provide "vital and hazardous services" by establishing a

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[1] Exhibit A.

[2] Exhibit B.

[3] Exhibit C.

[4] Exhibit D.

[5] Labor Code section 3600, subdivisions (a)(2) and (3).

[6] Labor Code sections 3202, 3202.5.

[7] Labor Code sections 4451, et seq.

presumption of industrial causation; that the injury arose out of and in the course of employment.[8] The presumptions have the effect of shifting to the employer the burden of proof as to the nonexistence of the presumed fact. Thus, the employer has the burden to prove that the employee's injury did not arise out of or in the course of employment.[9]

Labor Code section 3208, which was last amended in 1971, defines "injury" for purposes of workers' compensation as "any injury or disease arising out of the employment." This definition of "injury" includes hepatitis and any blood-borne infectious disease.

Test Claim Statute

Labor Code section 3212.8 was added in 2000, and provides that, for the purposes of workers' compensation, "injury" includes hepatitis for certain members of police, sheriff's, and fire departments when any part of the hepatitis develops or manifests itself during the period of employment. In such cases, the hepatitis shall be presumed to arise out of and in the course of employment.[10] This presumption may be rebutted, however, the employer cannot rebut this presumption by attributing the hepatitis to any disease existing prior to its development or manifestation.[11] In 2001, Labor Code section 3212.8 was amended by replacing "hepatitis" with "blood-borne infectious disease," and thus, providing a rebuttable presumption for more blood related "injuries."[12]

Related Test Claims and Litigation

Although not having precedential effect, the Second District Court of Appeal, in an unpublished decision for *CSAC Excess Insurance Authority v. Commission on State Mandates*, Case No. B188169, upheld the Commission's decisions to deny related workers' compensation test claims entitled *Cancer Presumption for Law Enforcement and Firefighters* (01-TC-19), *Lower Back Injury Presumption for Law Enforcement* (01-TC-25), and *Skin Cancer Presumption for Lifeguards* (01-TC-27), which addressed the issues raised in the current test claim.

The test claim entitled *Cancer Presumption for Law Enforcement and Firefighters*, addressed Labor Code section 3212.1, as amended by Statutes 1999, chapter 595, and Statutes 2000, chapter 887. Labor Code section 3212.1 provides a rebuttable presumption of industrial causation to certain law enforcement officers and firefighters that develop cancer, including leukemia, during the course of employment. Under the 1999 amendment to section 3212.1, the employee need only show that he or she was exposed to a known carcinogen while in the service of the employer. The employer still has the right to dispute the employee's claim as it did under prior law. But when disputing the claim, the burden of proving that the carcinogen is not reasonably linked to the cancer is shifted to the employer. The 2000 amendment to Labor Code section 3212.1 extended the cancer presumption to peace officers defined in Penal Code section 830.37, subdivisions (a) and (b); peace officers that are members of an arson-

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[8] *Zipton v. Workers' Comp. Appeals* Bd. (1990) 218 Cal.App.3d 980, 987.

[9] *Id.* at page 988, footnote 4.

[10] Statutes 2000, chapter 490.

[11] *Ibid.*

[12] Statutes 2001, chapter 833.

investigating unit or are otherwise employed to enforce the laws relating to fire prevention or fire suppression.

The test claim entitled *Lower Back Injury Presumption for Law Enforcement*, addressed Labor Code section 3213.2, as added by Statutes 2001, chapter 834. Labor Code section 3213.2 provides a rebuttable presumption of industrial causation to certain publicly employed peace officers who wear a duty belt as a condition of employment and, either during or within a specified period after termination of service, suffer a lower back injury.

The test claim entitled *Skin Cancer Presumption for Lifeguards*, addressed Labor Code section 3212.11, as added by Statutes 2001, chapter 846. Labor Code section 3212.11 provides a rebuttable presumption of industrial causation to certain publicly employed lifeguards who develop skin cancer during or immediately following their employment.

The Commission denied each test claim finding that pursuant to existing case law interpreting article XIII B, section 6, the statutes do not mandate new programs or higher levels of service on local agencies.[13]

On December 22, 2006, the Second District Court of Appeal issued its unpublished decision in *CSAC Excess Insurance Authority v. Commission on State Mandates*, affirming the Commission's decision that the 1999, 2000, and 2001 additions and amendments to Labor Code section 3212.1, 3212.11, and 3213.2, do not constitute reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[14] Final judgment in the case was entered on May 22, 2007.[15] In its decision affirming the Commission's finding that the test claim statutes did not constitute reimbursable state-mandated programs, the Second District Court of Appeal found:

- Workers' compensation is not a program administered by local governments as a service to the public. As a result, the test claim statutes' presumptions of industrial causation do not mandate a new program or higher level of service within an existing program, even assuming that the test claim statutes' presumptions will impose increased workers' compensation costs solely on local entities.
- Costs alone do not equate to a higher level of service within the meaning of article XIII B, section 6. The service provided by the counties represented by CSAC-EIA and the city, workers' compensation benefits to its employees, is unchanged. The fact that some employees are more likely to receive those benefits does not equate to an increased level of service to the public within the meaning of article XIII B, section 6.

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[13] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (*Kern High School Dist.*); *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

[14] Exhibit E, Supporting Documentation, *CSAC Excess Insurance Authority v. Commission on State Mandates*, Second District Court of Appeal, Case No. B188169 (Unpubl. Opn.).

[15] Exhibit E, Supporting Documentation, Judgment.

Claimant's Position

Claimant, Santa Monica Community College District, contends that the test claim statute constitutes 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 it is entitled to reimbursement for costs incurred as a result of the following activities required by the test claim statute:

- Develop and periodically revise polices and procedures for the handling of workers' compensation claims related to the contraction of hepatitis or blood-borne infectious diseases.
- Payment of additional costs of claims caused by the presumption of industrial causation of hepatitis or blood-borne infectious diseases.
- Payment of increased workers' compensation insurance coverage in lieu of additional costs of claims caused by the presumption of industrial causation.
- Physical examinations of community college district police officers prior to employment.
- Training of police officer employees to prevent contraction of hepatitis or blood-borne infectious disease on the job.[16]

Department of Finance's (Finance) Position

Finance filed comments on May 12. 2003,[17] arguing that the plain language of the test claim statute does not mandate the following activities:

- Increased workload associated with the development and periodic revision of policies and procedures for the handling of workers' compensation claims related to the contraction of blood-borne infectious disease.
- Increased requirements for physical examinations prior to employment.
- Increased training to prevent the contraction of blood-borne infectious disease.
- Increased workers' compensation insurance coverage for blood-borne infectious diseases.

As a result, Finance contends that claimants are not entitled to reimbursement for these activities. However, Finance finds that the test claim statute may impose a reimbursable state-mandated program requiring:

- Increased workers' compensation claims for blood-borne infectious diseases.

Thus, claimant may be entitled to reimbursement for this activity under article XIII B, section 6 of the California Constitution.

[16] Exhibit A, p. 109-110.

[17] Exhibit B.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[18] 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 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]

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[18] California Constitution, 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. 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.

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]

Issue 1: Does Labor Code section 3212.8, as added and amended in 2000, and 2001, constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution?

The case law is clear that even though a statute is addressed only to local government and imposes new costs on them, the statute may not constitute a reimbursable state-mandated program under article XIII B, section 6.[29] It is well-established that school districts and local agencies are not entitled to reimbursement for all increased costs, but only those resulting from a new program or higher level of service mandated by the state.[30] The costs identified by claimant for the test claim statute are the additional costs of developing and revising polices and procedures for the handling of workers' compensation claims involving hepatitis and blood-borne infectious diseases claims, the additional costs of handling these claims, the cost of increased workers' compensation insurance coverage for these types of claims in lieu of costs to handle these claims, costs of pre-employment physical examinations, and the cost of training peace officer employees to prevent contraction of hepatitis or blood-borne infectious diseases.

However, Labor Code section 3212.8, as added and amended in 2000, and 2001,[31] does not mandate school districts to incur these costs. The statute simply *creates* the presumption of industrial causation for the peace officer employee, but does not require a school district to provide a new or additional service to the public. The relevant language in Labor Code section 3212.8, as added in 2000 states that:

> The hepatitis so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and *may* be controverted by other evidence, but unless so

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[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.

[29] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1190; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197.

[30] *Kern High School Dist., supra,* 30 Cal.4th 727, 735-736.

[31] Statutes 2000, chapter 490, and Statutes 2001, chapter 833.

> controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity. (Emphasis added.)

