ITEM 5

TEST CLAIM
PROPOSED STATEMENT OF DECISION

Health and Safety Code Sections 1531.2, 1569.149,
1596.809, 13144.5, and 13235
Statutes 1989, Chapter 993

Fire Safety Inspections of Care Facilities
(01-TC-16)

City of San Jose, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates ("Commission") is whether the Proposed Statement of Decision accurately reflects the Commission's decision on the *Fire Safety Inspections of Care Facilities* test claim.[1]

Recommendation

Staff recommends that the Commission adopt the proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission's vote on item 4 modifies the staff analysis, staff recommends that the motion to adopt the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a proposed Statement of Decision be continued to the April 2006 Commission hearing.

[1] California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM:

Health and Safety Code Sections 1531.2, 1569.149, 1596.809, 13144.5, 13235;

Statutes 1989, Chapter 993;

Filed on June 3, 2002 by the City of San Jose, Claimant.

Case No.: 01-TC-16

Fire Safety Inspections of Care Facilities

PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Proposed for Adoption on March 29, 2006)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on March 29, 2006. [Witness list will be included in the final Statement of Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision].

Summary of Findings

As more fully described below, the Commission finds that the test claim legislation imposes a reimbursable state-mandated program on local agencies pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514 for the increased costs in performing the following activities:

1. the preinspection of community care facilities, residential care facilities for the elderly, and child day care facilities;
2. the consultation and interpretation of applicable fire safety regulations for the prospective facility licensee; and
3. written notice to the prospective facility licensee of the specific fire safety regulations which shall be enforced in order to obtain the final fire clearance approval.

Background

This test claim addresses amendments to the Health and Safety Code regarding fire inspections of specified community care facilities required by the State Fire Marshal. The purpose of the test claim legislation (Stats. 1989, ch. 993) is to ensure that community care facilities, residential care facilities for the elderly, and child day care facilities, during the process of being licensed by the State Department of Social Services, receive in a timely fashion the correct fire clearance information from the local fire enforcing agency or State Fire Marshal. The test claim legislation sets forth the Legislature's intent as follows:

> It is in the best interest of the California public that private citizens be encouraged to develop and operate community care facilities, residential care facilities for the elderly, and child day care facilities throughout the state in order to meet the critical demand for quality, specialized care homes.
>
> Complex and unclear fire safety codes have frustrated the attempts of persons seeking to establish community care facilities, residential care facilities for the elderly, and child day care facilities, and have resulted in significant loss of money and resources to individuals who have received incorrect information regarding fire safety requirements from state or local officials, or no guidance at all.
>
> Interpretation of state and local fire safety regulations varies between the more than 1,200 fire jurisdictions, and in some cases varies within the same jurisdiction, causing confusion and, in numerous instances, project cancellation.
>
> Therefore, it is the intention of the Legislature that a prospective applicant for community care facility, residential care facility for the elderly, or child day care facility licensure shall be clearly informed in advance of making design modifications to a structure to meet specific fire safety requirements.
>
> The Legislature further intends that it is incumbent on state and local agencies to assist persons in the interpretation of fire safety regulations for community care facilities, residential care facilities for the elderly, and child day care facilities, and that greater efforts must be made to clarify and streamline the fire safety clearance process.[2]

The State Fire Marshal establishes statewide fire safety standards[3] which are generally enforced at the local level by fire enforcing agencies established in cities and counties.[4] Although local fire enforcing agencies are tasked with fire-related enforcement and inspections, such as the fire clearances required for the community care facilities, the State Fire Marshal carries out these duties when there is no local fire enforcing agency or may carry them out when asked to do so by the local fire official or local governing body.[5] The statutory

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[2] Senate Bill 1098, Statutes of 1989, chapter 993, Section 1.

[3] Health and Safety Code sections 13100 et seq.

[4] Health and Safety Code sections 13800 et seq.

[5] Health and Safety Code section 13146, subdivisions (c) and (d).

and regulatory scheme in existence prior to the test claim legislation required fire clearances for various community care facilities licensed by the Department of Social Services.[6]

Test Claim Legislation

The test claim legislation affected Health and Safety Code sections 1531.2, 1569.149, 1596.809, 13144.5, and 13235. These sections require the following activities:

