

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Vehicle Code Sections 13202, 13202.3, 13352, 13353, 13353.1, 13353.2, 13353.3, 13353.4, 13353.6, 13354, 13551, 13557, 13558, 13559, 14100, 14905, 14907, 23136, 23137, 23138, 23139, 23140, 23157, 23158.2, and 23158.5,

As Added or Amended by Statutes 1989, Chapter 1460; Statutes 1990, Chapter 43 1; Statutes 1992, Chapter 1281; Statutes 1993, Chapters 899 and 1244; Statutes 1994, Chapter 938; and Statutes 1997, Chapter 5;

Filed on June 11, 1999;

By City of Newport Beach, Claimant.

No. 98-TC-16

Administrative License Suspension, Per Se

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

(Adopted on August 29, 2002)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on August 30, 2002.



PAULA HIGASHI, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Vehicle Code Sections 13202, 13202.3, 13352, 13353, 13353.1, 13353.2, 13353.3, 13353.4, 13353.6, 13354, 13551, 13557, 13558, 13559, 14100, 14905, 14907, 23136, 23137, 23138, 23139, 23140, 23157, 23158.2, and 23158.5,

As Added or Amended by Statutes 1989, Chapter 1460; Statutes 1990, Chapter 431; Statutes 1992, Chapter 128 1; Statutes 1993, Chapters 899 and 1244; Statutes 1994, Chapter 938; and Statutes 1997, Chapter 5;

Filed on June 11, 1999;

By City of Newport Beach, Claimant.

No. 98-TC- 16

Administrative License Suspension, Per Se

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

(Adopted on August 29, 2002)

STATEMENT OF DECISION

The Commission heard and decided this test claim on July 30, 2002 during a regularly scheduled hearing. Pamela Stone represented the claimant, the City of Newport Beach. Glen Everroad, Revenue Manager, and Howard Eisenberg, Traffic Investigator, appeared as witnesses on behalf of the claimant, the City of Newport Beach. Elliott Mandell appeared on behalf of the Department of Finance.

At the hearing testimony was given, the test claim was submitted, and the vote was taken.

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 sections 17500 et seq., and related case law.

The Commission approved this test claim by a 4-2 vote.

BACKGROUND

Since the 1960s, the Department of Motor Vehicles (DMV) has been authorized to suspend driver's licenses of persons convicted of specified alcohol related driving offenses upon receipt of a certified abstract of conviction by the court. The DMV has also been authorized to suspend the driver's licenses of persons who refused a peace officer's request to submit to a chemical test to determine their blood alcohol level.¹

This test claim addresses the Administrative License Suspension legislation, which became effective on July 1, 1990. Generally, the test claim legislation authorizes a peace officer, on behalf of the DMV, to immediately seize a valid California driver's license in the possession of a person arrested or detained for driving under the influence of alcohol (DUI), immediately serve an order of suspension or revocation, and issue a temporary driver's license to the driver.

The California Supreme Court outlined the purposes of the test claim legislation as follows:

The express legislative purposes of the administrative suspension procedure are: (1) to provide safety to persons using highways by quickly suspending the driving privilege of persons who drive with excessive blood-alcohol levels; (2) to guard against erroneous deprivation by providing a prompt administrative review of the suspension; and (3) to place no restriction on the ability of a prosecutor to pursue related criminal actions. (Stats. 1989, ch. 1460, § 1, pp. 6501-6502; [Citations omitted] .)

The legislative history reveals that "the need for the administrative per se statutes arose from the fact that the legal process leading to imposition of a suspension sometimes took years from the time of arrest." [Citation omitted.] "Many drivers with high chemical test results failed to have sanctions taken against their driving privilege because of reduction in charges as the result of 'plea bargaining' or pre-trial diversion programs." [Citation omitted.] In enacting the administrative per se law, the Legislature intended to establish an expedited driver's license suspension system that would reduce court delays. The suspension will be swift and certain and will be more effective as a deterrent. . . . "[Citation omitted.]"²

The test claim legislation has been amended several times since it was enacted. However, since 1997³, the law applies to any driver that is *arrested* for driving under the influence of alcohol pursuant to Vehicle Code sections 23 140, 23 152, or 23 153, who:

- Refuses to take or fails to complete a chemical test to determine the blood alcohol concentration level (Veh. Code, § §13353, 23 157); or
- Takes a chemical test that shows a blood alcohol concentration of 0.08 percent or more for persons 21 years of age or older, or 0.05 percent for persons under the age of 21 (Veh. Code, §§13353.2, 23157, and 23158.5).

¹ Vehicle Code sections 13352 (Stats.1959, ch. 3) and 13353 (Stats. 1986, ch. 527, and derived from former section 13353, as added by Stats. 1966, ch. 138).

² *Gikas v. Zolin* (1993) 6 Cal.4th 841, 847.

³ The reimbursement period for this test claim begins July 1, 1997. (Gov. Code, § 17557.)

The law also applies to any driver under the age of 21 that is *lawfully detained* pursuant to Vehicle Code section 23136 for DUI who:

- Refuses to take or fails to complete a preliminary alcohol screening test, which measures the presence of alcohol based on a breath sample; or
- Takes the preliminary alcohol screening test and the test reveals a blood alcohol concentration of 0.01 percent or more (Veh. Code, §§ 13353.1, 13353.2, 23137).

When a peace officer arrests or detains a driver for violation of the DUI statutes, the peace officer is required to tell the person that his or her failure to submit to, or the failure to complete the required chemical test or preliminary alcohol screening test will result in suspension or revocation of the person's privilege to operate a motor vehicle for a specified period of time. (Veh. Code, § 23136, 23157.)

If the driver refuses or fails to complete the chemical test, or has been found to have a concentration of alcohol in their blood in violation of the DUI statutes, the peace officer, acting on behalf of the DMV, is required to serve a notice of order of suspension or revocation on the driver. The notice shall be on a form provided by the DMV. If appropriate, the officer shall also provide the person with a non-English notice developed under Vehicle Code section 14100. The peace officer is then required to take possession of any driver's license issued by the state. The driver receives a temporary driver's license, which is valid for 30 days. The temporary license is an endorsement on the notice of order of suspension. (Veh. Code, §§ 23137, 23157.)

