Hearing Date: December 4, 2006
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ITEM 8

TEST CLAIM
PROPOSED STATEMENT OF DECISION

Health and Safety Code Section 13110.5

Statutes 1987, Chapter 345 (SB 2187)

The New California Fire Incident Reporting System Manual – Version 1.0/July 1990

California Fire Incident Reporting System Manual
(CSM-4419, 00-TC-02)

San Ramon Valley Fire Protection District and City of Newport Beach, Claimants

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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 *California Fire Incident Reporting System (CFIRS) Manual* 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 7 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 January 25, 2007 Commission hearing.

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[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 Section 13110.5;

Statutes 1987, Chapter 345 (SB 2187);

The New California Fire Incident Reporting System Manual – Version 1.0/July 1990;

Filed on December 31, 1991, by San Ramon Valley Fire Protection District, Claimant; Re-filed on June 13, 1996, and Amended on July 17, 2000 by City of Newport Beach.

Case No.: CSM-4419, 00-TC-02

California Fire Incident Reporting System Manual

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 December 4, 2006)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 4, 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 to partially approve this test claim at the hearing by a vote of [vote count will be included in the final Statement of Decision].

Summary of Findings

All fire protection agencies in California have had a duty since January 1, 1974, to report "information and data to the State Fire Marshal relating to each fire" in their jurisdiction pursuant to Health and Safety Code section 13110.5. The State Fire Marshal issued a manual and reporting forms in 1974 entitled the "California Fire Incident Reporting System" (CFIRS). This test claim, as amended, alleges that a 1987 amendment to the Health and Safety Code, and the 1990 edition of the CFIRS manual, imposed a reimbursable state-mandated program.

The original test claim filing (CSM-4419) by San Ramon Valley Fire Protection District (San Ramon) was received on December 31, 1991. When the test claim was filed, Government Code section 17757 stated that "[a] test claim shall be submitted on or before December 31 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back to July 1, 1990.

San Ramon appeared to drop out of the test claim process after asking for a postponement of the test claim hearing set for November 19, 1992, "to allow for the development of a response to the

State Fire Marshals report on this issue." The postponement was granted, but San Ramon never responded in writing to requests for updates so that the hearing could be rescheduled.

On June 13, 1996, the Commission received a "duplicate" test claim from City of Newport Beach (Newport Beach) which was given the same test claim number as the San Ramon filing.[2] On December 6, 1996, Commission staff issued a draft staff analysis, and the hearing was set for February 27, 1997. Newport Beach requested a prehearing, which was held on January 31, 1997. Following this prehearing, the Executive Director requested additional information in writing from Newport Beach. This request was repeated in March 2000, including a note that the claim was being set for dismissal if the response was not received. On April 25, 2000, Newport Beach requested that the claim be removed from inactive status and asked for a 90-day extension of time to obtain the information. On July 17, 2000, Newport Beach filed a test claim amendment (00-TC-02) which alleges a reimbursable state-mandated program was imposed by the amendments to Health and Safety Code section 13110.5 by Statutes 1987, chapter 345.

Discussion

The claimants allege that the "New CFIRS Manual - Version 1.0, July 1990," imposed a reimbursable state mandate by expanding the reporting categories from 10 to over 100; requiring quarterly reports on diskette or magnetic tape; expanding the one page form to three pages; and increasing the CFIRS manual from 100 to over 500 pages to describe the reporting requirements.

The Commission finds that requiring the local implementation of a computerized version of CFIRS, with submission of forms by diskette or magnetic tape, mandated a new program or higher level of service on local fire agencies. This was a significant, substantive change to the CFIRS program compared to what was required pre-1975. Claimants who incurred actual costs for implementing the new computerized CFIRS format may be eligible for one-time costs for acquiring and implementing any necessary hardware and software. However, this activity is only reimbursable from July 1, 1990, the beginning of the reimbursement period based on the filing date of San Ramon's test claim, until June 30, 1992, the date a letter was issued from the State Fire Marshal stating that fire incident reports may be submitted by hardcopy rather than diskette or tape.

Other than the time-limited higher level of service for implementing a computerized version of CFIRS, the claimants have failed to demonstrate how the 1990 CFIRS manual creates a new program or higher level of service for filing incident reports beyond the broad pre-1975 requirement that the chief fire official of each fire department in the state, "shall furnish information and data to the State Fire Marshal relating to each fire which occurs within his area of jurisdiction," in the form, time and manner prescribed by the State Fire Marshal.

Conclusion

The Commission concludes that the New California Fire Incident Reporting System Manual (Version 1.0, July 1990), mandated a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposed costs

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[2] There is no evidence in the record that San Ramon withdrew or Newport Beach took over by substitution of the parties. The Commission sent a letter on March 29, 2004, requesting clarification of San Ramon's status. On April 7, 2004, San Ramon responded that they intend to remain a co-claimant.

mandated by the state pursuant to Government Code section 17514, for requiring the local implementation of a computerized version of CFIRS, with submission of forms by diskette or magnetic tape.

Claimants who incurred actual costs for implementing the new computerized CFIRS format from July 1, 1990 (the beginning of the reimbursement period), to June 30, 1992 (the date of the letter from the State Fire Marshal stating that computerized filing was no longer required), may be eligible for one-time costs for acquiring and implementing any necessary hardware and software.