- Under sections 1531.2, 1569.149 and 1596.809, the Department of Social Services is required to notify prospective applicants for a community care facility, residential care facility for the elderly, or child day care facility license that a fire clearance approval from the local fire enforcing agency or the State Fire Marshal is a prerequisite to licensure.
- Under section 13144.5, the State Fire Marshal is required to include, as part of its voluntary regular training sessions devoted to the interpretation and application of the laws and rules relating to fire and panic safety, interpretation of the regulations pertaining to community care facilities, residential care facilities for the elderly, and child day care facilities.
- Under section 13235, subdivision (a), the local fire enforcing agency or State Fire Marshal is required to conduct a preinspection of a community care facility, residential care facility for the elderly, or child day care facility upon receipt of a request from a prospective licensee of such a facility, prior to the final fire clearance approval. The preinspection shall include:
  - consultation and interpretation of fire safety regulations;
  - notification to the prospective licensee in writing of the specific fire safety regulations which shall be enforced in order to obtain fire clearance approval.
- Under section 13235, subdivision (b), the final fire clearance inspection shall be completed within 30 days of receipt of the request for final inspection.

Health and Safety Code section 13235, subdivision (a), specifically allows the following fees to be charged for the preinspection of a facility: 1) not more than $50 for a facility serving 25 or fewer persons; and 2) not more than $100 for a facility serving more than 25 persons.

Claimant's Position

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

The City of San Jose, according to its test claim, is seeking reimbursement for the following activities to the extent that the allowed preinspection fees of $50 and $100 do not cover the activities:

- training of fire inspector to conduct inspection(s);
- travel of fire inspector to site to conduct inspection(s);

[6] California Code of Regulations, title 22, sections 80020, 87220, and 101171.

- fire inspector conducting pre-inspection and consultation regarding interpretation and application of fire safety regulations;
- fire inspector providing written information regarding what is needed to be done in order to obtain fire clearance; and
- fire inspector conducting final fire clearance inspection.

Department of Finance Position

Department of Finance submitted comments on the test claim contending that "the test claim legislation applies to the State Fire Marshal as well as local fire agencies, and is therefore not unique to local government" and that, accordingly, the test claim should be denied.

State Fire Marshal

The State Fire Marshal responded to Commission staff's request for information by providing copies of materials that pertain to community care facilities, residential care facilities for the elderly and child day care facilities, used in the quarterly Statutes and Regulations training for state and local officials. The State Fire Marshal also stated: "Under [Health and Safety Code] section 13146(d), the local enforcing agency could request the [State Fire Marshal] to assume jurisdiction for these community care facilities provided that we have the resources to fulfill the request."

Sacramento Metropolitan Fire District

The Sacramento Metropolitan Fire District commented that the Northern California Fire Prevention Officers Association (NORCAL), Building Standards Committee in cooperation with the State Fire Marshal's Office has drafted a manual called the *California Fire Service Guide to Licensed Facilities.* The District supplied a copy of that draft to the Commission. The District also reiterated that the current costs for pre-inspections "far exceed[ ] the fees allowed by statute."

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[7] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[8] "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

[7] 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."

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

financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[9] 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.[10] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[11]

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.[12] 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.[13] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[14]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[15]

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.[16] 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."[17]

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

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

[11] *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*).

[12] *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; *Lucia Mar, supra,* 44 Cal.3d 830, 835.).

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

[14] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[15] *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.

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

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

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a "new program" or "higher level of service" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution?

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

Mandatory or Discretionary Activities?

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered. In such a case, compliance with the test claim statute is within the discretion of the local agency.

Under the test claim legislation, the local fire enforcing agency or State Fire Marshal, whichever has primary jurisdiction, is required to: 1) conduct a preinspection of the facility prior to the final fire clearance approval; 2) provide consultation, interpretation and written notice to the facility applicant regarding applicable fire safety regulations;[18] and 3) complete the final fire clearance inspection within 30 days of a request to do so.[19] However, Health and Safety Code section 13146, subdivision (d), gives the State Fire Marshal authority to enforce building standards and regulations on behalf of the local fire enforcing agency upon request of the chief fire official or local governing body. According to information provided by the State Fire Marshal: "Under [Health and Safety Code] Section 13146(d), the local enforcing agency could request the [State Fire Marshal] to assume jurisdiction for these community care facilities provided that we have the resources to fulfill the request."[20]

Because the local fire enforcing agency or local governing body could ask the State Fire Marshal to assume the enforcement duties pursuant to Section 13146, subdivision (d), the issue is raised as to whether those duties could be considered a discretionary activity by the local agency. Based on the following analysis, the enforcement duties are not discretionary.

Providing fire protection services by enforcing building standards is legally compelled by the statutory scheme under which the test claim legislation was enacted. The Health and Safety Code requires the State Fire Marshal or the chief of any city or county fire department or

[18] Health and Safety Code section 13235, subdivision (a).