The 2001 amendment merely replaces "hepatitis" with "blood-borne infectious diseases" and makes no other substantive change. This statute authorizes, but does not require, school districts that employ police officers to dispute the claims of injured officers. Thus, it is the decision made by the school district to dispute the claim that triggers any litigation costs incurred. Litigation costs are not mandated by the state.[32]

In addition, the Labor Code section 3212.8, on its face, does not mandate school districts to pay workers' compensation benefits to injured employees. Even if the statute required the payment of increased benefits, the payment of benefits to employees would still have to constitute a new program or higher level of service. School districts, however, have had the responsibility to pay workers' compensation benefits for "any injury or disease arising out of employment" since 1971.[33] Labor Code section 4850 has further provided special compensation benefits to injured peace officers and firefighters since 1983, well before the enactment of the test claim statute. Thus, the payment of employee benefits is not new and has not been shifted to school districts from the state.

Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required for a statute to constitute a new program or higher level of service.[34] Rather, the California Supreme Court and other courts of appeal have determined that the following programs required under law are not administered by local government to provide a service to the public and, thus, reimbursement under article XIII B, section 6 of the California Constitution is not required: providing workers' compensation benefits to public employees; providing unemployment compensation protection to public employees; increasing Public Employment Retirement System (PERS) benefits to retired public employees; and paying death benefits to local safety officers under the PERS and workers' compensation systems.[35]

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[32] *Kern High School Dist., supra*, 30 Cal.4th 727, 742-743. Furthermore, there is no evidence that counties and cities are practically compelled to dispute the claims. The statutes do not impose a substantial penalty for not disputing the claim. (*Kern High School Dist., supra*, 30 Cal.4th at p. 751.)

[33] Labor Code section 3208, as last amended in 1971. See also, Labor code section 3300, defining "employer" for purposes of workers' compensation as "Each county, city, district, and all public and quasi public corporations and public agencies therein," and Education Code sections 44043 and 87042.

[34] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 877.

[35] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57; *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67; and *City of Richmond v. Commission on State Mandates, supra*, 64 Cal.App.4th 1190, 1195.

More specifically within the context of workers' compensation, the Supreme Court decided *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, and, for the first time, defined a "new program or higher level of service" pursuant to article XIII B, section 6. Counties were seeking the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits to their employees as private individuals or organizations. The Supreme Court recognized that workers' compensation is not a new program and, thus, determined whether the legislation imposed a higher level of service on local agencies.[36] Although the Court defined a "program" to include "laws which, to implement a state policy, impose unique requirements on local governments," the Court emphasized that a new program or higher level of service requires "state mandated increases in the services provided by local agencies in existing programs."

> Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. *Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs."*[37]

The Court continued:

> The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility *for providing services which the state believed should be extended to the public.*[38]

Applying these principles, the Court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required by the California Constitution. The Court stated the following:

> Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers ... In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program ... Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.[39]

Moreover, in 2004, the California Supreme Court, in *San Diego Unified School Dist.*, reaffirmed the conclusion that simply because a statute, which establishes a public employee benefit

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[36] *County of Los Angeles, supra*, 43 Cal.3d at page 56.

[37] *Ibid,* emphasis added.

[38] *Id.* at pages 56-57, emphasis added.

[39] *Id.* at pages 57-58, fn. omitted.

program, may increase the costs to the employer, the statute does not "in any tangible manner increase the level of service provided by those employers to the public" within the meaning of article XIII B, section 6.[40]

These principles apply even though the presumption is granted uniquely to public safety employees. In the Second District Court of Appeal case of *City of Anaheim*, the city sought reimbursement for costs incurred as a result of a statute that temporarily increased retirement benefits to public employees. The city argued that since the statute "dealt with pensions for *public* employees, it imposed unique requirements on local governments that did not apply to all state residents and entities."[41] The court held that reimbursement was not required because the statute did not impose any state-mandated activities on the city and the PERS program is not a program administered by local agencies as a service to the public.[42] The court reasoned as follows:

> Moreover, the goals of article XIII B of the California Constitution "were to protect residents from excessive taxation and government spending ... and preclude a shift of financial responsibility for carrying out governmental functions from the state to local agencies. ... Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear - neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61.) Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public.[43]

The reasoning in *City of Anaheim* applies here. Simply because the test claim statute applies uniquely to local governments and school districts does not mean that reimbursement is required under article XIII B, section 6.[44]

Accordingly, staff finds that Labor Code section 3212.8, as added and amended in 2000 and 2001, does not mandate a new program or higher level of service and, thus, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

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[40] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 875.

[41] *City of Anaheim, supra*, 189 Cal.App.3d at pp. 1483-1484.

[42] *Id.* at page 1484.

[43] *Ibid.*

[44] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 877, fn. 12; *County of Los Angeles, supra*, 110 Cal.App.4th at page 1190; *City of Richmond, supra*, 64 Cal.App.4th at page 1197.

Conclusion

Staff concludes that Labor Code section 3212.8, as added and amended by Statutes 2000, chapter 490 and Statutes 2001, chapter 833; is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts.

Recommendation

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

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State of California

COMMISSION ON STATE MANDATES
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EXHIBIT A

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Claim No. 02-TC-[illegible]

TEST CLAIM FORM

Local Agency or School District Submitting Claim

SANTA MONICA COMMUNITY COLLEGE

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Santa Monica Community College District
1900 Pico Avenue
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 21 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

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

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

Hepatitis Presumption (K-14)

Chapter 833, Statutes of 2001 Chapter 490, Statutes of 2000	Labor Code Section 3212.8

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

Name and Title of Authorized Representative	Telephone No.
Cheryl Miller Associate Vice President, Business Services	(310) 434-4221

Signature of Authorized Representative	Date
X Cheryl Miller	11/20/02

Claim Prepared By:
Keith B. Petersen
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5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	No. CSM 02-TC-17
Santa Monica Community College District	Chapter 833, Statutes of 2001 Chapter 490, Statutes of 2000
Test Claimant	Labor Code Sections 3212.8
	Hepatitis Presumption (K-14)
	TEST CLAIM FILING

PART 1. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Santa Monica Community College District is a "school district" as defined in Government Code section 17519.[1]

[1] Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for school districts and community college districts to pay increased worker's compensation claims or premiums for members of district police departments as a result of the new presumption that hepatitis developing or manifesting itself during employment arose out of or in the course of employment and the prohibition from claiming the injury may be attributed to a pre-existing disease or condition.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

The "Workers' Compensation and Insurance" law is found in Division 4 of the Labor Code. Labor Code Section 3200[2] sets forth the declaration of the Legislature that the term "workman's compensation" shall thereafter be known as "workers' compensation".

Labor Code Section 3202[3] provides that the provisions of Division 4 and Division

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[2] Labor Code Section 3200, added by Chapter 1454, Statutes of 1974, Section 11:

"The Legislature hereby declares its intent that the term "workmen's compensation" shall hereafter also be known as "workers' compensation." In furtherance of this policy it is the desire of the Legislature that references to the terms "workmen's compensation" in this code be changed to "workers' compensation" when such code sections are being amended for any purpose. This act is declaratory and not amendatory of existing law."

[3] Labor Code Section 3202, added by Chapter 90, Statutes of 1937, Section 3202:

"The provisions of Division IV and Division V of this code shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment."

5 of the code shall be liberally construed by the courts to extend benefits to persons injured in the course of their employment.

Labor Code Section 3208[4] defines injury to include any injury or disease arising out of the employment.

Prior to 1975, there was no statute, code section or regulation that created a presumption that hepatitis or other blood-borne infectious disease developing or manifesting itself in members of district police departments arose out of or in the course of their employment with the district, and there was no statute, code section or regulation that prohibited such an injury from being attributed to a pre-existing disease or condition.

SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

Chapter 922, Statutes of 1982, Section 3, added Labor Code Section 3202.5[5] to

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[4] Labor Code Section 3208, added by Chapter 90, Statutes of 1937, Section 3208, as amended by Chapter 1064, Statutes of 1971, Section 1:

"'Injury' includes any injury or disease arising out of the employment, including injuries to artificial members, dentures, hearing aids, eyeglasses and medical braces of all types; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for, unless injury to them is incident to an injury causing disability."

[5] Labor Code Section 3202.5, as added by Chapter 922, Statutes of 1982, Section 3:

"Nothing contained in Section 3202 shall be construed as relieving a party from meeting the evidentiary burden of proof by a preponderance of the evidence. "Preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the

clarify that nothing in Section 3202 (i.e. "liberal construction") shall be construed as relieving a party from meeting the evidentiary burden of proof by a "preponderance of the evidence".

Chapter 4, Statutes of 1993, Section 1.5, amended Labor Code Section 3202.5 to make technical changes.

Chapter 490, Statutes of 2000, Section 1, added Labor Code Section 3212.8[6].

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evidence."

