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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim of: )  
County of Los Angeles, )  
Claimant )  
\_\_\_\_\_ )

No. CSM-4432  
Health and Safety Code  
Sections 427.10 through 427.13  
Chapter 961, Statutes of 1992  
Pacific Beach Safety:  
Water Quality and Closures

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on November 18, 1993, in Sacramento, California, during a regularly scheduled hearing.

Mr. Leonard Kaye, Mr. Randy DeGregori, and Mr. Jack Petralia appeared on behalf of the County of Los Angeles, Mr. Stephen L. Kowalewski and Mr. Michael Kiado appeared on behalf of the Department of Health Services, and Mr. James Apps appeared on behalf of the Department of Finance. Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE

Do the provisions of Health and Safety Code sections 427.10 through 427.13 of Chapter 961, Statutes of 1992 (Chapter 961/92), require

1 local agencies to implement a new program or provide a higher level  
2 of service in an existing program, within the meaning of Government  
3 Code section 17514 and section 6, article XIII B of the California  
4 Constitution?

5  
6 BACKGROUND AND FINDINGS OF FACT

7  
8 The test claim was filed with the Commission on July 9, 1993, by  
9 the County of Los Angeles.

10  
11 The elements for filing a test claim, as specified in section 1183  
12 of Title 2 of the California Code of Regulations, were satisfied,

13  
14 The Commission observed that Chapter 961/92 added Health and Safety  
15 Code section 427.110 which provides:

16 " For the purposes of this article the following  
17 definitions apply:

18 (a) 'Beach' means any public beach of the ocean waters  
19 and bays of the state where water-contact sports are  
engaged in by the public.

20 (b) 'Board' means the State Water Resources Control  
Board.

21 (c) 'Health officer' means the legally appointed health  
22 officer or director of environmental health of the county  
or city having jurisdiction of the area in which a public  
saltwater beach is located/  
23

24 The Commission found that section 427.10 merely provides  
25 definitions for the terms "beach," "board," and "health officer."

26 The Commission reviewed the provisions of Health and Safety Code  
27  
28

1 | section 427.11, as added by Chapter 961/92, which provides  
2 | legislative comments. Section 427.11 begins, for example:

3 |       "(a) California's world-famous beaches are an invaluable  
4 |       economic, environmental, and recreational resource that  
5 |       must be protected for present and future generations.  
6 |       Millions of residents and visitors alike visit the  
7 |       state's beaches annually.@\*

8 | The Commission found that the Legislature's assertions in  
9 | section 427.11 are simply legislative observations.

10 | The Commission observed that Chapter 961/92 added Health and Safety  
11 | Code section 427.12, subdivision (a), which states:

12 |       "(a) On or before March 30, 1994, and annually  
13 |       thereafter, each health officer shall submit to the board  
14 |       a survey documenting **all beach** postings and closures due  
15 |       to **threats** to the **public health** that occurred during the  
16 |       preceding calendar year. The survey shall, at a minimum,  
17 |       include the location and duration of each beach closure  
18 |       in its jurisdiction and the suspected sources of the  
19 |       contamination that caused **the closure**, if known."

20 | The Commission found that under prior law the local health officer  
21 | was not required to supply the State Water Resources Control Board  
22 | with a survey of the local health officers' annual beach posting  
23 | and closing activities.

24 | The Commission observed that Chapter 961/92 added Health and Safety  
25 | Code section 427.12, subdivisions (b) and (c), which state:

26 |       "(b) On or before September 30, 1994, and annually  
27 |       thereafter, the [SWRC] board shall publish a statewide  
28 |       report documenting the beach posting and closure data  
29 |       provided to the board by health officers for the  
30 |       preceding calendar year. The report shall, at a minimum,  
31 |       include the location and duration of each beach closure

1 and the suspected **sources** of the contamination that  
2 caused the closure, if known.