[19] Health and Safety Code section 13235, subdivision (b).

[20] Letter from Ruben Grijalva, State Fire Marshal, to Paula Higashi, Executive Director, Commission on State Mandates, December 27, 2005.

district providing fire services to enforce building standards and other regulations that have been adopted by the State Fire Marshal.[21] In addition, local fire enforcing agencies are required to enforce fire-related building standards for buildings used for human habitation.[22]

The Health and Safety Code, in section 13146, further delineates the authorities and requirements for enforcing State Fire Marshal building standards and other regulations. Under subdivision (b), the local fire enforcing agency "*shall enforce* within its jurisdiction the building standards and other regulations of the State Fire Marshal …" Under subdivision (c), the State Fire Marshal "shall have authority to enforce the building standards and other regulations … in areas outside of corporate cities and districts providing fire protection services."

The statutory scheme also specifies that enforcement of fire regulations and fire-related building standards "shall, so far as practicable, be carried out at the local level by persons who are regular full-time members of a regularly organized fire department of a city, county, or district providing fire protection services …"[23] Furthermore, as noted above, section 13146, subdivision (d), gives the State Fire Marshal the authority to assume the fire enforcing duties where a local fire enforcing agency exists, but only upon the *request* of the chief fire official or the governing body. The State Fire Marshal has stated that jurisdiction over those duties could be assumed if the State Fire Marshal has "resources to fulfill the request."

Thus while the fire enforcement duties might be considered discretionary for the State Fire Marshal where a local fire enforcing agency is established, the duties could not be considered discretionary for that local fire enforcing agency, since providing the services is legally compelled by the statutory scheme and would be required of the local agency if the State Fire Marshal could not provide the services. It follows that the specific requirements in the test claim legislation — i.e., the preinspection, the consultation, interpretation and written notice of fire safety regulations, and the 30-day requirement for completion of the final inspection — are not discretionary for the local fire enforcing agency.

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[21] Health and Safety Code section 13145: "The State Fire Marshal, the chief of any city or county fire department or district providing fire protection services, and their authorized representatives, shall enforce in their respective areas building standards relating to fire and panic safety adopted by the State Fire Marshal and published in the State Building Standards Code and other regulations that have been formally adopted by the State Fire Marshal for the prevention of fire or for the protection of life and property against fire or panic."

[22] Health and Safety Code section 17962: "The chief of any city or any county fire department or district providing fire protection services, and their authorized representatives, shall enforce in their respective areas all those provisions of this part, the building standards published in the State Building Standards Code relating to fire and panic safety, and those rules and regulations promulgated pursuant to the provisions of this part pertaining to fire prevention, fire protection, the control of the spread of fire, and safety from fire or panic."

[23] Health and Safety Code section 13146.5.

Does the Test Claim Legislation Constitute a "Program?

The test claim legislation must also constitute a "program" in order to be subject to article XIII B, section 6 of the California Constitution. The Department of Finance argues that the test claim legislation is not a program subject to reimbursement under article XIII B, section 6, because the test claim legislation is not unique to local government since the same requirements are imposed on the state, through the State Fire Marshal. The Commission disagrees with this position for the reasons cited below.

The relevant tests regarding whether this test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 are set forth in case law. The California Supreme Court, in the case of *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, defined the word "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[24] (Emphasis added.) Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.

The *County of Los Angeles* case also found that the term "program" as it is used in article XIII B, section 6, "was [intended] to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities." (Emphasis added.)[25] In this case, the court found that no reimbursement was required for the increase in workers' compensation and unemployment insurance benefits applied to all employees of private and public businesses.[26]

Here, on the other hand, the requirements imposed by the test claim statute are carried out by state and local fire officials. Although both state and local officials perform the requirements imposed by the test claim legislation in conducting a prelicensure inspection for specified care facilities, these requirements do not apply "generally to all residents and entities in the state," as did the requirements for workers' compensation and unemployment insurance benefits in the *County of Los Angeles* case.

In addition, the Court of Appeal, Third Appellate District, in *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App3d 521, has recognized that fire protection is a peculiarly governmental function, and that, along with police protection, fire protection is one of the "most essential and basic functions of local government."[27] In this respect, the prelicensure fire inspections provide basic fire protection services for the public.

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[24] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles)*.

[25] *County of Los Angeles, supra,* 43 Cal.3d 46, 56-57.

[26] *County of Los Angeles, supra,* 43 Cal.3d 46, 57-58.

[27] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537 *(Carmel Valley)*.