[6]Labor Code Section 3212.8, added by Chapter 490, Statutes of 2000, Section 1:

"(a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or active firefighting services, such as stenographers, telephone operators, and other office workers, the term "injury" as used in this division, includes hepatitis when any part of the hepatitis develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit. The compensation that is awarded for hepatitis shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

(b) The hepatitis so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) The hepatitis so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation."

Subdivision (a) expands, for the first time, the term "injury" to include hepatitis when any part of the hepatitis develops or manifests itself during a period while that person is employed by the police or fire department of a city, county, city and county, district, or other municipal corporation or political subdivisions or individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code[7], whether voluntary, fully paid or partly paid. The compensation that is awarded for hepatitis shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

Subdivision (b) created, for the first time, a disputable presumption that hepatitis contracted by those members described in subdivision (a) arose out of or in the course of employment. The presumption shall be extended after termination of service for a period of three calendar months for each full year of service, not to exceed 60 months.

Subdivision (c) prohibits, for the first time, those cases of hepatitis from being attributed to any pre-existing disease or condition.

Chapter 833, Statutes of 2001, Section 4, amended Labor Code Section 3212.8[8]

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[7] Section 830.32 of the Penal Code includes members of a community college police department and members of a police department of a school district.

[8] Labor Code Section 3212.8, added by Chapter 490 ,Statutes of 2000, Section 1, as amended by Chapter 833, Statutes of 2001, Section 4:

"(a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with Section

to expand the presumption to include, for the first time, any blood-born infectious disease, manifesting itself during the employee's term of employment or during the included extended period after termination of service. The amendment defines a "blood-borne infectious disease" to mean a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as blood-borne pathogens by the

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830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or active firefighting services, such as stenographers, telephone operators, and other office workers, the term "injury" as used in this division, includes ~~hepatitis~~ a blood-borne infectious disease when any part of the ~~hepatitis~~ blood-borne infectious disease develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit. The compensation that is awarded for ~~hepatitis~~ a blood-borne infectious disease shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

(b) The ~~hepatitis~~ blood-borne infectious disease so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) The ~~hepatitis~~ blood-borne infectious disease so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(d) For the purposes of this section, "blood-borne infectious disease" means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

Department of Industrial Regulations[9].

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The Labor Code Section referenced in this test claim results in school districts incurring costs mandated by the state, as defined in Government Code Section 17514[10], by creating new state-mandated duties related to the uniquely governmental function of providing public services to students and this statute applies to school districts and does not apply generally to all residents and entities in the state.[11]

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[9] California Code of Regulations, Title 8, Division 1, Chapter 4, Subchapter 7, Group 16, Article 109, Section 5193(b):

"'Bloodborne Pathogens' means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV) and human immunodeficiency virus (HIV)."

[10] Government Code section 17514, as added by Chapter 1459/84:

"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 XIIIB of the California Constitution."

[11] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is

The new duties mandated by the state upon school districts and community college districts require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

A) To develop policies and procedures, and periodically update those policies and procedures, for the handling of claims by peace officer employees who make claims of worker's compensation alleging the development of his or her hepatitis or other blood-borne infectious disease was caused by his or her employment with the district police department, pursuant to Labor Code Section 3212.8;

B) To pay the additional costs of claims, including full hospital, surgical and medical treatment, disability indemnity and death benefits, caused by the shifting of the burden of proof of the cause of hepatitis or other blood-borne infectious diseases from the peace officer member to the employer and the prohibition from attributing the injury to a pre-existing condition, pursuant to Labor Code Section 3212.8;

C) In lieu of the additional cost of claims caused by hepatitis or other blood-borne infectious disease of its employees, to pay the additional costs of

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administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

insurance covering those claims, pursuant to Labor Code Section 3212.8;

D) The cost of physical examinations, or the increased cost of physical examinations prior to employment, of peace officer job applicants to screen those applicants to determine if they already suffer from hepatitis or other blood-borne infectious diseases, pursuant to Labor Code Section 3212.8; and

E) The cost of training peace officer employees to take precautionary measures to prevent the contraction of hepatitis or other blood-borne infectious disease on the job, pursuant to Labor Code Section 3212.8.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[12] statutory exceptions to a finding

[12] Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) 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.

(d) The local agency or school district has the authority to levy service charges,

of costs mandated by the state apply to this test claim. Note, that to the extent school districts may have previously performed functions similar to those mandated by the referenced code section and regulations, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[13]

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

No funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title

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fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) 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.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) 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."

[13] Government Code section 17565, added by Chapter 879, Statutes of 1986:

"If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

2, California Code of Regulations:

Exhibit 1: Declaration of Cheryl Miller, Associate Vice President Business Services
Santa Monica Community College District

Declaration of Sharleen Crosby, Benefits Clerk
Clovis Unified School District

Exhibit 2: Copies of Statutes Cited

Chapter 833, Statutes of 2001
Chapter 490, Statutes of 2000

Exhibit 3: Copy of Code Section Cited

Labor Code Section 3212.8

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on November 20, 2002, at Santa Monica, California by:

Cheryl Miller

Cheryl Miller
Associate Vice President
Business Services

Voice: (310) 434-4221
Fax: (310) 434-3607

PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates and Associates, as its representative for this test claim.

Cheryl Miller

Cheryl Miller
Associate Vice President
Business Services

Date Nov 20, 2002

Exhibit 1:
Declarations

DECLARATION OF CHERYL MILLER

Santa Monica Community College District

Test Claim of Santa Monica Community College District

COSM No. _____

Chapter 833, Statutes of 2001
Chapter 490, Statutes of 2000

Labor Code Section 3212.8

Hepatitis Presumption (K-14)

I, Cheryl Miller, Associate Vice President Business Services, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Associate Vice President Business Services, I am the supervisor of the district's Risk Management Department and I directly supervise those employees of the department who are responsible for the receipt and processing of claims for Worker's Compensation. I am familiar with the provisions and requirements of the Statutes and Labor Code Section enumerated above.

These Statutes and the Labor Code Section require the Santa Monica Community College District to:

A) To develop policies and procedures, and periodically update those policies and procedures, for the handling of claims by peace officer employees who make claims of worker's compensation alleging the development of his or her hepatitis or other blood-borne infectious disease was caused by his or her employment with the district police department, pursuant to Labor Code Section 3212.8;

B) To pay the additional costs of claims, including full hospital, surgical and medical treatment, disability indemnity and death benefits, caused by the shifting of the burden of proof of the cause of hepatitis or other blood-borne infectious diseases from the peace officer member to the employer and the prohibition from attributing the injury to a pre-existing condition, pursuant to Labor Code Section 3212.8;

C) In lieu of the additional cost of claims caused by hepatitis or other blood-borne infectious disease of its employees, to pay the additional costs of insurance covering those claims, pursuant to Labor Code Section 3212.8;

D) The cost of physical examinations, or the increased cost of physical examinations prior to employment, of peace officer job applicants to screen those applicants to determine if they already suffer from hepatitis or other blood-borne infectious diseases, pursuant to Labor Code Section 3212.8; and

E) The cost of training peace officer employees to take precautionary measures to prevent the contraction of hepatitis or other blood-borne infectious disease on the job, pursuant to Labor Code Section 3212.8.

It is estimated that the Santa Monica Community College District will incur, should such a Worker's Compensation claim be filed, approximately $1000, or more, annually in staffing and other costs in excess of any funding provided to districts to implement these new duties mandated by the state for which the district has not been reimbursed by any

federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 20 day of November, 2002, at Santa Monica, California

Cheryl Miller

Cheryl Miller
Associate Vice President Business Services
Santa Monica Community College District

DECLARATION OF SHAREEN CROSBY

Clovis Unified School District

Test Claim of Clovis Unified School District

COSM No. _____

Chapter 833, Statutes of 2001
Chapter 490, Statutes of 2000

Labor Code Section 3212.8

Hepatitis Presumption

I, Shareen Crosby, Benefits Technician, Clovis Unified School District, make the following declaration and statement.

In my capacity as Benefits Technician for Clovis Unifies School District, I am responsible for receiving and processing Worker's Compensation claims. I am familiar with the provisions and requirements of the Statutes and Labor Code Sections enumerated above.