The officer is then required to submit the following documents to the DMV:

- Copy of the completed notice of suspension or revocation;
- Driver's license; and
- Sworn report of all information relevant to the action. The report shall include information that adequately identifies the person, a statement of the officer's grounds for belief that the person violated the DUI statutes, a report of the results of any chemical tests conducted on the person or the circumstances constituting a refusal to submit or complete a chemical test, a copy of any notice to appear under which the person was released from custody, and a copy of the complaint filed with the court, if available. The officer is required to submit the sworn report and supporting documents to the DMV on or before the fifth ordinary business day following the arrest, or, for persons lawfully detained, on or before the fifth ordinary business day following the service of the notice of order of suspension. (Veh. Code, §§ 23137, 23157.)

In addition, if the person submitted to a blood or urine test, the peace officer is required to immediately forward the results to the appropriate forensic laboratory. The forensic laboratory is then required to forward the results of the chemical tests to the DMV within 15 calendar days of the date of the arrest. (Veh. Code, §§ 23137, 23157.)

Upon receipt of the officer's sworn report, the driver's license, the notice of order of suspension, and the chemical test results, DMV conducts an administrative review to determine, by a preponderance of the evidence, whether the order of suspension or revocation should be sustained. The determination of the DMV is final unless the driver requests an administrative hearing. (Veh. Code, §§ 13357, 13358, 14100.) Following the administrative hearing, the driver may appeal DMV's determination to sustain the suspension or revocation by filing a petition for

review with the court. (Veh. Code, § 13359.) A determination of the facts regarding the suspension or revocation of a person's driver's license by the DMV or the court does not preclude litigation of those same facts in a criminal proceeding. The suspension or revocation of a person's driver's license is a civil matter. (Veh. Code, §§ 13353.2, 13559.)

Before a driver's license may be issued, reissued, or returned to a person after suspension or revocation, the person is required to pay a fee in the amount of \$100 to the DMV. The fee shall be applied to the following costs:

- The administration of the administrative suspension and revocation programs for persons who refuse or fail to complete chemical testing, or who drive with an excessive amount of alcohol in their blood;
- Any costs to the Department of the California Highway Patrol related to the payment of compensation for overtime for attending administrative hearings; and
- Any reimbursement for costs mandated by the state. (Veh. Code, § § 14905 .)

The person is also required to show that he or she has successfully completed an alcohol treatment program. (Veh. Code, § 13353.4.)

On June 13, 1990, the DMV issued a letter to all police chiefs, sheriffs, marshals, and state police describing the above requirements imposed on the officer by the test claim legislation.

The claimant also included two 1997 statutes (Veh. Code, §§ 13202.3 and 14907, as amended by Stats. 1997, ch. 5) in this test claim that address the suspension or delay of the issuance of a driver's license ordered by the court following a conviction of a specified controlled substance offense. As amended, Vehicle Code section 13202.3 requires the peace officer that arrests a person for violation of a controlled substance offense to inform the person of the driver's license sanctions of suspension or delay either orally or in writing.

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 175 14. The claimant estimates that, as a result of the test claim legislation, it takes an average of 30 minutes to complete the administrative license suspension paperwork. In fiscal year 1997-98, the claimant processed 403 DUI arrests. At \$30.94 an hour for peace officer salaries, costs to complete the paperwork are estimated at \$ 6,234.41 for fiscal year 1997-98. The claimant is also requesting reimbursement for additional costs to attend DMV hearings under subpoena and training.

Position of the Department of Finance

The Department of Finance contends that the test claim legislation does not constitute a reimbursable state mandated program. The Department argues that the test claim legislation relates directly to the enforcement of criminal law and, thus, is not reimbursable under Government Code section 17556, subdivision (g), for the following stated reasons:

- The State does not mandate any level of service on any law enforcement agency. The deployment and enforcement priorities of each agency are at the agency's discretion, making all activities related to the enforcement of the law discretionary (i.e., the deployment of officers is based solely on

the priorities of the local agency and the perceived enforcement needs, putting officers in places where they are most likely to be able to enforce the laws related to a targeted criminal activity). In addition, although an officer may determine that a person has broken the law, the officer still maintains some discretion as to whether or not the person is arrested. In the case of driving under the influence this may involve allowing the person to be driven home by a sober driver or releasing the person on foot. Our conclusion is that enforcement activities are discretionary and, therefore, not reimbursable.

- If all activities directly related to the enforcement of crimes and infractions are not excluded from State reimbursement, local agencies could use their discretion to focus on the enforcement of those crimes that provide reimbursement. This would create a situation in which the deployment of officers and the enforcement of the law would not be based solely on the public safety needs of the community but also the fiscal concerns of the agency or local government.
- The Legislature should be free to enact laws in the interest of public safety without the State being responsible for all costs related to those laws. If it is not free to do so, the Legislature would be discouraged from making appropriate laws. In addition, as described above, if enforcement activities are reimbursable, the Legislature may be influencing enforcement priorities by providing an unintentional incentive for the enforcement of laws found to be reimbursable.⁴

The Department also contends that the requirement to inform the driver that failure to submit or complete a chemical test may result in suspension and the requirement to provide DMV with a sworn report were mandated before January 1, 1975, and, thus, are not reimbursable pursuant to article XIII B, section 6, subdivision (c).

Position of the Department of Motor Vehicles

DMV argues that the test claim legislation is not unique to local government because the same requirements are imposed on the state, through the California Highway Patrol. Thus, the DMV contends that the test claim legislation is not subject to article XIII B, section 6 of the California Constitution.

DMV also contends that all activities performed by police personnel in the collection of evidence, including the vehicle stop, administering all field sobriety tests, administering the evidentiary chemical test, and completing the police report, are directly related to the enforcement of a crime or infraction. Thus, DMV argues that these activities are not reimbursable pursuant to Government Code section 17556, subdivision (g). Similarly, DMV contends that the advisement that the peace officer must provide to the driver under Vehicle Code section 13202.3 is related to a suspension or revocation action ordered by the court following a criminal court conviction of a specified controlled substance offense. Thus, DMV

⁴ Department of Finance comments to Draft Staff Analysis.

argues that this advisement is not reimbursable because it is directly related to the enforcement of criminal law.

DMV also argues that peace officers were required to act on behalf of DMV to advise those arrested that their driver's license would be suspended if the person failed to submit to or complete a chemical test and to provide the DMV with a sworn statement before 1975. Thus, DMV contends that these activities are not reimbursable.