The Commission therefore finds that the test claim legislation carries out the governmental function of providing a service to the public and therefore constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

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.[28]

The claimant is requesting reimbursement for the entire fire clearance process, including:

- training of fire inspector to conduct inspection(s);
- travel of fire inspector to site to conduct inspection(s);
- fire inspector conducting pre-inspection and consultation regarding interpretation and application of fire safety regulations;
- fire inspector providing written information regarding what is needed to be done in order to obtain fire clearance; and
- fire inspector conducting final fire clearance inspection.

Pre-existing Fire Clearance Process

Prior to the test claim legislation, the Health and Safety Code required each of the three types of care facilities subject to the test claim to be licensed,[29] and the California Code of Regulations also required fire clearances for the facilities:

- California Code of Regulations, title 22, section 80020 – regarding community care facilities: "[a]ll facilities shall secure and maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal."
- California Code of Regulations, title 22, section 87220 – regarding residential care facilities for the elderly: "[a]ll facilities shall maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal."
- California Code of Regulations, title 22, section 101171 – regarding child day care facilities: "[a]ll child care centers shall secure and maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal."

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

[29] Health and Safety Code sections 1508, subdivision (a), 1569.10 and 1596.80.

The Enrolled Bill Report submitted by the State Fire Marshal[30] provided a summary of the procedures in existence at the time the test claim legislation was enacted. The Report stated that upon application to the State Department of Social Services for a license, the Department would send a request for a fire safety inspection to the appropriate fire authority, either the local fire enforcing agency or the State Fire Marshal. Upon receipt of the request, the local fire agency or State Fire Marshal would then conduct an inspection of the facility and issue the fire clearance approval. It is apparent from the statements of the State Fire Marshal that at least one inspection of the facility was already required in order to issue the fire clearance.

New Requirements under Test Claim Legislation

The test claim legislation requires the local fire enforcing agency to "conduct a *preinspection* of the facility prior to the final fire clearance approval." (Emphasis added.)[31] The fire enforcing agency is also required, at the time of the preinspection, to "provide consultation and interpretation of fire safety regulations,"[32] "notify the prospective licensee of the facility in writing of the specific fire safety regulations which shall be enforced in order to obtain fire clearance approval,"[33] and "complete the final fire clearance inspection … within 30 days of receipt of the request for final inspection, or as of the date the prospective facility requests the final prelicensure inspection …, whichever is later."[34]

Since the fire clearance approval requirement, which also required an inspection of the facility, was in effect prior to passage of the test claim legislation, the finding of a new program or higher level of service must be limited to activities relating to the *preinspection*. Any inspection activities related to the pre-existing final fire clearance approval requirements would not be considered a new program or higher level of service.

Therefore, the Commission finds that *with regard to the preinspection only*, the following activities fall within the meaning of "new program" or "higher level of service" under article XIII B, section 6:

1. the preinspection;
2. the consultation and interpretation of applicable fire safety regulations; and
3. written notice to the prospective licensee of the specific fire safety regulations which shall be enforced in order to obtain the final fire clearance approval.

The new requirement to complete the final fire clearance inspection for a facility within 30 days of receipt of the request does not mandate a new activity, since the final fire clearance inspection and approval requirement was already in existence. Instead it merely adds a timeline under which the activity must be completed. Therefore, the Commission finds that

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[30] State Fire Marshal Enrolled Bill Report, Senate Bill 1098, September 18, 1989.

[31] Health and Safety Code section 13235, subdivision (a).

[32] *Ibid.*

[33] *Ibid.*

[34] Health and Safety Code section 13235, subdivision (b).

the 30-day requirement does not fall within the meaning of "new program" or "higher level of service" under article XIII B, section 6.

The test claim legislation also addressed training related to interpretation of the regulations for the subject care facilities. Health and Safety Code section 13144.5 was amended to read:

> The State Fire Marshal shall prepare and conduct *voluntary* regular training sessions devoted to the interpretation and application of the laws and rules and regulations in Title 19 and Title 24 of the California Code of Regulations relating to fire and panic safety. The training sessions shall include, but need not be limited to, interpretation of the regulations pertaining to community care facilities licensed pursuant to Section 1508, to residential care facilities for the elderly licensed pursuant to Section 1569.10, and to child day care facilities licensed pursuant to Section 1596.80, in order to coordinate a consistent interpretation and application of the regulations among local fire enforcement agencies. (Emphasis added.)