These Statutes and the Labor Code Sections require the Clovis Unified School District to:

A) To develop policies and procedures, and periodically update those policies and procedures, for the handling of claims by peace officer employees who make claims of worker's compensation alleging the development of his or her hepatitis or other blood-borne infectious disease was caused by his or her employment with the district police department, pursuant to Labor Code Section 3212.8;

B) To pay the additional costs of claims, including full hospital, surgical and medical treatment, disability indemnity and death benefits, caused by the shifting of the burden of proof of the cause of hepatitis or other blood-borne infectious diseases from the peace officer member to the employer and the prohibition from attributing the injury to a pre-existing condition, pursuant to Labor Code Section 3212.8;

C) In lieu of the additional cost of claims caused by hepatitis or other blood-borne infectious disease of its employees, to pay the additional costs of insurance covering those claims, pursuant to Labor Code Section 3212.8;

D) The cost of physical examinations, or the increased cost of physical examinations prior to employment, of peace officer job applicants to screen those applicants to determine if they already suffer from hepatitis or other blood-borne infectious diseases, pursuant to Labor Code Section 3212.8; and

E) The cost of training peace officer employees to take precautionary measures to prevent the contraction of hepatitis or other blood-borne infectious disease on the job, pursuant to Labor Code Section 3212.8.

It is estimated that the Clovis Unified School District will incur, should such a Worker's Compensation claim be filed, approximately $1000, or more, annually in staffing and other costs in excess of any funding provided to districts and the state to implement these new duties mandated by the state for which the school district has not

been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 18th day of February, 2003, at Clovis, California

Shareen Crosby
Benefits Technician
Clovis Unified School District

EXHIBIT 3
COPY OF CODE SECTION CITED

§ 3212.8. Members of sheriff's office, police or fire departments, etc.; injury; inclusion of blood-borne infectious disease

(a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or active firefighting services, such as stenographers, telephone operators, and other office workers, the term "injury" as used in this division, includes * * * a blood-borne infectious disease when any part of the * * * blood-borne infectious disease develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit. The compensation that is awarded for * * * a blood-borne infectious disease shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

(b) The * * * blood-borne infectious disease so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) The * * * blood-borne infectious disease so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(d) For the purposes of this section, "blood-borne infectious disease" means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

(Added by Stats.2000, c. 490 (S.B.32), § 1. Amended by Stats.2001, c. 833 (A.B.196), § 4.)

EXHIBIT B

DEPARTMENT OF FINANCE

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

May 12, 2003

RECEIVED
MAY 15 2003
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 March 12, 2003, the Department of Finance has reviewed the test claim submitted by the Santa Monica Community College District (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 490, Statutes of 2000, (SB 32, Peace) and Chapter No. 883, Statutes of 2001, (AB 196, Correa) are reimbursable state mandated costs (Claim No. CSM-02-TC-17 "Hepatitis Presumption"). Commencing with page 8, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- Increased workload associated with the development and periodic revision of policies and procedures for the handling of workers' compensation claims related to the contraction of blood-borne infectious disease.
- Increased workers' compensation claims for blood-borne infectious diseases.
- Increased workers' compensation insurance coverage.
- Increased requirements for physical examinations prior to employment.
- Increased training to prevent the contraction of blood-borne infectious disease.

As the result of our review, we have concluded that the statute may have resulted in the following new state mandated program:

- Increased workers' compensation claims for blood-borne infectious diseases.

This new program may have resulted in establishing a presumption that the contraction of blood-borne infectious diseases occurring during the employee's service period arose out of and in the course of employment. This is consistent with the findings in our initial response to CSM-01-TC-20, a similar test claim filed by the County of Tehama. However, the following duties have been determined to have not resulted in a new state mandated program or reimbursable mandate:

- Increased workload associated with the development and periodic revision of policies and procedures for the handling of workers' compensation claims related to the contraction of blood-borne infectious disease.
- Increased requirements for physical examinations prior to employment.
- Increased training to prevent the contraction of blood-borne infectious disease.
- Increased workers' compensation insurance coverage for blood-borne infectious diseases.

Although these programs are involved in the screening and protection of employees related to the contraction of blood-borne infectious disease, the statutes cited in this claim do not require these duties and, therefore, these programs cannot be considered state reimbursable mandates as specified within this claim.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your March 12, 2003 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 Jennifer Osborn, Principal Program Budget Analyst at (916) 445-8913 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF JENNIFER OSBORN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-17

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 sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

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.

Sacramento
at Sacramento, CA

Jennifer Osborn
Jennifer Osborn

PROOF OF SERVICE

Test Claim Name: Hepatitis Presumption
Test Claim Number: CSM-02-TC-17

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 May 12, 2003 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: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

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

Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, CA 90405-1628

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Ms. Cheryl Miller
Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, CA 90405-1628

Mr. Paul Minney
Spector, Middleton, Young and Minney, LLP
7 Park Center Dr.
Sacramento, CA 95825

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Ms. Harmet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95824

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

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

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street, #294
Folsom, CA 95630

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Mr. Michael Havey
State Controller's Office (B-08)
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

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 12, 2003 at Sacramento, California.

Mary Latorre

SixTen and Associates
Mandate Reimbursement Services

EXHIBIT C

KEITH B. PETERSEN, MPA, JD, President
2 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

June 9, 2003

RECEIVED
JUN 13 2003
COMMISSION ON STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-17
Santa Monica Community College District
Hepatitis Presumption (K-14)

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated May 12, 2003, to which I now respond on behalf of the test claimant.

Although none of the objections generated by DOF are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

1. **The Comments of the DOF are Incompetent and Should be Excluded**

Test claimant objects to the Comments of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DOF comments do not comply with this essential requirement.

2. The Test Claim Legislation and Regulations Create New Mandated Duties

DOF concurs that the test claim statutes may have resulted in a new state mandated program for increased workers compensation claims for blood-borne infectious diseases.

DOF disagrees that the test claim statutes have resulted in a new state mandated program for (1) increased workload associated with the development and periodic revision of policies and procedures related to those increase workers' compensation claims, (2) increased requirements for physical examinations prior to employment, (3) increased training to prevent the contraction of blood-borne infectious diseases, and (4) increased workers' compensation insurance coverage.

This response will not address items (1) or (3) as they are implicit activities which result from the new mandate.

(2) Increased Requirements for Physical Examinations Prior to Employment

Labor Code Section 3212.8 provides, in part:

> "The hepatitis so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation."

The practical application of this new statute is that an applicant for employment could already have hepatitis at the time of his or her application and, if hired, would benefit not only from the work-caused presumption, but also from the prohibition against raising the pre-existing condition as a defense. It is a reasonable precaution for these job applicants to be given physical examinations prior to employment to screen out this possible scenario.

(4) Increased Workers' Compensation Insurance Coverage

The test claim seeks reimbursement for:

> "In lieu of the additional cost of claims caused by hepatitis or other blood-borne infectious disease of its employees, to pay the additional costs of insurance covering those claims, pursuant to Labor Code Section 3212.8"[1]

[1] Test Claim, Page 8, Line 18, through Page 9, Line 1.

While admitting that the test claim legislation may have resulted in a new state mandated program for paying the cost of increased workers' compensation claims, the DOF disagrees that, "*in lieu of*" the costs of those increased claims, these costs may best be paid through increased costs of insurance against those increased claims. If the costs of those claims are reimbursable, then the costs of insuring against those claims is also reimbursable. Workers' compensation insurance is a reasonable method of insurance risk management.

The response of the DOF should be ignored as legally incompetent for its failure to comply with Section 1183.02 of Title 5, California Code of Regulations and its response is legally and factually incorrect.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

Original List Date: 3/12/2003
Last Updated:
List Print Date: 04/17/2003
Claim Number: 02-TC-17
Issue: Hepatitis Presumption (K-14)

Mailing Information: Other

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.)

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Hearing Date: September 27, 2007
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ITEM ____

TEST CLAIM
DRAFT STAFF ANALYSIS

Labor Code Section 3212.8

Statutes 2000, Chapter 490
Statutes 2001, Chapter 833

Hepatitis Presumption (K-14)
(02-TC-17)

Santa Monica Community College District, Claimant

EXECUTIVE SUMMARY

Background

This test claim addresses an evidentiary presumption in workers compensation cases given to certain members of school district police departments that develop hepatitis and other blood-borne infectious diseases.

Generally, before an employer is liable for payment of workers' compensation benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury was proximately caused by the employment. The burden of proof is normally on the employee to show proximate cause by a preponderance of the evidence.

The Legislature eased the burden of proving industrial causation for certain public employees that provide vital and hazardous services by establishing a series of evidentiary presumptions for certain "injuries."

In 2000, the Legislature enacted Labor Code section 3212.8, which provides a rebuttable presumption that hepatitis developed during the period of employment for certain law enforcement officers and firefighters arose out of and in the course of employment. If the school district employer decides to dispute the claim, the burden of proving the hepatitis did not arise out of and in the course of employment is shifted to the employer. In 2001, the Legislature amended Labor Code section 3212.8 by replacing "hepatitis" with "blood-borne infectious disease," thus expanding the types of blood related illness were covered by the presumption.