The Commission concludes that Health and Safety Code section 13110.5, as amended by Statutes 1987, chapter 345, does not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

BACKGROUND

All fire protection agencies in California have had a duty since January 1, 1974 to report "information and data to the State Fire Marshal relating to each fire" in their jurisdiction pursuant to Health and Safety Code section 13110.5. The State Fire Marshal issued a manual and reporting forms in 1974 entitled the "California Fire Incident Reporting System." This test claim, as amended, alleges that a 1987 amendment to the Health and Safety Code, and the 1990 edition of the CFIRS manual, imposed a reimbursable state-mandated program.

Prior law as enacted by Statutes 1972, chapter 758, follows:

> *Health and Safety Code Section 13110.5.*
>
> The State Fire Marshal shall gather statistical information on all fires occurring within this state. Beginning January 1, 1974, the chief fire official of each fire department operated by the state, a city, city and county, fire protection district, organized fire company, or other public or private entity which provides fire protection, shall furnish information and data to the State Fire Marshal relating to each fire which occurs within his area of jurisdiction. The State Fire Marshal shall adopt regulations prescribing the scope of the information to be reported, the manner of reporting such information, forms to be used, the time such information shall be reported and other requirements and regulations as he determines necessary.
>
> The State Fire Marshal shall annually analyze the information and data reported, compile a report, and disseminate a copy of such report together with his analysis to each chief fire official in the state. The State Fire Marshal shall also furnish a copy of his report and analysis to any other interested person upon request.

Claimants' Positions

Test Claim: December 31, 1991 Original Filing[3] *and June 13, 1996 Duplicate Filing*

Claimant, San Ramon, asserts that to comply with Statutes 1972, chapter 758, amending Health and Safety Code section 13110.5, the State Fire Marshal "instituted a fire incident reporting procedure known as the California Fire Incident Reporting System (CFIRS)." San Ramon argues that "[t]he implementation and conversion of CFIRS from the old manual system to the new computerized system results in a wide range of new state mandated activities." When the test claim was re-filed by Newport Beach in 1996, similar activity and cost allegations were made. Newport Beach asserts that "the reporting system was expanded from 10 items to 100 items with some of the additional items designated optional. The additional optional items are not included in this test claim."[4]

Newport Beach also alleges that there are two new sections on the report, Fire Service Casualty, and Non-Fire Service Casualty, "each requiring a separate page to complete."

Following is a chart summarizing the allegations of the two claimants on implementation and ongoing reimbursable activities imposed by the 1990 CFIRS manual:

Alleged New Activity – One-time	***San Ramon Estimated Cost***[5]	***Newport Beach Estimated Cost***[6]
Development, implementation and conversion plans	$2,080	No estimate provided
Design new system, obtain new software, install and test system	$800 software; $416 install and test; hard-ware costs unknown	$41,250 programming costs; $3,395 software
Develop and provide training	$11,248	$3,415 in staff time
Alleged New Activity - Ongoing	***San Ramon Estimated Cost***	***Newport Beach Estimated Cost***
Collection and recording of incident data at scene	$3,083	No estimate provided
Complete, review, verify, correct data and enter into computer	$6,246	$21,630
Prepare and submit quarterly reports	"To be determined"	$1,000

[3] When the test claim was filed, Government Code section 17757 stated that "[a] test claim shall be submitted on or before December 31 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back to July 1, 1990.

[4] Newport Beach Test Claim Filing, June 13, 1996, page 1.

[5] San Ramon Test Claim Filing, December 31, 1991, pages 5-6.

[6] Newport Beach Test Claim Filing, June 13, 1996, pages 2-3.

Test Claim Amendment: July 17, 2000

Newport Beach filed a test claim amendment on July 17, 2000, adding Health and Safety Code section 13110.5, as amended by Statutes 1987, chapter 345 to the test claim allegations. Specifically, Newport Beach asserts that both the San Ramon and Newport Beach test claim filings "inadvertently omitted the amendment." Newport Beach states:

> Although the statute speaks in terms of it being discretionary to local fire departments to provide information on medical aid incidents and hazardous materials incidents, with the implementation of *CFIRS* the State Fire Marshal instituted a mandatory method of computerized reporting, which included those medical aid incidents occurring within the local jurisdiction. In no other method could the State Fire Marshal obtain the requisite information to achieve its mandatory obligation to gather information on all fires, medical aid incidents and hazardous materials incidents.

December 1, 2000 Response

Following a prehearing on January 31, 1997, the Commission requested that the claimant, Newport Beach, provide additional information in writing to support its test claim allegations. In the response received December 1, 2000, Newport Beach argues that the State Fire Marshal never informed the claimants that filing medical aid incident and hazardous material incident reports through CFIRS was optional until after the test claim was filed. They also argue that the new forms require more codes, which are difficult to remember, and therefore take additional time to look up. These allegations are further discussed in the analysis below.

Comments on the October 16, 2006 Draft Staff Analysis

Claimant, Newport Beach, filed a letter on November 13, 2006, responding to the draft staff analysis. The letter makes or reasserts the following four arguments: under the new CFIRS manual, whenever a fire service vehicle is dispatched, an incident report is required, resulting in a greater number of reports; the new manual changed the coding system resulting in increased staff time needed to find the correct code to enter on an incident report; the manual fails to specifically label certain data entries as optional; and prior decisions of the Commission are not binding.