The pre-existing statute required the State Fire Marshal to prepare and conduct *voluntary* training related to fire and panic safety regulations. The new text in the test claim legislation simply added a requirement that the State Fire Marshal's training curriculum include interpretation of regulations relating to the subject facilities. Although the State Fire Marshal is required to provide such training, attendance is "voluntary" on the part of any local fire enforcing agency staff and no new mandate is established for the local fire enforcing agency as a result of the test claim legislation. Therefore, the Commission finds that the training activities do not constitute a local mandate under article XIII B, section 6. The Commission may, however, consider claimant's request for reimbursement for training at the Parameters and Guidelines stage to determine whether training is a reasonable method of complying with the mandate pursuant to California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution?

In order for the mandated activities to impose a reimbursable, state-mandated program under article XIII B, section 6, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant to Government Code section17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.

The test claim states:

> The fee authorization contained in the test claim legislation has not been increased in the 12 years since the passage of the subject legislation. At the present time an average of 3 hours is needed to complete the total fire clearance process for each facility. Some facilities, depending on the number of visits necessary to obtain the fire clearance, require up to 4 hours. Other facilities may only require 2 hours. Included in this process are travel time to the facility, time spent at the facility, telephone time, research of related codes, and data entry. Personnel turnover,

> which necessitates the training of new fire inspectors, is also part of the equation. The San Jose Fire Department Bureau of Fire prevention is mandated by the City to be 100% cost recovery. The hourly rate at which our department charges in order to achieve full cost recovery is $110. The present $50 fee allowance for a preinspection does not quite cover the cost of one-half hour.

Thus, there is evidence in the record, signed under penalty of perjury, that there are increased costs as a result of the test claim legislation.

Government Code section 17556 lists several exceptions which preclude the Commission from finding costs mandated by the state. Because some fee authority exists for this program, section 17556, subdivision (d) — which requires the commission to deny the claim where a local agency has "the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service" — must be analyzed to determine whether it is applicable.

Government Code section 66014 allows local entities to charge fees to recover costs for local zoning and permitting activities, including building inspections, which "may not exceed the estimated reasonable cost of providing the service for which the fee is charged …"[35] Health and Safety Code section 13146, subdivision (e), similarly addresses fee recovery for fire-related enforcement and inspections to "the reasonable cost of providing the service for which the fee is charged, pursuant to Section 66014 of the Government Code."

The test claim legislation, however, states that fees charged for the preinspection cannot exceed: 1) $50 for a facility with a capacity to serve 25 or fewer persons; and 2) $100 for a facility with a capacity to serve 26 or more persons.[36] A further potential limitation on fees that can be charged is located in the Community Care Facilities Act (Health and Safety Code sections 1500 et seq.), applicable to all three types of facilities. Section 1566.2 states that "… [n]either the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to residential facilities which serve six or fewer persons."

The question then is whether the local fee authority found in Government Code section 66014 is sufficient to recover preinspection costs in light of the two potentially fee-limiting provisions. The applicable rule of statutory construction states that when a general provision of law cannot be reconciled with a more specific provision, the general provision is controlled by the special provision and the special provision is treated as an exception.[37] Here, the two fee-limiting provisions found in the test claim legislation and the Community Care Facilities Act are exceptions to the more general local fee authority. Accordingly, fee recovery for the preinspection activity is limited to: 1) $0 for facilities which serve six or fewer persons; 2) $50 for facilities with a capacity to serve seven to 25 persons; and 3) $100 for facilities with a capacity to serve 26 or more persons.

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[35] Government Code section 66014, subdivision (a).

[36] Health and Safety Code section 13235, subdivision (a).

[37] *People v. Superior Court* (2002) 28 Cal. 4th 798; *Garcia v. McCutchen* (1997) 16 Cal. 4th 469.

Therefore, the local agency does not have the authority to levy service charges, fees, or assessments sufficient to pay for the preinspections, and Government Code section 17556, subdivision (d), does not apply to deny the claim. However, Health and Safety Code section 13235, subdivision (a), will be identified as offsetting revenue in the Parameters and Guidelines, which must be deducted from the total costs claimed.

Conclusion

The Commission concludes that the test claim legislation imposes a reimbursable state-mandated program on local agencies pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514 for the increased costs in performing the following activities:

1. the preinspection of community care facilities, residential care facilities for the elderly, and child day care facilities;
2. the consultation and interpretation of applicable fire safety regulations for the prospective facility licensee; and
3. written notice to the prospective facility licensee of the specific fire safety regulations which shall be enforced in order to obtain the final fire clearance approval.

The reimbursement period for this test claim begins July 1, 2000.

Finally, any statutory provisions that were pled in this test claim that are not identified above do not constitute a reimbursable state-mandated program.