Staff Analysis

Staff finds that the test claim statute is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts within the meaning of article XIII B, section 6. The express language of Labor Code section 3212.8 does not impose any state-mandated requirements on school districts. Rather, the decision to dispute this type of workers' compensation claim and prove that the injury did not arise out of and in the course of employment remains entirely with the school district. Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required for a statute to constitute a new program or higher level of service.

Conclusion

Staff concludes that Labor Code section 3212.8, as added and amended by Statutes 2000, chapter 490 and Statutes 2001, chapter 833; is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts.

Recommendation

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

STAFF ANALYSIS

Claimants

Santa Monica Community College District

Chronology

02/27/03	Claimant, Santa Monica Community College District, files test claim, *Hepatitis Presumption (K-14)* (02-TC-17), with the Commission on State Mandates (Commission)
03/12/03	Commission staff issues completeness letter on 02-TC-17
04/14/03	The Department of Finance (Finance) files request for an extension of time for comments
04/17/03	Commission staff grants extension of time for comments to May 12, 2003
05/12/03	Finance files comments on 02-TC-17
06/09/03	Claimant files response on 02-TC-17 to comments by Finance
07/23/07	Commission staff issues request for signed appointment of representation for Clovis Unified School District
08/02/07	Commission staff issues draft staff analysis on test claim

Background

This test claim addresses an evidentiary presumption in workers compensation cases given to certain members of school district police departments that develop hepatitis and other blood-borne infectious diseases.

In the usual workers' compensation case, before an employer can be held liable for benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury is proximately caused by the employment.[1] Although the workers' compensation law must be "liberally construed" in favor of the injured employee, the burden is normally on the employee to show proximate cause by a preponderance of the evidence.[2] If liability is established, the employee is entitled to compensation for the full hospital, surgical, and medical treatment, disability indemnity, and death benefits, as defined and calculated by the Labor Code.[3]

As early as 1937, the Legislature began to ease the burden of proof for purposes of liability for certain public employees that provide "vital and hazardous services" by establishing a presumption of industrial causation; that the injury arose out of and in the course of employment.[4] The presumptions have the effect of shifting to the employer the burden of proof

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[1] Labor Code section 3600, subdivisions (a)(2) and (3).

[2] Labor Code sections 3202, 3202.5.

[3] Labor Code sections 4451, et seq.

[4] *Zipton v. Workers' Comp. Appeals* Bd. (1990) 218 Cal.App.3d 980, 987.

as to the nonexistence of the presumed fact. Thus, the employer has the burden to prove that the employee's injury did not arise out of or in the course of employment.[5]

Labor Code section 3208, which was last amended in 1971, defines "injury" for purposes of workers' compensation as "any injury or disease arising out of the employment." This definition of "injury" includes hepatitis and any blood-borne infectious disease.

Test Claim Statute

Labor Code section 3212.8 was added in 2000, and provides that, for the purposes of workers' compensation, "injury" includes hepatitis for certain members of police, sheriff's, and fire departments when any part of the hepatitis develops or manifests itself during the period of employment. In such cases, the hepatitis shall be presumed to arise out of and in the course of employment.[6] This presumption may be rebutted, however, the employer cannot rebut this presumption by attributing the hepatitis to any disease existing prior to its development or manifestation.[7] In 2001, Labor Code section 3212.8 was amended by replacing "hepatitis" with "blood-borne infectious disease," and thus, providing a rebuttable presumption for more blood related "injuries."[8]

Related Test Claims and Litigation

Although not having precedential effect, the Second District Court of Appeal, in an unpublished decision for *CSAC Excess Insurance Authority v. Commission on State Mandates*, Case No. B188169, upheld the Commission's decisions to deny related workers' compensation test claims entitled *Cancer Presumption for Law Enforcement and Firefighters* (01-TC-19), *Lower Back Injury Presumption for Law Enforcement* (01-TC-25), and *Skin Cancer Presumption for Lifeguards* (01-TC-27), which addressed issues identical to those raised in the current test claim.

The test claim entitled *Cancer Presumption for Law Enforcement and Firefighters*, addressed Labor Code section 3212.1, as amended by Statutes 1999, chapter 595, and Statutes 2000, chapter 887. Under the 1999 amendment to section 3212.1, the employee need only show that he or she was exposed to a known carcinogen while in the service of the employer. The employer still has the right to dispute the employee's claim as it did under prior law. But when disputing the claim, the burden of proving that the carcinogen is not reasonably linked to the cancer is shifted to the employer. The 2000 amendment to Labor Code section 3212.1 extended the cancer presumption to peace officers defined in Penal Code section 830.37, subdivisions (a) and (b); peace officers that are members of an arson-investigating unit or are otherwise employed to enforce the laws relating to fire prevention or fire suppression.

The test claim entitled *Lower Back Injury Presumption for Law Enforcement*, addressed Labor Code section 3213.2, as added by Statutes 2001, chapter 834. Labor code section 3213.2 provides a rebuttable presumption of industrial causation to certain publicly employed peace officers who wear a duty belt as a condition of employment and, either during or within a specified period after termination of service, suffer a lower back injury.

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[5] *Id.* at page 988, footnote 4.

[6] Statutes 2000, chapter 490.

[7] *Ibid.*

[8] Statutes 2001, chapter 833.

The test claim entitled *Skin Cancer Presumption for Lifeguards*, addressed Labor Code section 3212.11, as added by Statutes 2001, chapter 846. Labor Code section 3212.11 provides a rebuttable presumption of industrial causation to certain publicly employed lifeguards who develop skin cancer during or immediately following their employment.

The Commission denied each test claim finding that pursuant to existing case law interpreting article XIII B, section 6, the statutes do not mandate new programs or higher levels of service on local agencies.[9]

On December 22, 2006, the Second District Court of Appeal issued its unpublished decision in *CSAC Excess Insurance Authority v. Commission on State Mandates*, affirming the Commission's decision that the 1999, 2000, and 2001 additions and amendments to Labor Code section 3212.1, 3212.11, and 3213.2, do not constitute reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[10] Final judgment in the case was entered on May 22, 2007.[11] In its decision affirming the Commission's finding that the test claim statutes did not constitute reimbursable state-mandated programs, the Second District Court of Appeal found:

- Workers' compensation is not a program administered by local governments, as a result, the test claim statutes' presumptions of industrial causation do not mandate a new program or higher level of service within an existing program, even assuming that the test claim statutes' presumptions will impose increased workers' compensation costs solely on local entities
- Costs alone do not equate to a higher level of service within the meaning of article XIII B, section 6, even if paid only by local entities and not the private sector. The service provided by the counties represented by CSAC-EIA and the city, workers' compensation benefits to its employees, is unchanged. The fact that some employees are more likely to receive those benefits does not equate to an increased level of service within the meaning of article XIII B, section 6.

Claimant's Position

Claimant, Santa Monica Community College District, contends that the test claim statute constitutes 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 it is entitled to reimbursement for costs incurred as a result of the following activities required by the test claim statute:

- Develop and periodically revise polices and procedures for the handling of workers' compensation claims related to the contraction of hepatitis or blood-borne infectious diseases.

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[9] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (*Kern High School Dist.*); *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

[10] Exhibit E, Supporting Documentation, *CSAC Excess Insurance Authority v. Commission on State Mandates*, Second District Court of Appeal, Case No. B188169 (Unpubl. Opn.).

[11] Exhibit E, Supporting Documentation, Judgment.

- Payment of additional costs of claims caused by the presumption of industrial causation of hepatitis or blood-borne infectious diseases.
- Increased workers' compensation insurance coverage in lieu of additional costs of claims caused by the presumption of industrial causation.
- Physical examinations of community college district police officers prior to employment.
- Training of police officer employees to prevent contraction of hepatitis or blood-borne infectious disease on the job.

Department of Finance's (Finance) Position

Finance filed comments on May 12. 2003,[12] arguing that the plain language of the test claim statute does not mandate the following activities:

- Increased workload associated with the development and periodic revision of policies and procedures for the handling of workers' compensation claims related to the contraction of blood-borne infectious disease.
- Increased requirements for physical examinations prior to employment.
- Increased training to prevent the contraction of blood-borne infectious disease.
- Increased workers' compensation insurance coverage for blood-borne infectious diseases.

As a result, Finance contends that claimants are not entitled to reimbursement for these activities. However, Finance finds that the test claim statute may impose a reimbursable state-mandated program requiring:

- Increased workers' compensation claims for blood-borne infectious diseases.

Thus, claimant may be entitled to reimbursement for this activity under article XIII B, section 6 of the California Constitution.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[13] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[14] "Its purpose is to preclude the state from shifting financial responsibility for carrying out

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[12] Exhibit B.