Finally, the DMV states that certain requirements imposed on the peace officer in the administrative license suspension program "may be a basis for a claim." These include serving the notice of suspension or revocation on the driver, taking possession of the person's driver's license, issuing a temporary driver's license, completing the sworn report, and forwarding the information to the DMV.

COMMISSION FINDINGS

Generally, 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. 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. 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." To determine if the program is new or imposes a higher level of service, the analysis must compare the test claim legislation with the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state?

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 Government Code sections 175 14 and 17556?

These issues are addressed below.

//

//

//

⁵ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁶ Government Code section 175 14.

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

Several test claim statutes do not mandate local agencies to do anything and, thus, are not subject to article XIII B, section 6

Article XIII B, section 6 of the California Constitution states that “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.” (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.⁷ To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

Here, there are several statutes in the test claim legislation that are helpful in understanding the administrative license suspension program. But, they do not impose any requirements on local agencies. These statutes include Vehicle Code sections 13352⁸, 13353.3⁹, 13353.4¹⁰, 13353.6¹¹, 13354¹², 13551¹³, 13559¹⁴, 14905¹⁵, 14907¹⁶, 23138¹⁷, 23139¹⁸, and 23140¹⁹.

⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482,487; *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

⁸ Section 13352 requires DMV to suspend or revoke a driver’s license upon receipt of a certified abstract of the record of any court showing that the person has been convicted of specified statutes. That section also defines the period of suspension or revocation.

⁹ Section 13353.3 clarifies when the order of suspension becomes effective and defines the period of suspension.

¹⁰ Section 13353.4 describes how a person’s driver’s license can be restored following suspension or revocation.

¹¹ Section 13353.6 describes the period and terms of suspension for a commercial driver’s license.

¹² Section 13354 clarifies that any administrative suspension or revocation ordered by DMV and any suspension or revocation ordered by the court resulting from the same arrest shall be imposed consecutively, if so ordered by the court.

¹³ Section 13551 addresses the surrender of the driver’s license to the DMV and describes the responsibilities of DMV when a license is suspended or revoked.

¹⁴ Section 13559 authorizes a person to file a petition for review of the administrative order of suspension or revocation with the court.

¹⁵ Section 14905 requires the driver to pay to DMV one hundred dollars (\$100) before his or her license can be issued, reissued, or returned following a suspension or revocation. Part of that money is required to be spent on costs incurred in complying with Vehicle Code section 23157, subdivisions (f) and (g). See Issue 3 for the discussion of section 14905 as an offset.

Furthermore, the claimant has included Vehicle Code section 13202, as amended by Statutes 1997, chapter 5, in the test claim. The claimant does not discuss section 13202 in the body of the test claim filing, however. Rather, the claimant analyzes Vehicle Code section 13202.3. Statutes 1997, chapter 5 did not amend section 13202, but did amend section 13202.3. In addition, the Commission finds that Vehicle Code section 13202 does not impose any requirements on local agencies. Rather, Vehicle Code section 13202 authorizes the court to suspend or order the DMV to revoke a driver's license of a person convicted of a controlled substance offense.

Accordingly, the Commission finds that Vehicle Code sections 13202, 13352, 13353.3, 13353.4, 13353.6, 13354, 13551, 13557, 13559, 23138, 23139, and 23140 are not subject to article XIII B, section 6 of the California Constitution.

The test claim legislation constitutes a "program" within the meaning of article XIII B, section 6

The remaining statutes included in this test claim describe the requirements imposed on peace officers when a person is arrested or detained for driving under the influence of alcohol or a controlled substance. They also describe the administrative hearing procedures on the suspension or revocation. (Veh. Code, §§ 13202.3, 13353, 13353.1, 13353.2, 13557, 13558, 14100, 23136, 23137, 23157, 23158.2, 23158.5.)

In order for these test claim statutes to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." The California Supreme Court, in the case of *County of Los Angeles v. State of California*²⁰, 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. Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.²¹

Both the Department of Finance and the DMV argue that the test claim legislation is not a program subject to reimbursement under article XIII B, section 6. The Department of Finance contends that law enforcement activities are discretionary and are, therefore, not reimbursable. The DMV contends that the test claim legislation is not unique to local government because the

¹⁶ Section 14907 provides that before a driver's license may be issued, reissued, or returned to a person after the suspension or delay of the person's privilege to operate a motor vehicle under section 13202.2 (requires DMV to suspend a driver's license after the court notifies DMV that the driver was convicted of a controlled substance offense) the driver shall pay \$24 to DMV to pay for the costs of the administration of the section 13202.2 license actions by the DMV. The Commission notes that the statute does not require that the \$24 be used to pay for the activities performed by peace officers under section 13202.2.

¹⁷ Section 23138 specifies that a violation of Vehicle Code section 23 136 is not an infraction or public offense, but is subject only to civil penalties.

¹⁸ Section 23139 requires that any person whose license is suspended or delayed issuance under section 23 137 to pay to the DMV \$100 for the reissuance, return, or issuance of the driver's license.

¹⁹ Section 23 140 specifies that it is unlawful for a person under the age of 21 to drive a vehicle with 0.05 percent or more, by weight, of alcohol in his or her blood.

²⁰ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

²¹ *Cannel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at 537.

same requirements are imposed on the state, through the California Highway Patrol. The Commission disagrees with these positions for the reasons described below.

The California Supreme Court, in the *County of Los Angeles* and *City of Sacramento* cases, 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 as an incidental impact of law that apply generally to all state residents and entities.” (Emphasis added.)²² Thus, 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.²³

Here, on the other hand, the requirements imposed by the administrative license suspension program are carried out by state and local peace officers. Although both state and local peace officers perform the requirements imposed by the test claim legislation by serving the notice of order of suspension or revocation on the driver, taking possession of the driver’s license, and completing a sworn report, these requirements do not apply “generally to all state residents and entities” in the state, such as private businesses.

In addition, the Court of Appeal, Third Appellate District, in the *Carmel Valley* case, has recognized that police protection is a peculiarly governmental function.²⁴ In this respect, one of the express purposes of the administrative license suspension procedures is to provide safety to persons using highways by quickly suspending the driving privilege of persons who drive with excessive blood-alcohol levels.²⁵ Thus, the Commission disagrees with the Department of Finance’s assertion that law enforcement activities are not subject to reimbursement under article XIII B, section 6 of the California Constitution.