Claimant, San Ramon, filed a letter on November 14, 2006, disputing the conclusions of the draft staff analysis, primarily asserting that the staff analysis fails to consider Article XIII B, section 6 "in the context of its implementation of Article XIII A." The claimant argues that this "joint construction" leads to a conclusion supporting the claimant's position that all of the CFIRS test claim activities should be found reimbursable on an ongoing basis, rather than limited in time and scope.

These arguments will be addressed as appropriate in the analysis below.

Department of Finance Position

September 21, 1992 Comments

Initial comments from DOF on the original test claim filing, dated September 21, 1992, conclude "that the 1990 CFIRS revisions do constitute a limited state-mandated local program" for providing the data on magnetic tape or diskette, which "was a new requirement and may have

resulted in some fire protection agencies having to acquire computer capability by lease or purchase."

DOF argues "that the quantity of data to be reported in the new format has not increased," and:

> In addition, we would note that the Commission has heard and denied a test claim (No. CSM-4356) based on a very similar factual situation involving the California School Accounting Manual (CSAM). … To summarize that decision, the Commission found that, since school districts had been required since at least 1964 to comply with CSAM, subsequent changes in CSAM did not constitute a reimbursable state mandate because it did not alter the underlying requirement to provide the data prescribed in CSAM. We would contend that the same rationale would apply to the 1990 revisions to CFIRS.[7]

February 7, 1997 Comments

A draft staff analysis was issued December 6, 1996. In response, DOF filed comments stating:

> Any requirement to submit documentation only on disk or computer tape was removed in June 30, 1992, with a letter from the State Fire Marshal to all California Fire Chiefs. However, according to the Question and Answer booklet sent to all California Fire Chiefs in September 1989 the "old format" was going to be accepted until 1992. Therefore, the computerization requirement was never implemented.

DOF also notes that hazardous materials and medical incident reports remain optional, and they reiterate the argument that changes to the CFIRS manual do not impose a reimbursable state mandate, consistent with the Commission's earlier decision regarding changes to the school accounting manual.

Comments on the October 16, 2006 Draft Staff Analysis

According to a letter received on November 13, 2006, DOF agrees "with the draft staff analysis that the revisions to the manual resulted in a limited state-mandated local program by requiring that data be provided on magnetic tape or diskette from July 1, 1990 to June 30, 1992."

State Fire Marshal Position

September 22, 1992 Comments

Initial comments from the California State Fire Marshal dated September 22, 1992, on the San Ramon test claim filing, assert that the CFIRS manual was issued in 1974, and the claim is based on the changes adopted in 1990. The State Fire Marshal "conclude[s] that the requirement to submit data in electronic form may constitute a very narrow and limited higher level of service in an existing local program for those agencies without any access to a personal computer. It is our contention, however, that the type and net amount of data to be reported for fire incidents is

[7] Newport Beach's November 13, 2006 letter asserts that prior decisions of the Commission are not binding, citing *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, and the 1989 Attorney General Opinion finding that prior Commission decisions have no precedential value. (72 Ops.Cal.Atty.Gen. 173, 178 (1989).) These are true points of law, and this analysis does not *rely* on prior decisions of the Commission.

essentially the same." The State Fire Marshal also asserts that the agency "has never attempted to enforce the mandatory provision of the program, nor is it our intention to do so in the future."[8]

Responding to the test claim specifics, the State Fire Marshal argues that "there has been no change to the underlying services and functions provided by California fire departments. The reporting requirements are fundamentally the same, only the prescribed format has changed."

Regarding San Ramon's statement that the CFIRS reports were "expanded from 10 to 100 items," the State Fire Marshal responds that "[i]n response to user input, the updated system provides the fire department the optional capability to capture information on all emergency incidents; however, the mandated reporting applies only to fires, which is unchanged from the original requirement which has been in place for 18 years."

Regarding the test claimant's assertion that the "code book has been increased from approximately 100 pages to well over 500 pages," the State Fire Marshal's office responds:

> It is erroneous to a make a direct comparison between the sizes of the two manuals because:
>
> - the new manual contains the instructions for using all the options (non-fire) components of the reporting system;
> - the format of the new manual has been expanded to include additional explanatory information to enhance its understanding and user-friendliness;
> - the print style and page layout of the new manual is designed with more open space for easier reading, and to make it convenient to add user notes, resulting in more pages;
> - the tables of codes are significantly larger so as to provide a more accurate and definitive selection for the use.
>
> It is the [California State Fire Marshal's] position that the extent of the requirements imposed by both manuals - regarding fires - are essentially the same.

Regarding San Ramon's assertion that the "new CFIRS added two sections, each requiring a separate page," the State Fire Marshal's office responds:

> The sections in question refer to supplemental information required when a casualty occurs in a fire.
>
> There has always been a requirement to submit a separate casualty report. The old form (SFM GO-1) was used for both a civilian and a fire fighter casualty. Because of the vastly different types of information needed … the single form was divided into two forms – one for each category.
>
> The requirement to submit a casualty report is unchanged. The fire department merely uses the report appropriate for the circumstances.

The State Fire Marshal also questions San Ramon's implementation costs, including the estimate based on 1,000 fires per year, noting that past reporting of fires from that department were an

[8] Cover letter, signed by Ronny J. Coleman, State Fire Marshal.

average of 200 per year. They also note that the fire department "already ha[s] two existing computers in their Fire Prevention Bureau, and others in Administration."