[13] California Constitution, 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."

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

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."[15] 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.[16] 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.[17]

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.[18] 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.[19] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[20]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[21]

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.[22] 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."[23]

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

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

[17] *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*).

[18] *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).

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

[20] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 877.

[21] *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.

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

[23] *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: Does Labor Code section 3212.8, as added and amended in 2000, and 2001, constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution?

The case law is clear that even though a statute is addressed only to local government and imposes new costs on them, the statute may not constitute a reimbursable state-mandated program under article XIII B, section 6.[24] It is well-established that school districts and local agencies are not entitled to reimbursement for all increased costs, but only those resulting from a new program or higher level of service mandated by the state.[25] The costs identified by claimant for the test claim statute are the additional costs of developing and revising polices and procedures for the handling of workers' compensation claims involving hepatitis and blood-borne infectious diseases claims, the additional costs of handling these claims, the cost of increased workers' compensation insurance coverage for these types of claims in lieu of costs to handle these claims, costs of pre-employment physical examinations, and cost of training peace officer employees to prevent contraction of hepatitis or blood-borne infectious diseases.

However, Labor Code section 3212.8, as added and amended in 2000, and 2001,[26] does not mandate school districts to incur these costs. The statute simply *creates* the presumption of industrial causation for the peace officer employee, but does not require a school district to provide a new or additional service to the public. The relevant language in Labor Code section 3212.8, as added in 2000 states that:

> The hepatitis so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and *may* be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity. (Emphasis added.)

The 2001 amendment merely replaces "hepatitis" with "blood-borne infectious diseases" and makes no other substantive change. This statute authorizes, but does not require, school districts that employ police officers to dispute the claims of injured officers. Thus, it is the decision made by the school district to dispute the claim that triggers any litigation costs incurred. Litigation costs are not mandated by the state.[27]

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[24] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1190; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197.

[25] *Kern High School Dist., supra,* 30 Cal.4th 727, 735-736.

[26] Statutes 2000, chapter 490, and Statutes 2001, chapter 833.

[27] *Kern High School Dist., supra*, 30 Cal.4th 727, 742-743. Furthermore, there is no evidence that counties and cities are practically compelled to dispute the claims. The statutes do not impose a substantial penalty for not disputing the claim. (*Kern High School Dist., supra*, 30 Cal.4th at p. 751.)

In addition, the Labor Code section 3212.8, on its face, does not mandate school districts to pay workers' compensation benefits to injured employees. Even if the statute required the payment of increased benefits, the payment of benefits to employees would still have to constitute a new program or higher level of service. School districts, however, have had the responsibility to pay workers' compensation benefits for "any injury or disease arising out of employment" since 1971.[28] Labor Code section 4850 has further provided special compensation benefits to injured peace officers and firefighters since 1983, well before the enactment of the test claim statutes. Thus, the payment of employee benefits is not new and has not been shifted to school districts from the state.

Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required for a statute to constitute a new program or higher level of service.[29] Rather, the California Supreme Court and other courts of appeal have determined that the following programs required under law are not administered by local agencies to provide a service to the public and, thus, reimbursement under article XIII B, section 6 of the California Constitution is not required: providing workers' compensation benefits to public employees; providing unemployment compensation protection to public employees; increasing Public Employment Retirement System (PERS) benefits to retired public employees; and paying death benefits to local safety officers under the PERS and workers' compensation systems.[30]

More specifically within the context of workers' compensation, the Supreme Court decided *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, and, for the first time, defined a "new program or higher level of service" pursuant to article XIII B, section 6. Counties were seeking the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits to their employees as private individuals or organizations. The Supreme Court recognized that workers' compensation is not a new program and, thus, determined whether the legislation imposed a higher level of service on local agencies.[31] Although the Court defined a "program" to include "laws which, to implement a state policy, impose unique requirements on local governments," the Court emphasized that a new program or higher level of service requires "state mandated increases in the services provided by local agencies in existing programs."

> Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in

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[28] Labor Code section 3208, as last amended in 1971. See also, Labor code section 3300, defining "employer" for purposes of workers' compensation as "Each county, city, district, and all public and quasi public corporations and public agencies therein," and Education Code sections 44043 and 87042.

[29] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 877.

[30] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57; *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67; and *City of Richmond v. Commission on State Mandates, supra,* 64 Cal.App.4th 1190, 1195.

[31] *County of Los Angeles, supra*, 43 Cal.3d at page 56.

conjunction with the predecessor phrase "new program" to give it meaning. *Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs."*[32]

The Court continued:

> The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility *for providing services which the state believed should be extended to the public.*[33]

Applying these principles, the Court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required by the California Constitution. The Court stated the following:

> Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers ... In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program ... Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.[34]

Moreover, in 2004, the California Supreme Court, in *San Diego Unified School Dist.*, reaffirmed the conclusion that simply because a statute, which establishes a public employee benefit program, may increase the costs to the employer, the statute does not "in any tangible manner increase the level of service provided by those employers to the public" within the meaning of article XIII B, section 6.[35]

These principles apply even though the presumption is granted uniquely to public safety employees. In the Second District Court of Appeal case of *City of Anaheim*, the city sought reimbursement for costs incurred as a result of a statute that temporarily increased retirement benefits to public employees. The city argued that since the statute "dealt with pensions for *public* employees, it imposed unique requirements on local governments that did not apply to all state residents and entities."[36] The court held that reimbursement was not required because the statute did not impose any state-mandated activities on the city and the PERS program is not a

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[32] *Ibid,* emphasis added.

[33] *Id.* at pages 56-57, emphasis added.

[34] *Id.* at pages 57-58, fn. omitted.

[35] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 875.

[36] *City of Anaheim, supra*, 189 Cal.App.3d at pp. 1483-1484.

program administered by local agencies as a service to the public.[37] The court reasoned as follows:

> Moreover, the goals of article XIII B of the California Constitution "were to protect residents from excessive taxation and government spending ... and preclude a shift of financial responsibility for carrying out governmental functions from the state to local agencies. ... Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear - neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61.) Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public.[38]

The reasoning in *City of Anaheim* applies here. Simply because the test claim statute applies uniquely to local governments and school districts does not mean that reimbursement is required under article XIII B, section 6.[39]

Accordingly, staff finds that Labor Code section 3212.8, as added and amended in 2000 and 2001, does not mandate a new program or higher level of service and, thus, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Conclusion

Staff concludes that Labor Code section 3212.8, as added and amended by Statutes 2000, chapter 490 and Statutes 2001, chapter 833; is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts.

Recommendation

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

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[37] *Id.* at page 1484.

[38] *Ibid.*

[39] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 877, fn. 12; *County of Los Angeles, supra,* 110 Cal.App.4th at page 1190; *City of Richmond, supra*, 64 Cal.App.4th at page 1197.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CSAC EXCESS INSURANCE AUTHORITY et al., Plaintiffs and Respondents, v. COMMISSION ON STATE MANDATES, Defendant and Appellant; CALIFORNIA DEPARTMENT OF FINANCE, Intervener and Appellant.	B188169 (Los Angeles County Super. Ct. Nos. BS092146 & BS095456)

FILED

APPEAL from a judgment of the Superior Court of Los Angeles County, David P. Yaffe, Judge. Affirmed in part; reversed in part with directions.

Camille Shelton and Katherine A. Tokarski for Defendant and Appellant Commission on State Mandates.

Bill Lockyer, Attorney General, Louis R. Maura, Assistant Attorney General, Christopher E. Krueger and Jack C. Woodside, Deputy Attorneys General, for Intervener and Appellant California Department of Finance.

Stephen D. Underwood; Robin Lynn Clauson, Newport Beach City Attorney, and Aaron C. Harp, Assistant City Attorney, for Plaintiffs and Respondents.

In this appeal from a judgment granting consolidated writ of mandate petitions, we affirm in part, reverse in part, and reinstate in part the administrative rulings of appellant Commission on State Mandates (commission).

INTRODUCTION

Article XIII B, section 6 of the California Constitution provides in relevant part that "[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service" (article XIII B, section 6). In this appeal, we must decide whether three workers' compensation statutes (Lab. Code, §§ 3212.1, 3212.11, 3213.2 (the test statutes)),[1] which provide certain publicly employed peace officers, firefighters, and lifeguards with a rebuttable presumption that their injuries arose out of and in the course of employment, mandated a new program or higher level of service of an existing program for which reimbursement is required under article XIII B, section 6.