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

Activities in the test claim legislation relating directly to a crime are not subject to article XIII B, section 6

Article XIII B, section 6, subdivision (b), of the California Constitution states that the Legislature may, but need not, provide a subvention of funds to reimburse local agencies for the costs of mandates that define a new crime or change the existing definition of a crime. This constitutional provision was implemented by the Legislature in Government Code section 17556, subdivision (g), which states that there are no “costs mandated by the state” when “the statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a new crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.”

²² *County of Los Angeles, supra*, 43 Cal.3d at 56-57; *City of Sacramento, supra*, 50 Cal.3d at 67.

²³ *Ibid.*

²⁴ *Camel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 521, 537.

²⁵ *Gikas, supra*, 6 Cal.4th 841, 847.

The Department of Finance contends that the test claim legislation, in its entirety, relates directly to the enforcement of criminal law and, thus, is not reimbursable under article XIII B, section 6 and Government Code section 17556, subdivision (g).

DMV contends that all activities performed by police personnel in the collection of evidence, including the vehicle stop, administering all field sobriety tests, administering the evidentiary chemical test, and completing the police report, are directly related to the enforcement of a crime or infraction. Thus, DMV argues that these activities are not subject to reimbursement under article XIII B, section 6 and Government Code section 17.556, subdivision (g).

In addition, DMV contends that Vehicle Code section 13202.3, as amended in 1997, which requires a peace officer that arrests a person for violation of a controlled substance offense to inform the person of the driver's license sanctions (i.e., suspension or delay of driving privileges) either orally or in writing on a form approved by the Judicial Council, is directly related to the enforcement of criminal law. As such, this activity would not be reimbursable pursuant to article XIII B, section 6, subdivision (b), and Government Code section 17556, subdivision (g).

First, the Commission disagrees with the Department of Finance that the test claim legislation, in its entirety, relates directly to the enforcement of a crime. The test claim legislation, in Vehicle Code section 13353.2, subdivision (e), expressly states that the determination of facts by the DMV to immediately suspend a driver's license "is a *civil* matter which is independent of the determination of the person's guilt or innocence, shall have no collateral estoppel effect on a subsequent criminal prosecution, and shall not preclude the litigation of the same or similar facts in the criminal proceeding." (Emphasis added.)²⁶

Second, the Commission disagrees with the DMV that the crime exception to reimbursement applies to Vehicle Code section 13202.3. Vehicle Code section 13202.3, subdivision (a), requires the DMV to immediately suspend or delay the privilege of any person to drive a motor vehicle for six months upon receipt of a duly certified abstract of the record of the court showing that the person has been convicted of a specified controlled substance offense. For each successive offense, the DMV is required to suspend or delay the issuance of a driver's license for an additional six months. Subdivision (d) of section 13202.3 states that suspension or delay of driving privileges under this section shall be in addition to any penalty imposed upon conviction of any violation of a specified controlled substance offense.

As amended in 1997, Vehicle Code section 13202.3, subdivision (e), requires the peace officer that arrests a person for violation of a controlled substance offense to inform the person of the driver's license sanctions (i.e., suspension or delay of driving privileges) either orally or in writing on a form approved by the Judicial Council. If the information is provided orally, the officer is required to indicate on the arrest report or on the notice to appear, the time and date that the information was provided. If the information is provided in a written form, the officer is required to attach a copy of the written document to the arrest report or notice to appear. These requirements became inoperative on June 30, 1999, and were repealed on January 1, 2000.

Although DMV contends that the admonishment required to be given under Vehicle Code section 13202.3, subdivision (e), is directly related to the enforcement of criminal law, DMV has not cited any authority that the suspension of a driver's license under this section constitutes a criminal penalty.

²⁶ See also, *Gikas, supra*, 6 Cal.4th at 847-848.

Rather, based on the authorities described below, the Commission finds that the crime exception to reimbursement does not apply to Vehicle Code section 13202.3, subdivision (e), because the suspension of a driver's license is not penal in nature and does not constitute "punishment" of a crime. Thus, Vehicle Code section 13202, subdivision (e), does not create a new crime or infraction, eliminate a crime or infraction, or change the penalty for a new crime or infraction, as specified in article XIII B, section 6, subdivision (b), and Government Code section 17556, subdivision (g).

The court has not specifically analyzed the suspension requirements imposed by Vehicle Code section 13202.3. The courts have consistently held, however, that similar driver's license suspension requirements following a conviction of a crime are not penal. In 1984, the Court of Appeal in *Campbell v. DMV* concluded that a section of the Vehicle Code calling for mandatory driver's license suspension where the driver is for the first time convicted of driving under the influence of alcohol is not penal in nature.²⁷ The court stated the following:

But it has been regularly held that a statute such as Vehicle Code section 13352, calling under certain circumstances for departmental "suspension or revocation of a driver's license is not penal; its purpose is to make the streets and highways safe by protecting the public from incompetence, lack of care, and willful disregard of the rights of others by drivers." [Citation omitted.]²⁸

In 1991, the Court of Appeal in *People v. Valenzuela* concluded that suspending the driving privilege of a minor for one year following a conviction of a controlled substance offense was not penal in nature. Rather, the suspension is a remedial measure designed to ensure public safety on the streets and highways.²⁹

Similarly, in 1997, the Court of Appeal in *People v. Grayden* concluded that the revocation of a driver's license of a minor convicted of assault with a deadly weapon was not a "punishment."³⁰ The court stated the following:

We explained [in *Thomas v. Department of Motor Vehicles* (1970) 3 Cal.3d 335] that the act of the DMV in suspending a driver's license . . . is merely an "administrative act in performing a mandatory function" [citation omitted], and that the DMV, having received abstracts of judgments for the driver's two prior convictions of driving under the influence, simply was required to suspend his driving privilege . . . [Citation omitted.]³¹

The court further noted that Penal Code section 15, which defines "punishments" or penal sanctions, does not include license suspension among the list of punishments.³²

The Commission further notes that the holding of the court that license suspension is not penal in nature is consistent with the plain language of test claim statute. Vehicle Code section 13202.3,

²⁷ *Campbell v. DMV* (1984) 155 Cal.App.3d 716, 718.

²⁸ *Ibid.*

²⁹ *People v. Valenzuela* (1991) 3 Cal.App.4th Supp.6, 8.

³⁰ *People v. Grayden* N. (1997) 55 Cal.App.4th 598,604.

³¹ *Ibid.*

³² *Id.* at 605.

subdivision (d), plainly states that the suspension or delay of driving privileges is *in addition to* any penalty imposed for the conviction.