February 4, 1997 Comments

Following the Newport Beach test claim filing and the January 31, 1997 pre-hearing, the State Fire Marshal submitted four additional documents, and stated in the cover letter, "[c]ollectively, these documents further confirm that the updated CFIRS merely continued the mandate for reporting fires – which has been in place for the past 25 years; and additionally, provided new options for reporting all types of other incidents at the discretion of the local agency."

One of the documents is an official notice "To All California Chief Fire Officials," dated June 30, 1992, from the State Fire Marshal, stating: "Effective immediately, the method for submitting reports for the updated version of CFIRS may be either by mainframe tape or PC/MAC diskette; OR by CSFM hardcopy forms for fires only." The document continues: "Your only obligation for compliance with Health & Safety Code Section 13110.5 is to report all fires in the prescribed updated format. Although CFIRS now provides you the opportunity to capture information on all incidents in a single uniform manner, this is at your option."

COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution[9] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[10] "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."[11] 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.[12] 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.[13]

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[9] Article XIII B, section 6, subdivision (a), provides: (a) 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.

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

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

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

[13] *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 Dist. v. Honig* (1988) 44 Cal.3d 830, 835 *(Lucia Mar).*

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.[14] 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.[15] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[16]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[17]

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.[18] 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."[19]

Issue 1: Is the test claim statute or executive order subject to article XIII B, section 6 of the California Constitution?

In order for a test claim statute or executive order to be subject to article XIII B, section 6 of the California Constitution, it must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[20] The court has held that only one of these findings is necessary.[21]

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[14] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

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

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

[17] *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.

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

[19] *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.

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

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

Although the statute and executive order claimed also apply equally to state and private fire agencies, the court in *Carmel Valley Fire Protection Dist.* found that "fire protection is a peculiarly governmental function," and that "[p]olice and fire protection are two of the most essential and basic functions of local government. [Citations omitted.] This classification is not weakened by State's assertion that there are private sector fire fighters who are also subject to the executive orders."[22]

The Commission finds that fire incident reporting imposes a program within the meaning of article XIII B, section 6 of the California Constitution. In particular, the reporting carries out the governmental function of providing a service to the public because, according to the Office of the State Fire Marshal, "the information is used to help fire departments target their resources and education programs, as well as develop and support fire safety legislation."[23]

However, much of the statutory scheme on fire incident reporting was in place prior to 1975, as was a CFIRS manual and forms, so the analysis must continue to determine if the statute or executive order alleged mandates a new program or higher level of service upon eligible claimants within the meaning of the California Constitution, article XIII B, section 6.

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

The test claim, as amended in a July 17, 2000 filing from Newport Beach, alleges a reimbursable state-mandated program was imposed by amendments to Health and Safety Code section 13110.5 by Statutes 1987, chapter 345. The underlined material was added:

Health and Safety Code Section 13110.5:

> The State Fire Marshal shall gather statistical information on all fires, medical aid incidents, and hazardous materials incidents occurring within this state. The chief fire official of each fire department operated by the state, a city, city and county, fire protection district, organized fire company, or other public or private entity which provides fire protection, shall furnish information and data to the State Fire Marshal relating to each fire which occurs within his or her area of jurisdiction. The chief fire official of each fire department operated by the state shall, and the chief fire official of fire departments operated by a city, city and county, fire protection district, organized fire company, or other public or private entity which provides fire protection may, also furnish information and data to the State Fire Marshal relating to medical aid incidents and hazardous materials incidents which occur within their area of jurisdiction. The State Fire Marshal shall adopt regulations prescribing the scope of the information to be reported, the manner of reporting the information, the forms to be used, the time the information shall be reported, and other requirements and regulations as the State Fire Marshal determines necessary.

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[22] *Ibid.*

[23] <http://osfm.fire.ca.gov/cfirs.html>, as of November 15, 2006.

> The State Fire Marshal shall annually analyze the information and data reported, compile a report, and disseminate a copy of the report, together with his or her analysis, to each chief fire official in the state. The State Fire Marshal shall also furnish a copy of his or her report and analysis to the State Emergency Medical Services Authority and any other interested person upon request.

This is the only amendment to Health and Safety Code section 13110.5 since its enactment in 1972. However, Newport Beach asserts:

> Although the statute speaks in terms of it being discretionary to local fire departments to provide information on medical aid incidents and hazardous materials incidents, with the implementation of *CFIRS* the State Fire Marshal instituted a mandatory method of computerized reporting, which included those medical aid incidents occurring within the local jurisdiction. In no other method could the State Fire Marshal obtain the requisite information to achieve its mandatory obligation to gather information on all fires, medical aid incidents and hazardous materials incidents.

Newport Beach states that the requirements were to be implemented by January 1, 1992. The claimant states that the "optional" reporting provisions of CFIRS are "not included in this test claim."

The Commission finds that the amended statutory language only specifies that local fire departments "*may*, also furnish information and data to the State Fire Marshal relating to medical aid incidents and hazardous materials incidents which occur within their area of jurisdiction." All other amendments to the code section are directives to the State Fire Marshal, or fire departments operated by the State. In *City of San Jose v. State of California,* the court clearly found that "[w]e cannot, however, read a mandate into language which is clearly discretionary."[24] The court concluded "there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[25] Therefore, based on the plain language of the statute,[26] the Commission finds that Health and Safety Code section 13110.5, as amended by Statutes 1987, chapter 345, does not mandate a new program or higher level of service.