3 **"(c)** Within 30 days of publication of the report, the  
4 state board shall distribute **copies** of the report to the  
5 Governor, the Legislature, and major media organizations,  
6 and copies of the report shall be made available to the  
7 public.\*\*

8 The Commission found that the statutory language of Health and  
9 Safety Code section 427.12, subdivisions (b) and (c), **only provide**  
10 directives from the Legislature to a state agency, the State Water  
11 **Resources** Control Board.

12 The Commission reviewed the provisions of Health and Safety Code  
13 section 427.13, as added by Chapter 961/92, which state:

14 **"Whenever any beach fails to meet the bacteriological**  
15 **standards of Section 7958 of Title 17 of the California**  
16 **Code of Regulations, the health officer, after**  
17 **determining that the cause of the elevated**  
18 **bacteriological levels constitutes a public health**  
19 **hazard, shall, at a minimum, post the beach with**  
20 **conspicuous warning signs to inform the public of the**  
21 **nature of the problem and the possibility of risk to**  
22 **public health."**

23 The Commission further reviewed section 7960, Title 17 of the  
24 California Code of Regulations, which was promulgated prior to  
25 Chapter 961/92. That section provides in pertinent part:

26 **"When a public beach or public water-contact sports area**  
27 **fails to meet the standards as set forth in 7957 or 7958**  
28 **above, the local health officer . . . may at his . . .**  
29 **discretion close, post with warning signs, or otherwise**  
30 **restrict use of said public beach or public water-contact**  
31 **sports area . . . "**

1 Under prior law, the Commission found that posting warning signs by  
2 the local health officer was discretionary. Following enactment of  
3 Health and Safety Code section 427.13, the local health officer is  
4 required to post the public beach with conspicuous warning signs  
5 when testing indicates that bacteriological levels constitute a  
6 public health hazard,

7  
8 In addition, the claimant asserted that the duty to post  
9 conspicuous warning signs also requires that continuous frequent  
10 testing is now state mandated,

11  
12 The Department of Health Services responded that Health and Safety  
13 Code section 24157 (enacted in 1957) requires application of  
14 bacteriological standards for public beaches. Section 24157  
15 states:

16 "Rules and regulations made pursuant to this article  
17 shall include suitable standards of safe bacteria count  
18 for water-contact sports areas specified by the State  
19 Water Pollution Control Board or regional water pollution  
control boards, which standards shall be applied to all  
public water-contact sport areas of the ocean waters and  
bays of the State."

20  
21 Pursuant to Health and Safety Code section 24157, the standard of  
22 beach water quality is defined in California Code of Regulations,  
23 Title 17, section 7958, which specifies in pertinent part:

24  
25 "(a) Bacteriological standards for each public beach or  
water-contact sports area shall be as follows:

26 Samples of water from each sampling station at a  
27 public beach or public water-contact sports area shall  
28 have a most probable number of coliform organisms less  
than 1,000 per 100 ml. (10 per ml.); provided that not  
more than 20 percent of the samples at any sampling

1 station, in any 30-day period, may exceed 1,000 per 100  
2 ml. (10 per ml.), and provided further that no single  
3 sample when verified by a repeat sample taken within 48  
4 hours shall exceed 10,000 per 100 ml. (100 per ml.)."

5 The Commission found that, prior to 1975 both the Health and Safety  
6 Code section 24157 and Code of Regulations, Title 17, section 7958  
7 set forth mandatory standards far bacteriological  
8 sampling/monitoring of public beaches, and that such standards  
9 continue as current law.

10 Moreover, the Commission observed California Code of Regulations,  
11 Title 17, section 7959, subdivision (b), as promulgated prior to  
12 1975, states in relevant part:

13  
14 "(b) In waters of a public beach. . . water samples shall  
15 be collected at such sampling stations and at such  
16 frequencies as may be determined by the local health  
17 officer or the Department. Local health officers shall  
18 be responsible for the proper collection and analysis of  
19 water samples in such areas."

20 The Commission found that regulation section 7959 required  
21 bacteriological water sampling by the local health officer.  
22 However, under section 7959, the frequency of such samplings was,  
23 and continues to be, at the discretion of the local health officer.

24 The Commission found that the change in program duties for the  
25 local health officer caused by enactment of Wealth and Safety Code  
26 section 427.13 is limited to the requirement to post the beach with  
27 conspicuous warning signs.