Thus, the Commission finds that the crime exception to reimbursement under article XIII B, section 6, subdivision (b), and Government Code section 17556, subdivision (g), does not apply to Vehicle Code section 13202.3.

But, there are some activities expressed in the test claim legislation that are directly related to a crime. For example, since 1966, Vehicle Code section 23 157 has required the peace officer to administer the chemical testing of a driver's blood or urine incident to a lawful arrest. That statute also requires the peace officer to advise the driver that he or she has a choice of a blood, breath, or urine test. The officer is also required to advise the driver that he or she does not have the right to have an attorney present before stating whether he or she will submit to a chemical test. Section 23 157 also authorizes the officer to use a preliminary alcohol screening test on adult drivers as an investigative tool in order to establish reasonable cause to believe the person was driving a vehicle in violation of the DUI statutes. The claimant has included Vehicle Code section 23 157 in this test claim.

In this respect, the Commission agrees with the DMV that the collection of evidence, including the vehicle stop, administering all field sobriety tests, administering the evidentiary chemical test, and completing the police report, pursuant to Vehicle Code section 23 157 are directly related to the enforcement of a crime or infraction and, thus, are not subject to 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, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation."

Admonishment by the peace officer regarding suspension or revocation (Veh. Code. §§ 23 13 6, 23157)

Vehicle Code sections 23 136 states that it is unlawful for a person under the age of 21 who has a blood alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test or other test, to drive. With reasonable cause, that person can be detained for testing and may be subject to a suspended or revoked driver's license. Section 23 136 requires the peace officer to tell that person that his or her failure to submit to, or the failure to complete, a preliminary alcohol screening test or other chemical test as requested will result in the suspension or revocation of the driver's license.

Vehicle Code section 23 157 imposes a similar admonishment requirement on the officer for persons arrested for violation of the DUI statutes (Veh. Code, §§ 23 140, 23 152, and 23 153). Under section 23 157, the arrested person shall be told by the officer that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if convicted, and suspension or revocation of the driver's license.

³³ *Lucia Mar, supra, 44* Cal.3d at 835.

The claimant contends that the admonishment activity imposed by Vehicle Code sections 23 136 and 23 157 constitutes a new program or higher level of service. For the reasons stated below, the Commission agrees, in part, with the claimant.

Since 1966, former Vehicle Code section 13353 required the peace officer to tell a person arrested for violation of a DUI statute that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if convicted, and suspension or revocation. Thus, the requirement imposed by Vehicle Code section 23 157 to provide the same admonition to the arrested person is not new and, thus, does not constitute a new program or higher level of service.

However, the Commission finds that the admonition under Vehicle Code section 23 136, for persons under the age of 21 who are detained with reasonable cause for having their blood alcohol level at 0.01 percent, is new. Before the enactment of the test claim legislation, there was no authority to suspend the driver's license of a person under the age of 21 when their blood alcohol level reached 0.01 percent, and no requirement to admonish this population of drivers regarding suspension or revocation of their driver's license.

In response to the draft staff analysis, DMV filed comments agreeing that the admonition to detained drivers under Vehicle Code section 23 136 is a new program. However, DMV clarifies, based on its research, that in fiscal year 2000-2001, 83.7% of the drivers initially admonished under Vehicle Code section 23 136 were ultimately arrested for having a blood alcohol content level above the legal limit of 0.05%. Thus, DMV states that the admonition given to 83.7% of drivers under the age of 21 was actually given under Vehicle Code section 23 157. Therefore, for the population of drivers under the age of 21 who are ultimately arrested, reimbursement is not required since the admonition under section 23 157 is not a new program.

Accordingly, the Commission finds that the requirement to admonish those drivers, detained under Vehicle Code section 23 136 and not ultimately arrested for having a concentration of alcohol in their blood in violation of a DUI statute, that the failure to submit to, or the failure to complete, a preliminary alcohol screening test or other chemical test as requested will result in the suspension or revocation of the driver's license, constitutes a new program or higher level of service.

Administering the preliminary alcohol screening test for detained minors (Veh. Code, §§ 23 136, 23137):

Vehicle Code section 23 136 states that it is unlawful for a person under the age of 21 to drive with the blood alcohol concentration of 0.01 percent, as measured by a preliminary alcohol screening test. That section further states that the preliminary alcohol testing shall be incidental to a lawful detention and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle with a blood alcohol concentration of 0.01 percent.

Vehicle Code section 23 137 states that if a peace officer lawfully detains a person under the age of 21 who is driving a motor vehicle, and the officer has reasonable cause to believe that the person is in violation of section 23 136, the officer shall request that the person take a preliminary alcohol screening test to determine the presence of alcohol in the person, if a preliminary alcohol screening test device is immediately available. If the testing device is not immediately,

available, the officer may request the person to submit to chemical testing of his or her blood, breath, or urine.

The claimant contends that administering the preliminary blood alcohol screening test under section 23 136 and 23 13 7 constitutes a new program or higher level of service. The Commission agrees.

The requirement to request and to administer the preliminary alcohol screening test on minors detained under Vehicle Code section 23 136 and 23 137 is a new requirement imposed by the test claim legislation. Moreover, violation of section 23 136 does not result in criminal penalties, but is a civil matter. In this respect, Vehicle Code section 23 13 8 states the following:

A violation of Section 23 136 is neither an infraction nor a public offense, as defined in Section 15 of the Penal Code. A violation of Section 23 136 is only subject to civil penalties. Those civil penalties shall be administered by the department through the civil administrative procedures set forth in this code.

Accordingly, the Commission finds that the requirement to request and to administer the preliminary alcohol screening test on minors that are detained pursuant Vehicle Code sections 23 13 6 and 23 13 7 and are not ultimately arrested for having a concentration of alcohol in their blood in violation of a DUI statute constitutes a new program or higher level of service.

Serving the notice of suspension or revocation, completing the sworn report, and forwarding: the documentation to the DMV (Veh. Code, §§ 23137, 23157, 23158.2, 23158.5, 13353, 13353.1, 13353.2, 14100)

Pursuant to Vehicle Code sections 23137, 23157, 23158.5, 13353, 13353.1, 13353.2, the peace officer, acting on behalf of the DMV, is required to serve a notice of order of suspension or revocation on the driver if the driver refuses or fails to complete the chemical test, or has been found to have a concentration of alcohol in their blood in violation of the DUI statutes. The notice shall be on a form provided by the DMV. If appropriate, the officer shall also provide the person with a non-English notice developed under Vehicle Code section 14 100. The peace officer is then required to take possession of any driver's license issued by the state. The driver receives a temporary driver's license, which is valid for 30 days. The temporary license is an endorsement on the notice of order of suspension.