New CFIRS Manual - Version 1.0, July 1990:

The claimants allege that the "New CFIRS Manual - Version 1.0, July 1990," imposed a reimbursable state mandate by:

- expanding the reporting categories from 10 to over 100,
- requiring quarterly reports on diskette or magnetic tape,
- expanding the one page reporting form to 3 pages, and

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[24] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

[25] *Id*. at page 1817.

[26] "If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs." (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.)

- increasing the CFIRS manual from 100 to over 500 pages to describe the reporting requirements.

Under Government Code section 17516, an "executive order" may include "any order, plan, requirement, rule, or regulation issued by . . . any agency, department, board, or commission of state government." Health and Safety Code section 13110.5, as enacted in 1972, directs the State Fire Marshal to "adopt regulations prescribing the scope of the information to be reported, the manner of reporting such information, forms to be used, the time such information shall be reported and other requirements and regulations" regarding fire incident reporting. The State Fire Marshal developed the 1974 CFIRS manual as the method of implementation of Health and Safety Code section 13110.5. Thus, pursuant to Government Code section 17516, the CFIRS manual issued by the State Fire Marshal, which details how to complete mandatory fire incident reporting, is included in the definition of an executive order. However, the Commission must still determine if the 1990 version mandates a new program or higher level of service, and costs mandated by the state.

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.[27] The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "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."[28] A statute or executive order mandates a reimbursable "higher level of service" when, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, it increases the actual level of governmental service to the public provided in the existing program.[29]

The claimants allege a new program or higher level of service because the 1990 CFIRS manual requires quarterly reports on diskette or magnetic tape. In their initial comments on the test claim filing, both the State Fire Marshal and DOF conceded that requiring the provision of CFIRS data on magnetic tape or diskette "was a new requirement and may have resulted in some fire protection agencies having to acquire computer capability by lease or purchase."

In September 1989, the State Fire Marshal issued a package to all California fire chiefs, with a cover letter, printouts of new CFIRS forms, a "record layout and specifications" document,[30] and a small booklet entitled "Questions and Answers About the New CFIRS." In the cover letter, the reference to the record layout and specifications document, describing how to develop CFIRS software, states: "These provide the molds into which all CFIRS records must fit. There can be no exceptions – **every** CFIRS record must meet this criteria."

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[27] *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 836.

[28] *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *San Diego Unified School District, supra*, 33 Cal.4th 859, 874.

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

[30] See Exhibit F, "Specifications for Writing CFIRS Software."

The 1989 "Questions and Answers" booklet discusses the new CFIRS and states that the first time fire departments can use the new quarterly CFIRS format is January 1, 1990.[31] Until then, the old format -- monthly paper forms or mainframe tape -- was required. The Questions and Answers booklet continues:

> **If I'm not ready by January 1990, when can I go to the new CFIRS after that?**
>
> *It's strictly up to you.* You can implement the new format as soon as you have the capability to produce the CSFM standard record on a PC. [Emphasis added.]
>
> […]
>
> **Important:** You must submit a CFIRS report for **every** fire that occurs in your jurisdiction. Until you convert to the new format, you must submit the present hardcopy form or mainframe tape – whichever applies in your case.
>
> **How is the CSFM going to put the new records together with the old ones?**
>
> [Discussion of phase-in procedures.] This allows both the new and old formats to be used during the transition. This will end when the old format is discontinued, probably in 1992.

According to the State Fire Marshal, some departments were already sending computerized reports in by mainframe tape. The Questions and Answers booklet addresses those departments, stating they may continue to send in tapes in the old format monthly, or begin sending the tapes in the new format quarterly, beginning in 1991, but at page 9, the booklet states: "You may continue to use the old format during '91 if additional time is needed to accomplish your conversion." Regarding a "deadline for tape departments to" switch to the new system, the document gives a date of "January, 1992." The Commission notes that for those departments that were already using mainframe tape to complete CFIRS reporting before the 1990 manual was issued, Government Code section 17565 provides that when a local agency incurs costs at its option that are later state-mandated, reimbursement is still required "for those costs incurred after the operative date of the mandate."

However, on June 30, 1992, an official notice "To All California Chief Fire Officials," was issued by the State Fire Marshal, stating: "Effective immediately, the method for submitting reports for the updated version of CFIRS may be either by mainframe tape or PC/MAC diskette; OR by CSFM hardcopy forms for fires only." The document continues: "Your only obligation for compliance with Health & Safety Code Section 13110.5 is to report all fires in the prescribed updated format. Although CFIRS now provides you the opportunity to capture information on all incidents in a single uniform manner, this is at your option."[32] Thus, any mandate for fire

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[31] Exhibit I, page 1361.

[32] Comments on the draft staff analysis by San Ramon, filed November 14, 2006, page 3, argue that the State Fire Marshal "is estopped from taking" the position that the CFIRS reports may be done in hard copy, and that "local agencies were entitled to rely on the representation of the State Fire Marshall [sic] that the electronic means of reporting was in fact required to their detriment."

This perhaps would be true if the State Fire Marshal was taking the position, *after the fact*, that electronic reporting was *never* required. But instead they assert that "effective immediately," electronic reporting is no longer required. If the local agencies found that electronic reporting

agencies to convert to a computerized system was eliminated on June 30, 1992. After that date, all computerized reporting was completed at the discretion of the local agency.