1 Further, the Commission found that the provisions of Chapter 961/92  
2 did not impose any uniform testing protocols nor frequency of  
3 uniform testing requirements upon local agencies. The Department  
4 of Health Services added that such testing protocols may be  
5 forthcoming from the Legislature,

6  
7 The claimant in its test claim submitted an exhibit entitled "Beach  
8 Regulatory & Monitoring Protocol." The claimant alleged that this  
9 document exhibits the framework of program activities mandated by  
10 the state. The Department of Health Services responded that the  
11 claimant's alleged activities and related costs pursuant to its  
12 protocol far exceed the higher level of service set forth in Health  
13 and Safety Code sections 427.12, subdivision (a), and 427.13.  
14 Based upon its review, the Commission found that the protocol was  
15 written by the County of Los Angeles and not by the Legislature or  
16 a state agency.

17  
18 APPLICABLE LAW RELEVANT TO THE DETERMINATION  
19 OF A REIMBURSABLE STATE MANDATED PROGRAM

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21 Government Code section 17500 and following, and section 6,  
22 article XIIIIB of the California Constitution and related case Paw.

23  
24 CONCLUSION

25  
26 The Commission determines that it has the authority to decide this  
27 claim under the provisions of Government Code sections I.7500  
28 and 17551, subdivision (a).



1 The Commission concludes that the requirements of Health and Safety  
2 Code sections 427.10, 427.11, and 427.12, subdivisions (b) and (c),  
3 of Chapter 961/92, do not impose a new program or higher level of  
4 service in an existing program within the meaning of Government  
5 Code section 17514 and section 6 of article XIII B of the California  
6 Constitution.

7  
8 The Commission concludes that Health and Safety Code  
9 section 427.12, subdivision (a), does impose a new program or a  
10 higher level of services in an existing program within the meaning  
11 of Government Code section 17514 and section 6 of article XIII B of  
12 the California Constitution, by requiring the local health officer  
13 to submit to the State Water Resources Control Board an annual  
14 survey documenting all beach postings and closures.

15  
16 The Commission concludes that Health and Safety Code  
17 section 427.13, as added by Chapter 961/92, does impose a new  
18 program or a higher level of service in an existing program within  
19 the meaning of Government Code section 27514 and section 6 of  
20 article XIII B of the California Constitution, by requiring the  
21 local health officer to post the beach with conspicuous warning  
22 signs.

23  
24 Accordingly, such costs incurred related to Health and Safety Code  
25 sections 427.12, subdivision (a), and 427.13, are costs mandated by  
26 the state and are subject to reimbursement within the meaning of  
27 section 6, article XIII B of the California Constitution.

28 Therefore, the claimant is directed to submit parameters and

1 | guidelines, pursuant to Government Code section 17557 and Title 2,  
2 | California Code of Regulations, section 1183.1, to the Commission  
3 | for its consideration.

4 |

5 | The foregoing conclusion pertaining to Health and Safety Code  
6 | sections 427.12, subdivision (a), and 427.13, is subject to the  
7 | following conditions:

8 |       The determination of a reimbursable state mandated  
9 |       program does not mean that all increased costs claimed  
10 |       will be reimbursed, Reimbursement, if any, is subject to  
11 |       Commission approval of parameters and guidelines for  
12 |       reimbursement of the mandated program; approval of a  
13 |       statewide cost estimate; a specific legislative  
14 |       appropriation for such purpose; a timely-filed claim for  
15 |       reimbursement; and subsequent review of the claim by the  
16 |       State Controller's Office.

17 |       If the statewide cost estimate for this mandate does not  
18 |       exceed one million dollars (\$1,000,000) during the first  
19 |       twelve (12) month period following the operative date of  
20 |       the mandate, the Commission shall certify such estimated  
21 |       amount to the State Controller's Office, and the State  
22 |       Controller shall receive, review, and pay claims from the  
23 |       State Mandates Claims Fund as claims are received.  
24 |       (Government Code section 17610.)

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