The officer is then required to submit the following documents to the DMV:

- Copy of the completed notice of suspension or revocation;
- Driver's license; and
- Sworn report of all information relevant to the action. Pursuant to Vehicle Code section 23 158.2, the sworn report shall include information that adequately identifies the person, a statement of the officer's grounds for belief that the person violated the DUI statutes, a report of the results of any chemical tests conducted on the person or the circumstances constituting a refusal to submit or complete a chemical test, a copy of any notice to appear under which the person was released from custody, and a copy of the complaint filed with the court, if available. The officer is required to submit the sworn report and supporting documents to the DMV on or before the fifth ordinary business day following the arrest, or, for persons lawfully detained, on or before the fifth ordinary business day following the service of the notice of order of suspension.

In addition, if the person submitted to a blood or urine test, the peace officer is required to immediately forward the results to the appropriate forensic laboratory. The forensic laboratory is then required to forward the results of the chemical tests to the DMV within 15 calendar days of the date of the arrest. (Veh. Code, §§ 23 137, 23 157.)

The claimant contends that these activities constitute a new program or higher level of service. The DMV states that these activities “may be a basis for a claim.” As described below, the Commission agrees, in part, with the parties.

The Commission finds that the requirement to serve the notice of order of suspension or revocation, with the temporary driver’s license endorsed on the back of the notice, on the driver if the driver refuses or fails to complete the chemical test, or has been found to have a concentration of alcohol in their blood in violation of the DUI statutes, is new and, thus, constitutes a new program or higher level of service. (Veh. Code, §§ 23 137, 23 157, 23 158.5, 13353, 133 53.1, and 13353.2.) Under prior law, the notice of suspension was issued by the DMV *after* DMV received the officer’s sworn report in cases where the adult driver refused or failed to complete a chemical test, or *after* DMV received a certified abstract of conviction by the court.³⁴ The test claim legislation requires the officer, rather than DMV, to immediately serve the notice of suspension on the driver once the driver refuses or fails to complete the test, or has been found to have a blood alcohol concentration beyond the legal limits.

The Commission also finds that the requirement to issue the non-English notice developed under Vehicle Code section 14 100 when appropriate is new and, thus, constitutes a new program or higher level of service.

In addition, the Commission finds that the requirement imposed by Vehicle Code sections 23 137, 23 157, and 23 158.5 to take possession of any driver’s license issued by the state after the notice of order of suspension is issued is new and, thus, constitutes a new program or higher level of service.

The Commission further finds that the requirement to complete a sworn report in accordance with Vehicle Code section 23 158.2 constitutes a new program or higher level of service as described below. Before the enactment of the test claim legislation, Vehicle Code section 13353 (as added by Stats. 1986, ch. 527) required the peace officer to complete a sworn statement on a form furnished by the DMV stating that the officer had reasonable cause to believe the person was driving under the influence and refused or failed to complete the chemical tests.

The test claim legislation also requires the officer to complete a sworn report on a form prepared by the DMV. DMV revised the form after July 1, 1990, the operative date of the test claim legislation, to comply with the test claim legislation.³⁵ The Commission finds, however, that the completion of the sworn report under the test claim legislation constitutes a new program or higher level of service because peace officers are now required to complete the form for additional drivers; i.e., those drivers that are arrested or detained with a blood alcohol concentration higher than the legal limits, and detained minors who refuse or fail to complete the required preliminary alcohol screening test or other chemical test.

³⁴ Vehicle Code sections 13352 (as last amended by Stats. 1987, ch. 1041) and 13353 (as added by Stats. 1986, ch. 527).

³⁵ Letter issued by DMV dated June 13, 1990, attached to Claimant’s Rebuttal.

The Commission also finds that the requirement to forward the results of a blood or urine test to the appropriate forensic laboratory is not new and, thus, does not impose a new program or higher level of service. Since 1969, the testing by or for law enforcement agencies of blood or urine for the purposes of determining the concentration of ethyl alcohol in the blood of persons involved in traffic accidents or in traffic violations has been required to be performed only by a laboratory approved and licensed by the State Director of Health Services. (Health & Saf. Code, § 436.5 1.) Thus, under prior law, the peace officer was required to forward the results of the blood or urine test to the appropriate forensic laboratory.

Finally, the Commission finds that the requirement to submit a copy of the completed notice of order of suspension, driver's license, and sworn report to the DMV pursuant to Vehicle Code sections 23 137, 23 157, 23 158.2, and 23 158.5, constitutes a new program or higher level of service.

In summary, the Commission finds that the following activities constitute a new program or higher level of service:

- Taking possession of any driver's license issued by the state and serving the notice of order of suspension or revocation, with the temporary driver's license endorsed on the back of the notice, on the driver if the driver refuses or fails to complete the chemical test, or has been found to have a concentration of alcohol in their blood in violation of the DUI statutes, as specified in Vehicle Code sections 23 137, 23 157, 23 15 8.5, 13353, 13353.1, and 13353.2.
- Issuing the non-English notice developed under Vehicle Code section 14 100 when appropriate.
- Completing a sworn report in accordance with Vehicle Code section 23 15 8.2 for those drivers that are arrested or detained with a blood alcohol concentration higher than the legal limits, and for detained minors who refuse or fail to complete the required preliminary alcohol screening test or other chemical test.
- Submitting a copy of the completed notice of order of suspension, driver's license, and sworn report to the DMV pursuant to Vehicle Code sections 23 137, 23 157, 23 158.2, and 23 158.5.

Administrative Hearing (Veh. Code, §§ 13557, 13 558, 14 100)

Pursuant to Vehicle Code sections 13 557, 1355 8, and 14 100, any person who receives a notice of an order of suspension or revocation may request an administrative hearing. The issues at the hearing are whether the peace officer had reasonable cause to believe the person had been driving in violation of Vehicle Code sections 23 136, 23 140, 23 152, or 23 153; whether the person was placed under arrest or lawfully detained; whether the person failed or refused to complete the chemical test, or whether the person was driving beyond the legal limits; and whether the person was told that his or her privilege to operate a motor vehicle would be suspended or revoked if he or she refused to submit to and complete the testing. The DMV shall consider the sworn report of the peace officer and any other evidence accompanying the report.