The Commission finds that requiring the local implementation of a computerized version of CFIRS, with submission of forms by diskette or magnetic tape, mandated a new program or higher level of service on local fire agencies. This was a significant, substantive change to the CFIRS program compared to what was required pre-1975. Claimants who incurred actual costs for implementing the new computerized CFIRS format from July 1, 1990, the beginning of the reimbursement period, to June 30, 1992, the date of the letter from the State Fire Marshal, may be eligible for one-time costs for acquiring and implementing any necessary hardware and software.[33]

The claimants also seek ongoing reimbursement for additional time necessary to complete CFIRS reports. The allegations conclude that the new CFIRS is three pages, while the original CFIRS was on a one-page form, therefore there is a higher level of service. Even if a form

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was more efficient or otherwise beneficial, it was at their option to continue using the electronic version of CFIRS. However, such reporting was no longer required.

San Ramon also argues that allowing hard copy forms instead of electronic reporting "is contrary to the declared legislative intent to implement electronic recordkeeping," pursuant to Civil Code section 1633.1 et seq. (*Id.* at pg. 4.) The Uniform Electronic Transactions Act of 1999, which addresses the legal effect of electronic records and signatures, is not part of the test claim legislation and may not be analyzed for the imposition of a reimbursable state mandate here.

[33] Comments filed on November 14, 2006, on behalf of San Ramon, urge a mandates analysis that uses a "joint construction" of the California Constitution, articles XIII A and XIII B, to find "that police and fire services were to be unaffected by" the passage of article XIII A, and therefore, "[t]he Test Claim should be declared to be a reimbursable State mandate with no limitations to the present." The case cited by the claimant, *County of Fresno v. Malstrom* (1979) 94 Cal.App.3d 974, 981, states "we find that the ballot arguments in favor of article XIII A support a conclusion that the article is aimed at *general* taxes and governmental spending. The arguments claimed that more than 15 percent of all governmental spending was wasted and that the article's limitations would not affect property-related governmental *services* (as contrasted with property-related *improvements*) such as trash collection, police and fire protection and street light *maintenance*… ." [Emphasis in original.]

Claimant focuses on the truncated phrase "would not affect … police and fire protection," and apparently interprets this to mean that no law can affect police and fire protection without resulting in an unending reimbursable state-mandated program, even if the law or rule is later repealed or rescinded. A great number of appellate and California Supreme Court cases have been published since *Malstrom* (which was decided before article XIII B was adopted) interpreting article XIII B, section 6, specifically, and construing it with article XIII A to discuss the relationship between article XIII A's purpose to control certain taxes, with article XIII B's purpose of controlling government spending. (See *County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61, and *County of Fresno, supra*, 53 Cal.3d 482, 492, for two examples.) A full analysis of the history of article XIII A, particularly one that ignores any established meaning of "mandate" under article XIII B, section 6, is unnecessary here.

taking up more pages was proof of a higher level of service, this is not the case here – both versions require either one page, or multiple pages, depending on how many casualties may have occurred at the incident. On the Fire Incident Report form included in the 1974 CFIRS manual, there is a reference under section J to the "SFM Form GO-1," the Fire Casualty Report. At page 109 of the original CFIRS manual it states that the State Fire Marshal requires this additional form for each fire-incident related death, or injury requiring hospitalization. The only change to the new version of CFIRS is that a separate form is used depending on whether the victim is a member of the fire service, or considered a civilian.

The older casualty report form requires identifying information for the incident and for the casualty victim, familiarity of the victim with the structure, location of the victim at the time the fire was ignited, cause of the casualty, condition preventing victim's escape, condition before injury, nature of casualty, activity at the time of the casualty, parts of the body affected and disposition of the victim; and then space for a detailed narrative is given on the back of the form.

The modern version of the casualty part of the fire incident report separates out the items that were applicable only to fire service personnel, versus those pieces of information that would only be collected for non-firefighters. For example, only the civilian-section of the report now asks for the familiarity of the victim with the structure, or the condition preventing escape -- presumably because these items are not significant for fire personnel. The Commission finds that the new version of a CFIRS report does not require a longer form than the old version.

In a related argument, Newport Beach asserts that the number of coded choices to fill in on the form have increased dramatically, requiring more time "to check the book for the appropriate code to be inserted," than "to check a box."[34]

CFIRS has always been a code-driven system and required the use of a manual to properly fill in a fire incident report. The January 1974 CFIRS manual describes the purpose of the document:

> In keeping with the forgoing statutory provisions [Health & Saf. Code, § 13110.5], the State Fire Marshal has instituted a fire incident reporting procedure known as the California Fire Incident Reporting System, which shall be referred to hereafter as CFIRS.
>
> Fundamentally, this document is a code book, containing an established series of numbers within specified categories which define and represent predetermined fire incident conditions. Through the use of these code numbers, it is possible to provide input into the computers for ultimate feedback of statewide fire incident statistics.

The introduction continues to explain that the codes in the manual are largely drawn from the National Fire Prevention Association Coding System for Fire Reporting, and the Uniform Fire Incident Reporting System. The 1990 CFIRS is also based on the national coding systems.