Respondents CSAC (California State Association of Counties) Excess Insurance Authority (hereafter EIA), a joint powers authority that provides insurance to its 54 member counties, and City of Newport Beach (city) petitioned for writs of mandate to

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[1] All further undesignated statutory references are to the Labor Code.

vacate the commission's denials of their claims for reimbursement of state-mandated costs created by the test statutes. The commission and the California Department of Finance (department), which filed a complaint in intervention, opposed the consolidated writ petitions and demurred on the ground that the EIA lacked standing. The superior court overruled the demurrer and entered judgment for the EIA and the city. The superior court issued a peremptory writ of mandate that vacated the commission's rulings and directed it to determine the amount of increased workers' compensation benefits paid, if any, by the city and the EIA's member counties as a result of the presumptions created by the test statutes.

In this appeal from the judgment by the commission and the department, we conclude that the EIA has standing as a joint powers authority to sue for reimbursement of state-mandated costs on behalf of its member counties. We also conclude that because workers' compensation is not a program administered by local governments, the test statutes did not mandate a new program or higher level of service of an existing program for which reimbursement is required under article XIII B, section 6, notwithstanding any increased costs imposed on local governments by the statutory presumptions.

BACKGROUND

A. The Administrative Proceedings

The EIA is a joint powers authority. The EIA states that it "was formed in 1979 to provide insurance coverage, risk management and related services to its members in accordance with Government Code [section] 998.4. Specifically, with respect to the issues presented here, the EIA provides both primary and excess workers' compensation coverage for member counties, including the payment of claims and losses arising out of work related injuries." The EIA's members include 54 of the 58 California counties. According to the EIA, "[e]very California county except Los Angeles, San Francisco, Orange and San Mateo [is a member] of the EIA."

In 2002, the County of Tehama, which is not a party to this appeal, the EIA, and the city filed test claims with the commission concerning the three test statutes. A "test

claim" is "the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." (§ 17521.) The test claims alleged that each test statute, by creating a presumption of industrial causation in favor of certain public employees seeking workers' compensation benefits for work-related injuries, imposed state-mandated costs for which reimbursement is required under article XIII B, section 6.

In the first test claim, the County of Tehama and the EIA challenged section 3212.1, which grants a rebuttable presumption of industrial causation to certain publicly employed peace officers and firefighters who, either during or within a specified period following termination of service, develop cancer, including leukemia, after being exposed to a known carcinogen. Section 3212.1, subdivision (d) allows employers to rebut this presumption with "evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer." If the presumption is not rebutted, "the appeals board is bound to find in accordance with the presumption." (§ 3212.1, subd. (d).)

In the second test claim, the County of Tehama and the EIA challenged section 3213.2, which grants a rebuttable presumption of industrial causation to certain publicly employed peace officers who wear a duty belt (a belt used to hold a gun, handcuffs, baton, and other law enforcement items) as a condition of employment and, either during or within a specified period after termination of service, suffer a lower back injury. Section 3213.2, subdivision (b) allows employers to rebut this presumption with "other evidence, but unless so controverted, the appeals board is bound to find in accordance with it."

In the third test claim, the city challenged section 3212.11, which grants a rebuttable presumption of industrial causation to certain publicly employed lifeguards who develop skin cancer during or immediately following their employment. Section 3212.11 allows employers to rebut this presumption with "other evidence, but unless so controverted, the appeals board shall find in accordance with it."

The commission denied each test claim after determining that each test statute's respective presumption of industrial causation did not mandate increased costs for which local entities must be reimbursed under article XIII B, section 6. The commission also concluded that the EIA lacked standing to pursue the test claims because the EIA does not employ the peace officers, firefighters, or lifeguards affected by the test statutes and is a separate entity from its member counties.

B. The Judicial Proceeding

The EIA and the city petitioned for writs of mandate to vacate the commission's denials of their respective test claims. (Code Civ. Proc., § 1094.5.) The commission and the department, which filed a complaint in intervention, opposed the consolidated petitions. (Gov. Code, § 13070; see *Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1198.)

The commission and the department challenged on demurrer the EIA's standing to prosecute the test claims. When the test claims were filed, Government Code section 17520 defined "special district" to include joint powers authorities and Government Code section 17552 defined "local agency" to include special districts. The superior court determined that because the EIA, as a joint powers authority, was a special district under Government Code section 17520 when the test claims were filed, the EIA was a local agency under Government Code section 17552 and, therefore, had standing to file the test claims. The superior court noted that although in 2004, the Legislature deleted joint powers agencies or authorities from the definition of special district (Gov. Code, § 17520, as amended by Stats. 2004, ch. 890), because the EIA's test claims were filed before the amendment took effect, the amendment did not apply to the EIA's pending test claims.

Regarding the issue of state-mandated costs, the superior court concluded that the test statutes mandated a new program or increased services under article XIII B, section 6. The superior court reasoned that "[l]egislation that expands the ability of an injured employee to prove that his injury is job related, expands the cost to the employer to compensate its injured workers. The assertion by the state that the employer can

somehow 'opt out' of that cost increase is clearly without merit. By contending that the counties need not 'dispute' the presumptions mandated by the legislature, that the injury is job related, misses the point.. The counties are entitled to subvention, not for increased LITIGATION costs, but for the increased costs of COMPENSATING their injured workers which has been mandated by the legislature."

The superior court granted judgment to the EIA and the city, and issued a peremptory writ of mandate directing the commission to vacate its administrative rulings and "to determine the amount, if any, that the cost of providing workers' compensation benefits to the employees of the City of Newport Beach and each member county [of the EIA] has been increased by the enactment of the presumptions created by" the test statutes. On appeal, the commission and the department challenge the EIA's standing to prosecute the test claims and argue that the test statutes do not mandate a new program or increased services within an existing program for which reimbursement is required under article XIII B, section 6.

DISCUSSION

I

Standing

The commission and the department contend that the EIA lacks standing to prosecute the test claims on behalf of its member counties. We disagree.

In 1984, the Legislature established the administrative procedure by which local agencies and school districts may file claims with the commission for reimbursement of costs mandated by the state. (Gov. Code, §§ 17500, 17551, subd. (a).) In this context, "costs mandated by the state" means "any increased costs which a local agency or school district is required to incur . . . as a result of any statute . . . 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." (Gov. Code, § 17514.)

Given that Government Code section 17551, subdivision (a) allows local agencies and school districts to seek reimbursement of state-mandated costs and Government Code

section 17518 includes counties within the definition of local agency, it must follow that the EIA's 54 member counties have standing to bring test claims for reimbursement of state-mandated costs. We must decide whether the EIA has standing to bring the test claims on behalf of its member counties.

When the EIA filed its test claims in 2002, Government Code section 17520 included joint powers authorities within the definition of special districts. As of January 1, 2005, however, joint powers agencies were eliminated from the definition of special districts. (Stats. 2004, ch. 890 (AB 2856).) Because the amended definition of special districts applies to pending cases such as this one, we conclude that the EIA is not a special district under section 17520 and has no standing to pursue its test claims on that basis. (See *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223 [Proposition 64, which limited standing to bring actions under the unfair competition law to governmental parties and injured private parties, eliminated the appellant's standing to pursue an appeal that was pending when the proposition was passed].)

Nevertheless, we agree with the EIA that it may pursue the test claims on behalf of its member counties because "[r]ather than having 54 counties bring individual test claims, the EIA, in its representative capacity is statutorily authorized to proceed on its members' behalf."[2]

According to the joint powers agreement, the EIA's purpose is "to jointly develop and fund insurance programs as determined. Such programs may include, but are not limited to, the creation of joint insurance funds, including excess insurance funds, the pooling of self-insured claims and losses, purchased insurance, including reinsurance,

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[2] Under *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, the companion case to *Californians for Disability Rights v. Mervyn's LLC, supra*, 39 Cal.4th 223, even if we were to conclude that the EIA lacked standing to bring a test claim on behalf of its member counties, it is possible that the EIA would be granted leave to amend to identify the county or counties that might be named as a plaintiff. Given our determination that the EIA has standing as a representative of its member counties to pursue the test claims, we need not address this unbriefed issue.

and the provision of necessary administrative services. Such administrative services may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal defense services."

By law, the EIA as a joint powers authority possesses the common powers enumerated in the joint powers agreement and may exercise those powers in the manner provided therein. (Gov. Code, § 6508.) California law provides that a joint powers agency may sue and be sued in its own name if it is authorized in its own name to do any or all of the following: to make and enter contracts; to employ agents and employees; to acquire, construct, manage, maintain, or operate any building, works, or improvements; to acquire, hold, or dispose of property; or to incur debts, liabilities, or obligations. (*Id.*, § 6508.) In this case, the joint powers agreement gave the EIA "all of the powers common to counties in California and all additional powers set forth in the joint powers law, and . . . authorized [it] to do all acts necessary for the exercise of said powers. Such powers include, but are not limited to, the following: [¶] (a) To make and enter into contracts. [¶] (b) To incur debts, liabilities, and obligations. [¶] (c) To acquire, hold, or dispose of property, contributions and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities. [¶] (d) To sue and be sued in its own name, and to settle any claim against it. . . ."