The claimant contends that the cost of the peace officer's time when subpoenaed for the administrative hearing under these code sections is reimbursable under article XIII B, section 6 and Government Code section 175 14.

For the reasons stated below, the Commission finds that Vehicle Code section 13 557, 1355 8, and 14 100 do not impose a new program or higher level of service on peace officers and, thus, reimbursement is not required under article XIII B, section 6.

First, there is no express requirement in the test claim legislation that the officer appear as a witness at the administrative hearing. Rather, the plain language of Vehicle Code sections 13 558 and 14 100 states that the driver that receives a notice of an order of suspension or revocation “may” request a hearing.

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.³⁶ This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.³⁷

In fact, the courts have determined that the facts necessary to sustain the suspension can be established by the use of the sworn report, even though the officer does not appear at the hearing.³⁸

Thus, since the plain language of the test claim legislation does not require that the officer be subpoenaed for the administrative hearing, the Commission finds that it does not constitute a new program or higher level of service.

In addition, before the enactment of the test claim legislation, drivers whose licenses were suspended or revoked by DMV also had the authority to request a hearing, addressing the same issues identified in the test claim legislation.³⁹ At that time, and after the test claim legislation was enacted, the driver or DMV had the authority to subpoena the officer under Government Code section 115 10. That statute was enacted in 1945 and remains in effect today.⁴⁰ Thus, the officer’s presence under subpoena at an administrative hearing is not new.

Accordingly, the Commission finds that Vehicle Code section 13 5 57, 13 5 5 8, and 14 100 do not impose a new program or higher level of service on peace officers and, thus, reimbursement is not required under article XIII B, section 6.

³⁶ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

³⁷ *City of San Jose, supra*, 45 Cal.App.4th 1802, 18 16-1 8 17.

³⁸ *Davenport v. DMV* (1992) 6 Cal.App.4th 133, 139.

³⁹ Vehicle Code section 13353, as added by Statutes 1986, chapter 527; See also, *Snelgrove v. DMV* (1987) 194 Cal.App.3d 1364, where the court held that the sworn statement of the arresting officer is sufficient proof in a formal administrative hearing before the DMV to suspend or revoke a license under former Vehicle Code section 13353.

⁴⁰ Added by Statutes 1945, ch. 867.

Suspension of a license following conviction of a controlled substance offense (Veh. Code, § 13202.3)

The claimant included Vehicle Code section 13202.3, as amended by Statutes 1997, chapter 5, in this test claim. As explained in Issue 1, Vehicle Code section 13202.3, subdivision (a), requires the DMV to immediately suspend or delay the privilege of any person to drive a motor vehicle for six months upon receipt of a duly certified abstract of the record of the court showing that the person has been convicted of a specified controlled substance offense. For each successive offense, the DMV is required to suspend or delay the issuance of a driver's license for an additional six months.

As amended in 1997, Vehicle Code section 13202.3, subdivision (e), requires the peace officer that arrests a person for violation of a controlled substance offense to inform the person of the driver's license sanctions (i.e., suspension or delay of driving privileges) either orally or in writing on a form approved by the Judicial Council. If the information is provided orally, the officer is required to indicate on the arrest report or on the notice to appear, the time and date that the information was provided. If the information is provided in a written form, the officer is required to attach a copy of the written document to the arrest report or notice to appear. The Commission notes that the requirement imposed on peace officers under subdivision (e) became inoperative on June 30, 1999, and was repealed on January 1, 2000.

The claimant contends that Vehicle Code section 13202.3, subdivision (e), imposes a new program or higher level of service on local agencies. The Commission agrees.

According to legislative history, Assembly Bill 74, as originally introduced, complied with the Federal Transportation Bill (Public Law 101-1 56). Under the Federal Transportation Bill each state is required to either suspend or revoke drivers' licenses for six months for any controlled substance offense, or opt out of the federal mandate through a resolution by the Legislature and a letter from the Governor. However, Assembly Bill 74 was amended to no longer comply with the federal law and to add the state requirement to notify the person of the driver's license sanctions. At the same time, the Legislature enacted Senate Bill 13 1 to comply with the federal law by opting out of the federal mandate.⁴¹

Thus, the Commission finds that the requirements imposed by Vehicle Code section 13202.3, as amended in 1997, to inform the person of the driver's license sanctions either orally or in writing, and to indicate that the information was provided orally to the person on the arrest report or notice to appear, or to attach the written notice to the arrest report or notice to appear, constitutes a state mandated new program or higher level of service.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

As indicated above, the Commission finds that the following activities constitute a new program or higher level of service:

- Admonishing those drivers, detained under Vehicle Code section 23 136 and not ultimately arrested for having a concentration of alcohol in their blood in violation of a DUI statute, that the failure to submit to, or the failure to complete, a preliminary alcohol

⁴¹ Bill Analysis of the Senate Rules Committee dated April 11, 1997.

screening test or other chemical test as requested will result in the suspension or revocation of the driver's license.

- Requesting and administering the preliminary alcohol screening test on minors that are detained pursuant Vehicle Code sections 23 136 and 23 137 and not ultimately arrested for having a concentration of alcohol in their blood in violation of a DUI statute.
- Taking possession of any driver's license issued by the state and serving the notice of order of suspension or revocation, with the temporary driver's license endorsed on the back of the notice, on the driver if the driver refuses or fails to complete the chemical test, or has been found to have a concentration of alcohol in their blood in violation of the DUI statutes, as specified in Vehicle Code sections 23137, 23157, 23 158.5, 13353, 13353.1, and 13353.2.
- Issuing the non-English notice developed under Vehicle Code section 14 100 when appropriate.
- Completing a sworn report in accordance with Vehicle Code section 23 158.2 for those drivers that are arrested or detained with a blood alcohol concentration higher than the legal limits, and for detained minors who refuse or fail to complete the required preliminary alcohol screening test or other chemical test.
- Submitting a copy of the completed notice of order of suspension, driver's license, and sworn report to the DMV pursuant to Vehicle Code sections 23 137, 23 157, 23 158.2, and 23 158.5.
- Informing a person arrested for a specified controlled substance offense of the driver's license sanctions either orally or in writing, and indicating that the information was provided orally to the person on the arrest report or notice to appear, or attaching the written notice to the arrest report or notice to appear pursuant to Vehicle Code section 13202.3.