The claimants also allege that a reimbursable state-mandated program was imposed by the 1990 CFIRS manual because the reporting categories have expanded from 10 to over 100, and the manual has increased from 100 to over 500 pages to describe the reporting requirements. The fact that the new CFIRS manual is considerably bulkier than the old version is not relevant to a

[34] Response from Newport Beach, received December 1, 2000, page 20.

mandates analysis. Regarding the test claimant's assertion that the "code book has been increased from approximately 100 pages to well over 500 pages," the State Fire Marshal's office responds:

> It is erroneous to a make a direct comparison between the sizes of the two manuals because:
>
> - the new manual contains the instructions for using all the options (non-fire) components of the reporting system;
> - the format of the new manual has been expanded to include additional explanatory information to enhance its understanding and user-friendliness;
> - the print style and page layout of the new manual is designed with more open space for easier reading, and to make it convenient to add user notes, resulting in more pages;
> - the tables of codes are significantly larger so as to provide a more accurate and definitive selection for the use.
>
> It is the [California State Fire Marshal's] position that the extent of the requirements imposed by both manuals - regarding fires - are essentially the same.

The Commission agrees with the State Fire Marshal, and finds that the increase in the number of pages of an instructional manual does not allow for the automatic conclusion that a higher level of service has been mandated. This is particularly true when much of the reporting is not required. The 1989 State Fire Marshal's Questions and Answers booklet, described at page 12 above, addresses which part of the CFIRS reporting was mandatory:

> **Do I have to submit a new CFIRS report for every dispatch, regardless of what it is?**
>
> One "yes", a "maybe", and two "no's".
>
> Yes – if it's a FIRE … NO exceptions – just like it's always been.
>
> MAYBE – if it's a HAZ MAT. If you are the "Administering Agency" for your jurisdiction, you must submit a CHMIRS report to OES.[35]
>
> You have two choices: you can either send in a separate CHMIRS form; or you can simply enter the information on a CFIRS report and we will have our computer give it to OES's computer.
>
> NO – if it's EMS.
>
> NO – if it's any OTHER type of call (ie; public assist).

In its December 1, 2000 supplemental filing, Newport Beach argues that:

> Although the reporting requirement mandated on local fire agencies by statute was for fires only, this new CFIRS system required local fire agencies to report all fires, as well as all medical aid incidents and hazardous materials incidents.

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[35] Any hazardous materials reporting that may be required for the Office of Emergency Services is *not* required by the subject test claim statute or the 1990 CFIRS manual.

> Although the State Fire Marshal has claimed during these filings that the requirements to report medical aid incidents and hazardous materials incidents to it were voluntary, the State Fire Marshal did not communicate this to local fire agencies during the implementation of the new CFIRS manual.

This basic argument was also reasserted in Newport Beach's comments on the draft staff analysis, filed November 13, 2006, page 3, specifically stating "[n]ow, if there is a false alarm, a medical aid incident, a "move up" [footnote omitted], mutual aid, and other miscellaneous incidents, a report must be filed." The claimant's assertions are contradicted by evidence in the record showing that the Questions and Answers document quoted above was transmitted to all California fire officials in September 1989, prior to issuing the new CFIRS manual. The Commission finds that even though the new CFIRS form includes fields for reporting fire, hazardous materials, emergency medical service, and other calls, the Questions and Answers booklet, first distributed in 1989, as well as subsequent editions, explicitly states that a CFIRS report is *only required for fire incidents*, which is consistent with the pre-1975 requirements of Health and Safety Code section 13110.5.

The original CFIRS form and manual required detailed, coded fire incident reporting on the following:

- identifying information;
- property classification;
- property type;
- extent of damage;
- location and cause;
- area, materials, and smoke spread;
- spread of fire;
- protection facilities (sprinklers/extinguishers);
- protection facilities (alarm systems); and
- miscellaneous (casualties; checking "yes" required the filing of an additional "Fire Casualty Report" as discussed above).

The 1990 CFIRS form requires the same basic categories of information, and includes blocks for emergency medical service (medical aid), hazardous materials, or other, miscellaneous incidents. As made clear by Health and Safety Code section 13110.5, and the State Fire Marshal's Questions and Answers booklet– only fire incidents were ever required to be reported through CFIRS. During the transition period, agencies that had not adopted electronic CFIRS reporting were instructed to continue reporting on hardcopy forms for fires only.[36] When the State Fire Marshal explicitly removed electronic reporting as a mandatory requirement, they developed a new CFIRS hardcopy form, for fires only, with instructions stating that only the blocks with

[36] "Until you convert to the new format, you must submit the *present hardcopy form*, or mainframe tape - whichever applies in your case." Administrative Record (AR), page 1364.

"black triangles" in the corners were required.[37] Those marked blocks fall into the same categories of identifying information such as date, time, fire department; property type; damage; location and cause; materials; smoke and fire spread; sprinklers and alarms; and casualty reporting. The Commission finds that while individual boxes on the form may be reorganized, or have altered terminology, the same essential information on fire incidents is sought, and no new reporting categories have been mandated.

To the extent that the State Fire Marshal has a duty from Statutes 1987, chapter 345 to gather additional incident report information, they are able to collect it from state agencies, and *request* it of local agencies, but in no way was this additional reporting ever mandated of local agencies.