Given that the joint powers agreement expressly authorized the EIA to exercise all of the powers common to counties in California, to do all acts necessary for the exercise of said powers, and to sue and be sued in its own name, we conclude that the joint powers agreement authorized the EIA to bring the test claims on behalf of its member counties, each of which qualifies as a local agency to bring a test claim under Government Code section 17518. Although as appellants point out, the EIA is a separate entity from the contracting counties and is not directly affected by the test statutes because it does not employ the peace officers, firefighters, and lifeguards specified in the test statutes, we conclude that those factors do not preclude the EIA from exercising its power under the agreement to sue on behalf of its member counties.

Appellants' reliance on *Kinlaw v. State of California* (1991) 54 Cal.3d 326 is misplaced. In *Kinlaw*, the plaintiffs filed suit as individual taxpayers and medically indigent adult residents of Alameda County to compel the state either to restore their Medi-Cal eligibility or to reimburse the county for their medical costs under article XIII B, section 6. The Supreme Court held that the plaintiffs in *Kinlaw* lacked standing because the right to reimbursement under article XIII B, section 6 "is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services." (54 Cal.3d at p. 334.) The Supreme Court noted that the interest of the plaintiffs, "although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government." (*Id.* at p. 335.)

In this case, however, the EIA has standing to sue as a joint powers authority on behalf of its 54 member counties that have standing as local agencies to bring test claims. Unlike the plaintiffs in *Kinlaw*, the EIA claims standing not as an individual or as a taxpayer, but as a joint powers authority with the right to exercise "all of the powers common to counties in California," and "to do all acts necessary for the exercise of said powers," including the right to sue in its own name. We therefore distinguish *Kinlaw* and conclude that it does not deprive the EIA of standing in this case.

II

Article XIII B, Section 6

Article XIII B, section 6 provides in relevant part that "[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service . . . ." We conclude that because the test statutes did not mandate a new program or higher level of service of an existing program, reimbursement under article XIII B, section 6 is not required.

A. The Purpose of Article XIII B, Section 6

Article XIII A, which was added to the California Constitution by Proposition 13 in 1978, imposed a limit on the power of state and local governments to adopt and levy taxes. Article XIII B, which was added to the Constitution by Proposition 4 in 1979, imposed a complementary limit on government spending. The two provisions "work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1.)

Article XIII B, section 6 prevents the state from shifting financial responsibility for governmental functions to local agencies by requiring the state to reimburse local agencies for the costs of providing a new program or higher level of service mandated by the state. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) "Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues." (*Ibid.*)

B. State Mandates

We will assume for the sake of argument that the test statutes' presumptions of industrial causation will impose some increased costs on local governments in the form of increased workers' compensation benefit payments to injured local peace officers, firefighters, or lifeguards. The mere imposition of increased costs, however, is not determinative of whether the presumptions mandated a new program or higher level of service within an existing program as stated in article XIII B, section 6. "Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate." (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197.) Whether the increased costs resulted from a state-mandated program or higher level of service presents solely a question of law as there are no disputed facts. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.)

As previously noted, "costs mandated by the state" means "any increased costs which a local agency or school district is required to incur . . . as a result of any statute . . . 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." (Gov. Code, § 17514.) As the Supreme Court explained in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, "Looking at the language of section 6 then, it seems clear that by itself the term 'higher level of service' is meaningless. It must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.' But the term 'program' itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term--programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Id.* at p. 56; see *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1191.)

In this case, the test statutes affect the administration of the workers' compensation program. The Supreme Court has held that statutes increasing workers' compensation benefits to reflect cost-of-living increases did not mandate either a new program or higher level of service in an existing program. "Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (See Lab. Code,

§ 3201 et seq.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at pp. 57-58.)

We similarly conclude that because workers' compensation is not a program administered by local governments, the test statutes' presumptions of industrial causation do not mandate a new program or higher level of service within an existing program, even assuming that the test statutes' presumptions will impose increased workers' compensation costs solely on local entities. Because the test statutes do not involve a program administered by local governments, the increased costs resulting from the presumptions imposed to implement a public policy do not qualify for reimbursement under article XIII B, section 6. (See *City of Sacramento v. State of California*, *supra*, 50 Cal.3d 51 [state law extending mandatory coverage under state's unemployment insurance law to include state and local governments did not mandate a new program or higher level of service]; *City of Richmond v. Commission on State Mandates*, *supra*, 64 Cal.App.4th 1190 [state law requiring local governments to provide death benefits to local safety officers under both the Public Employees Retirement System and the workers' compensation system did not mandate a new program or higher level of service].)

Respondents' reliance on *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521 is misplaced. In *Carmel Valley*, the appellate court concluded that executive orders requiring local agencies to purchase updated firefighting equipment mandated both a new program and a higher level of service within an existing program because firefighting is "a peculiarly governmental function" (*id.* at p. 537) and the executive orders, to implement a state policy, imposed unique requirements on local governments that did not apply generally to all residents and entities in the state (*ibid.*). In this case, on the other hand, providing workers' compensation benefits is not a peculiarly governmental function and, even assuming the

test statutes implemented a state policy of paying increased workers' compensation benefits to local peace officers, firefighters, and lifeguards, the costs are not reimbursable because they do not arise within an existing program administered by local governments.

Respondents contend that the effect of the test statutes, increased costs, is borne only by local governments. As peace officers, firefighters, and lifeguards are uniquely governmental employees, respondents argue the test statutes do not apply generally to all entities in the state. The question which remains, however, is whether increased costs alone equate to a higher level of service within the meaning of article XIII B, section 6, even if paid only by local entities and not the private sector. We conclude they do not.

In a similar case, the City of Anaheim sought reimbursement for costs it incurred as a result of a statute that temporarily increased retirement benefits to public employees. The City of Anaheim argued, as do respondents, that since the statute "dealt with pensions for *public* employees, it imposed unique requirements on local governments that did not apply to all state residents or entities." (*City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1483-1484.) The court held that subvention was not required because the program involved, the Public Employees' Retirement System, is not a program administered by local agencies. Such is the case here with the workers' compensation program. As noted, the program is administered by the state, not the local authorities.

The court also noted: "Moreover, the goals of article XIII B of the California Constitution 'were to protect residents from excessive taxation and government spending . . . [and] preclud[e] a shift of financial responsibility for carrying out governmental functions from the state to local agencies. . . . Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage--costs which all employers must bear--neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.' (*County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at p. 61.) Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a

higher cost of providing services to the public." (*City of Anaheim v. State of California*, *supra*, 189 Cal.App.3d at p. 1484.)

The reasoning applies here. The service provided by the counties represented by the EIA and the city, workers' compensation benefits to its employees, is unchanged. The fact that some employees are more likely to receive those benefits does not equate to an increased level of service within the meaning of article XIII B, section 6. (*County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at pp. 57-58.)

DISPOSITION

The judgment granting the petitions for writ of mandate is affirmed in part on the issue of standing and reversed in part on the issue of reimbursement of state-mandated costs under article XIII B, section 6. The superior court is directed to enter a new and different judgment denying the petitions for writ of mandate and to reinstate that portion of the administrative rulings denying the test claims. The parties are to bear their own costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

WILLHITE, Acting P.J.

MANELLA, J.

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SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CSAC EXCESS INSURANCE AUTHORITY, a public agency, and CITY OF NEWPORT BEACH, a municipality,

Petitioners,

v.

COMMISSION ON STATE MANDATES, STATE OF CALIFORNIA; DOES 1 THROUGH 10, inclusive,

Respondents.

CALIFORNIA DEPARTMENT OF FINANCE,

Respondent in Intervention,

v.

CSAC EXCESS INSURANCE AUTHORITY, a public agency,

Petitioner.

Case No.: BS092146
[Consolidated with Case No. BS095456]

~~[PROPOSED]~~ JUDGMENT DENYING PETITIONS FOR WRIT OF MANDATE

Judge: Honorable David P. Yaffe

Pursuant to the opinion of the Second District Court of Appeal in this proceeding,

IT IS ORDERED, ADJUDGED AND DECREED:

1. That Petitioner CSAC Excess Insurance Authority has standing to file test claims and sue on behalf of their member counties;

2. That the Petitions for Writ of Mandate are denied;

3. That the portions of the administrative rulings of the Commission on State Mandates denying the test claims that are the subject of this litigation are reinstated; and

4. That each party is to bear their own costs.

Dated: MAY 22 2007

DAVID P. YAFFE

DAVID P. YAFFE, Judge
Los Angeles County Superior Court