The Commission must continue its inquiry to determine if these activities impose increased "costs mandated by the state" under Government Code section 175 14 and 17556.

The claimant contends that it has incurred increased costs mandated by the state to comply with the test claim legislation. For example, the claimant estimates that, as a result of the test claim legislation, it takes an average of 30 minutes to complete the administrative per se paperwork. In fiscal year 1997-98, the claimant had 403 DUI arrests. At \$30.94 an hour for peace officer salaries, costs to complete the paperwork are estimated at \$ 6,234.41 for fiscal year 1997-98.

DMV contends that the cost estimates proposed by the claimant are too high. In support of their contention, DMV requested the California Highway Patrol ("CHP") to provide information regarding the time it takes an arresting officer to perform the activities under the test claim legislation. The CHP represents that it takes 14 minutes on average, rather than 30 minutes as proposed by the claimant, to perform the test claim activities.⁴²

Based on the evidence in the record, the Commission finds that the activities bulleted above result in increased costs mandated by the state under Government Code section 175 14. The

⁴²The arguments raised by the DMV on the claimant's proposed time estimates will be addressed during the parameters and guidelines phase.

Commission further finds that none of the exceptions listed in Government Code section 17556 apply to the bulleted activities.

However, existing statutes require the driver to pay a fee for the cost of the mandated program before his or her license is reissued. For example, Vehicle Code section 14905 requires the driver to pay to DMV one hundred dollars (\$100) before his or her license can be issued, reissued, or returned following a suspension or revocation. Part of that money is required to be spent on costs incurred in complying with Vehicle Code section 23 157, subdivisions (f) and (g), for those suspensions or revocations that are not set aside by the DMV or the court. Vehicle Code section 23 157, subdivisions (f) and (g), impose the requirements on the peace officer to take possession of the driver's license and forward to the DMV a copy of the completed notice of suspension or revocation form, the driver's license, and the sworn report. Vehicle Code section 14905 states the following:

(a) Notwithstanding any other provision of this code, in lieu of the fees in Section 14904, before a driver's license may be issued, reissued, or returned to a person after suspension or revocation of the person's privilege to operate a motor vehicle pursuant to Section 13 3 53 or 13 3 53.2, there shall be paid to the department [DMV] a fee in the amount of one hundred dollars (\$100) to pay the costs of the administration of the administrative suspension and revocation programs for persons who refuse or fail to complete chemical testing, as provided in Section 133 53, or who drive with an excessive amount of alcohol in their blood, as provided in Section 13353.2, any costs of the Department of the California Highway Patrol related to the payment of compensation for overtime for attending any administrative hearings pursuant to Article 3 (commencing with Section 14 100) of Chapter 3 and Section 23 15 8.5, and any reimbursement for costs mandated by the state pursuant to subdivisions (f) and (g) of Section 23 157.

(b) This section does not apply to a suspension or revocation that is set aside by the department or a court.

Vehicle Code section 14905 will be identified as an offset in the parameters and guidelines.

In addition, there is potential federal grant money that may be available to offset the cost of the test claim legislation. In 1988, Congress enacted Public Law 100-690, which added section 4 10 to Title 23 of the United States Code. Pursuant to section 410, if California or any other state implements and enforces an administrative license suspension program with the same requirements as the test claim legislation, the state is eligible to receive basic grant money equal to 65% of the amount of funds apportioned to the state from the federal Highway Trust Fund. Supplemental grants of five percent are also available for states that establish laws that any person under the age of 21 with a blood alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated. The grant monies received by the state and passed through to local agencies for the cost of this program will be identified as an offset in the parameters and guidelines.

CONCLUSION

The Commission concludes that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14 only for the following activities:

- Admonishing those drivers, detained under Vehicle Code section 23 136 and not ultimately arrested for having a concentration of alcohol in their blood in violation of a DUI statute, that the failure to submit to, or the failure to complete, a preliminary alcohol screening test or other chemical test as requested will result in the suspension or revocation of the driver's license.
- Requesting and administering the alcohol screening test on minors that are detained pursuant to Vehicle Code sections 23 136 and 23 137 and are not ultimately arrested for having a concentration of alcohol in their blood in violation of a DUI statute.
- Taking possession of any driver's license issued by the state and serving the notice of order of suspension or revocation, with the temporary driver's license endorsed on the back of the notice, on the driver if the driver refuses or fails to complete the chemical test, or has been found to have a concentration of alcohol in the blood in violation of the DUI statutes, as specified in Vehicle Code sections 23137, 23157, 23158.5, 13353, 13353.1, and 13353.2.
- Issuing the non-English notice developed under Vehicle Code section 14 100 when appropriate.
- Completing a sworn report in accordance with Vehicle Code section 23 158.2 for those drivers that are arrested or detained with a blood alcohol concentration higher than the legal limits, and for detained minors who refuse or fail to complete the required preliminary alcohol screening test or other chemical test.
- Submitting a copy of the completed notice of order of suspension, driver's license, and sworn report to the DMV pursuant to Vehicle Code sections 23 137, 23 157, 23 158.2, and 23158.5.
- Informing a person arrested for a specified controlled substance offense of the driver's license sanctions either orally or in writing, and indicating that the information was provided orally to the person on the arrest report or notice to appear, or attaching the written notice to the arrest report or notice to appear pursuant to Vehicle Code section 13202.3.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 958 14.

August 30, 2002, I served the:

Adopted Statement of Decision

Administrative License Suspension - Per Se (98-TC-16)

Vehicle Code Sections 13202, 13202.3, 13352, 13353, 13353.1, 13353.2, 13353.3, 13353.4, 13353.6, 13354, 13551, 13557, 13558, 13559, 14100, 14905, 14907, 23136, 23137, 23138, 23139, 23140, 23157, 23158.2, 23158.5

As Added or Amended by Statutes 1989, Chapter 1460; Statutes 1990, Chapter 431; Statutes 1992, Chapter 1281; Statutes 1993, Chapters 899 and 1244; Statutes 1994, Chapter 938; and Statutes 1997, Chapter 5, City of Newport Beach, Claimant

by placing a true copy thereof in an envelope addressed to:

Ms. Pamela A. Stone
Legal Counsel
DMG-Maximus , Inc.
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 30, 2002, at Sacramento, California.


COURTNEY DIXON