



November 14, 2003

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**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 October 15, 2003, the Department of Finance has reviewed the test claim submitted by the City of Newport Beach (claimant) asking the Commission to determine whether specified costs incurred under Chapter 465, Statutes of 1976; Chapter 1259, Statutes of 1994; Chapter 148, Statutes of 1997; Chapter 786, Statutes of 1988; Chapter 263, Statutes of 1998; Chapter 112, Statutes of 1998; Chapter 338, Statutes of 1999; Chapter 209, Statutes of 2000; Chapter 1156, Statutes of 2002; and Chapter 170, Statutes of 2002, are reimbursable state mandated costs (Claim No. CSM-03-TC-18 "Peace Officers Procedural Bill of Rights II"). The claimant has identified the following duties, which it asserts create reimbursable state mandated costs. These duties arise from statutes enacted subsequent to the original Peace Officers Procedural Bill of Rights test claim, or from statutes not addressed by the original test claim:

- The requirement to provide notice, a reason, and an opportunity for hearing to police chiefs being removed from office, necessitating the need to draft, review, and establish policies, procedures, forms, protocols and training to provide same.
- The requirement to add work hours for investigations and to draft, review and establish policies, procedures, forms, protocols, tracking systems and training, in order that no punitive action be taken for any misconduct if an investigation of the allegation is not completed within one year of discovery except as provided.
- The requirement to add additional work hours and to draft, review and establish policies, procedures, forms, protocols, tracking systems and training when cases are reopened, as provided.
- The requirement that employers maintain officers' personnel records where they can be inspected and pay the officer during the inspection time; respond in writing to requests for corrections and provide reasons when changes are denied; and the need to draft, review, and establish policies, procedures, forms, protocols and training to implement same.
- The requirement to provide notice or a legal process before searching an officer's locker and need to draft, review and establish policies, procedures, forms, protocols, and training, to provide same.

- The requirement to provide notice and an opportunity to appeal proposed disciplinary action for wearing a pin or displaying any other item containing the American flag, and the need to draft, review, and establish policies, procedures, forms, protocols and training to provide same.

As the result of our review, we have the following concerns with the activities asserted by the claimant:

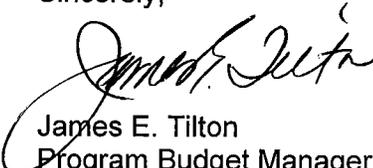
- When a permanent or an at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed, then an administrative appeal would already be required pursuant to the due process clauses of the United States and California Constitutions; and as such, would not constitute a new program or higher level of service. However, in the original test claim, the Commission found that United States and California Constitutions do not require an administrative appeal when dismissal or other disciplinary action is received by at-will employees whose liberty interests are not affected. Therefore, in some situations, the requirement to provide notice, a reason and an opportunity for a hearing may constitute a reimbursable state mandate. The other activities, to draft, review, and establish policies, procedures, forms, protocols and training to provide notices and hearings, exist already; nothing in the amended law requires special rules to apply to at-will (police chief) employees.
- While the 1997 amendments provide that a punitive action may only be pursued when an investigation is completed within one year, the amendments also provide numerous exceptions to this rule, as well as numerous conditions under which closed cases may be reopened. Claimants assert that the requirement will necessitate the drafting, review and establishment of policies, procedures, forms, protocols, file tracking systems and training to implement the practices for officers, investigators, supervisors, employers, clericals, counsel and staff. We note that current law for state peace officers requires completion and prosecution of state peace officers within three years. Current law for local peace officers has no time limit. Even in the latter case, investigative procedures exist. The establishment of a timeframe, by itself, does not create the need to have procedures for conducting an investigation. In addition, since there is no level of punitive actions prescribed by current law, the one-year timeframe does not, by itself, require more work on the part of the police offices. We also note that a long list of police officer political organizations supported the legislation that enacted this change.
- The 1997 amendment to the law allows, but does not require, an investigation to be reopened against a public safety officer beyond the one-year time period under certain conditions; therefore, the discretionary authority does not constitute a reimbursable state mandate.
- Government Code Section 31011, enacted in 1974, and Labor Code Section 1198.5, enacted in 1975, provide personnel review and response procedures for county, city and special district employees, thus the new requirement set forth in section 3306.5 does not constitute a new state program, with the possible exception of the explanation an employer must provide if a requested change is denied. Claimants assert that employers must pay the officer during the time the officer elects to review his or her record; however, the law only provides that there be no loss of compensation to the officer.

- Claimants assert that the requirement to provide notice or adhere to a legal process before searching an officer's locker creates the need to draft, review and establish policies, procedures, forms, protocols and training. We note that since their existing practices have gone unchallenged since 1976 when this statute was enacted, no new procedures are expected or necessary.
- Claimants assert that the requirement to provide written notice, and an opportunity to appeal proposed discipline for displaying an American flag is a new state mandated program. This statute was passed in the aftermath of September 11, 2001, to prohibit punitive action against a public safety officer for wearing a pin or displaying any other item containing the American flag. This is an example of a specific reason for disciplinary action. In the unlikely event this authority for disciplinary action was exercised, existing procedures and relief are addressed pursuant to the original POBOR test claim.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 15, 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,



James E. Tilton  
Program Budget Manager

Attachments

DECLARATION OF JENNIFER OSBORN  
DEPARTMENT OF FINANCE  
CLAIM NO. CMS-03-TC-18

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 Chapter 465, Statutes of 1976; Chapter 1259, Statutes of 1994; Chapter 148, Statutes of 1997; Chapter 786, Statutes of 1988; Chapter 263, Statutes of 1998; Chapter 112, Statutes of 1998; Chapter 338, Statutes of 1999; Chapter 209, Statutes of 2000; Chapter 1156, Statutes of 2002; and Chapter 170, Statutes of 2002 relevant to this claim are accurately quoted in the test claim submitted by the claimant 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.

November 14, 2003  
at Sacramento

  
Jennifer Osborn

## PROOF OF SERVICE

Test Claim Name: Peace Officers Procedural Bill of Rights II  
Test Claim Number: CSM-03-TC-18

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, eighth Floor, Sacramento, CA 95814.

On November 14, 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, eighth Floor, for Interagency Mail Service, addressed as follows:

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

B-8  
State Controller's Office  
Division of Accounting & Reporting  
Attention: Michael Havey  
3301 C Street, Suite 500  
Sacramento, CA 95816

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

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

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

The City of Newport Beach  
Attention: Glen Everroad  
3300 Newport Blvd.  
P.O. Box 1768  
Newport Beach, CA 92659-1768

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

SixTen & Associates  
Attention: Keith B. Peterson  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

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

Mandate Resource Services  
Attention: Harmeet Barkschat  
5325 Elkhorn Blvd., #307  
Sacramento, CA 95842

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

Spector, Middleton, Young & Minney, LLP  
Attention: Paul Minney  
7 Park Center Drive  
Sacramento, CA 95825

Department of Finance  
Attention: Keith Gmeinder  
915 L Street, 8<sup>th</sup> Floor  
Sacramento, CA 95814

Centration, Inc.  
Attention: Cindy Sconce  
12150 Tributary Point Drive, Suite 140  
Gold River, CA 95670

E-09  
State Personnel Board  
Attention: Walter Vaughn  
801 Capitol Mall, Suite 504  
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 November 14, 2003, at Sacramento, California.

  
\_\_\_\_\_  
Mary Latorre