In fact, even if the State Fire Marshal wanted to require local agencies to provide this additional information, they would be prohibited from doing so under the law. A California Supreme Court decision, which found an administrative rule invalid because it was in direct conflict with statutory law, describes in detail the role of an administrative agency in interpreting statutes:

> In determining the proper interpretation of a statute and the validity of an administrative regulation, the administrative agency's construction is entitled to great weight, and if there appears to be a reasonable basis for it, a court will not substitute its judgment for that of the administrative body. (*Id.*, at p. 133; see *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86, 93 [130 Cal.Rptr. 321, 550 P.2d 593].) …
>
> [W]e have said that 'Where a statute empowers an administrative agency to adopt regulations, such regulations 'must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose.' (*Mooney v. Pickett* (1971) 4 Cal.3d 669, 679 ...; Gov. Code, § 11342.2.) The task of the reviewing court in such a case "is to decide whether the [agency] reasonably interpreted the legislative mandate.' [Citation.]' (*Credit Ins. Gen. Agents Assn. v. Payne* (1976) 16 Cal.3d 651, 657 ....) Such a limited scope of review constitutes no judicial interference with the administrative discretion in that aspect of the rulemaking function which requires a high degree of technical skill and expertise. [Citation.] Correspondingly, *there is no agency discretion to promulgate a regulation which is inconsistent with the governing statute*. [¶] We repeat our admonition expressed in *Morris v. Williams* (1967) 67 Cal.2d 733, 737 ...: 'Our function is to inquire into the legality of the regulations, not their wisdom .... Administrative regulations that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them.' Acknowledging that the interpretation of a statute by one charged with its administration was entitled to great weight, we nonetheless affirmed: "Whatever the force of administrative construction ... final responsibility for the interpretation of the law rests with the courts.' [Citations.] *Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to [,] strike down such*

[37] A new hardcopy form appears to have been made available by February 1993. See Exhibit I, AR pages 1384, 1391 (CFIRS Q & A Rev. 3/96).

> *regulations*.' (*Id.*, at p. 748.)' (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 679 [170 Cal.Rptr. 484, 620 P.2d 1032], italics added.)

(*Ontario Community Foundations, Inc. v. State Bd. of Equalization* (1984) 35 Cal.3d 811, 816-817, [emphasis in original].)

Health and Safety Code section 13110.5, as amended in 1987, requires that state fire service agencies *shall*, but local or private fire service agencies *may* "also furnish information and data to the State Fire Marshal relating to medical aid incidents and hazardous materials incidents which occur within their area of jurisdiction." If the State Fire Marshal were to *require* local or private fire service agencies to provide this type of information by administrative rule, such a rule would be void under the law. The fact that the State Fire Marshal has repeatedly issued written directives stating that the CFIRS program only requires fire incident reporting for local agencies consistent with the pre-1975 Health and Safety Code, gives authority to this interpretation.[38]

Other than the time-limited higher level of service for implementing a computerized version of CFIRS, the claimants have failed to demonstrate how the 1990 CFIRS manual creates a new program or higher level of service for filing incident reports beyond the broad pre-1975 requirement that the chief fire official of each fire department in the state, "shall furnish information and data to the State Fire Marshal relating to each fire which occurs within his area of jurisdiction," in the form, time and manner prescribed by the State Fire Marshal.

The Commission finds that once any requirement to submit fire incident reports in a computerized format was eliminated by the State Fire Marshal's June 30, 1992 letter, use of the 1990 CFIRS manual and related forms require the same duties and activities as pre-1975 law: completing a one-page form with the coded details of a fire incident call, and completing a separate form, as needed, to report a related casualty (injury or death) for either fire service personnel or civilians. Therefore, the Commission finds that the 1990 CFIRS manual and related reporting forms do not mandate a new program or higher level of service for reporting fire or other incidents, other than as described in the conclusion below.

Issue 3: Does the executive order impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher

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[38] See Exhibit I, AR page 1365 (CFIRS Q & A, circa Sept. 1989); page 1374 (Jun. 30, 1992 letter from State Fire Marshal to all fire chiefs); and pages 1369-70 (CFIRS Q & A Rev. 3/96).

Newport Beach's November 13, 2006 letter, page 4, asserts that "[w]ithout a clear designation that a data element is optional, the fire departments will complete the section and should be fully reimbursed for the costs unless and until they are so notified by the State Fire Marshall [sic] that that portion of the report is optional." The Commission finds that before, during and after the issuance of the 1990 CFIRS manual, the State Fire Marshal provided written directives to all California chief fire officials, indicating that all parts of CFIRS reporting are optional except fire reporting, which was required under long-standing prior law.

level of service. Both of the claimants estimated mandated costs in excess of $200, which was the statutory threshold at the time the test claim was filed.

The claimants also stated that none of the Government Code section 17556 exceptions apply. For the activities listed in the conclusion below, the Commission agrees and finds accordingly that the new program or higher level of service also imposes costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

The Commission concludes that the New California Fire Incident Reporting System Manual (Version 1.0, July 1990), mandated a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposed costs mandated by the state pursuant to Government Code section 17514, for requiring the local implementation of a computerized version of CFIRS, with submission of forms by diskette or magnetic tape.

Claimants who incurred actual costs for implementing the new computerized CFIRS format from July 1, 1990 (the beginning of the reimbursement period), to June 30, 1992 (the date of the letter from the State Fire Marshal stating that computerized filing was no longer required), may be eligible for one-time costs for acquiring and implementing any necessary hardware and software.

The Commission concludes that Health and Safety Code section 13110.5, as amended by Statutes 1987, chapter 345, does not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.