

**ITEM 12**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**

Labor Code Section 4850  
Statutes 2000, Chapters 920 & 929  
Statutes 1999, Chapters 270 & 970  
Statutes 1989, Chapter 1464  
Statutes 1977, Chapter 981

*Workers' Compensation Disability Benefits for Government Employees*  
(00-TC-20, 02-TC-02)

County of Los Angeles, Claimant  
San Diego Unified School District, Co-Claimant

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**ITEM 12**  
**TEST CLAIM**  
**REVISED FINAL STAFF ANALYSIS**

Labor Code Section 4850  
Statutes 2000, Chapters 920 (AB 1883) & 929 (SB 2081)  
Statutes 1999, Chapters 270<sup>1</sup> (AB 224) & 970 (AB 1387)  
Statutes 1989, Chapter 1464  
Statutes 1977, Chapter 981

*Workers' Compensation Disability Benefits for Government Employees*  
(00-TC-20, 02-TC-02)

County of Los Angeles, Claimant  
San Diego Unified School District, Co-Claimant

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**EXECUTIVE SUMMARY**

**Background**

This test claim was originally scheduled for the July 28, 2006 Commission hearing. However, claimant requested postponement pending the outcome of the *CSAC Excess Insurance Authority v. Commission on State Mandates* case, a case dealing with similar issues which was currently being appealed to the Second District Court of Appeal. The request for postponement was granted. On December 20, 2006, the Court of Appeal issued an unpublished decision on the case, which was then appealed to the Supreme Court by CSAC Excess Insurance Authority. On March 21, 2007, the Supreme Court denied the petition for review. On March 22, 2007, Commission staff then reissued the final staff analysis for another 30-day comment period. This is a revised final staff analysis.

This test claim addresses statutes that expanded applicability of an existing workers' compensation leave benefit to specified local safety officers. That benefit entitles employees to a leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in the course of employment.

The test claim presents the following issue:

- Do the test claim statutes mandate a "new program or higher level of service" on local governments within the meaning of article XIII B, section 6 of the California Constitution?

**Staff Analysis**

Staff finds that the test claim statutes do not mandate a new program or higher level of service in an existing program. The California Appellate and Supreme Court cases have consistently held that additional costs for increased employee benefits, in the absence of some increase in

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<sup>1</sup> Claimant incorrectly identified Statutes 1999, chapter 224 on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

the actual level or quality of governmental services *provided to the public*, do not constitute an "enhanced service to the public" and therefore do not impose a new program or higher level of service on local governments within the meaning of article XIII B, section 6 of the California Constitution.

**Conclusion**

Staff finds that because the test claim statutes do not impose a new program or higher level of service, they do not create a reimbursable state-mandated program on local governments within the meaning of article XIII B, section 6 of the California Constitution.

**Recommendation**

Staff recommends that the Commission adopt this analysis and deny this test claim.



## STAFF ANALYSIS

### Claimant

County of Los Angeles

### Co-Claimant

San Diego Unified School District

### Chronology

06/29/01 County of Los Angeles filed test claim with the Commission

08/13/01 The Department of Finance filed comments on test claim with the Commission

08/31/01 County of Los Angeles filed reply to Department of Finance comments

07/17/02 County of Los Angeles filed amendment to test claim requesting addition of San Diego Unified School District as co-claimant

07/25/02 Commission approved request to add co-claimant

08/23/02 The Department of Finance filed comments on test claim with the Commission

04/28/06 Commission staff issued draft staff analysis

05/15/06 County of Los Angeles filed comments on draft staff analysis

07/11/06 Commission staff issued final staff analysis

07/20/06 County of Los Angeles requested postponement of the hearing pending outcome of appeal of the *CSAC Excess Insurance Authority and City of Newport Beach v. Commission on State Mandates and the State Department of Finance* case (BS092146 & BS095456)

07/21/06 Commission staff granted request for postponement

12/20/06 Court of Appeal issued unpublished decision in *CSAC Excess Insurance Authority v. Commission on State Mandates*

01/22/07 CSAC Excess Insurance Authority and City of Newport Beach filed petition for review of Court of Appeal decision in California Supreme Court

03/21/07 California Supreme Court denied petition for review of the decision

03/22/07 Commission staff reissued final staff analysis for 30-day comment period

04/20/07 County of Los Angeles filed comments on test claim with the Commission

04/25/07 The Department of Finance filed comments on test claim with Commission

05/17/07 Commission staff issued revised final staff analysis

## Background

This test claim addresses statutes that expanded applicability of an existing workers' compensation leave benefit to specified local safety officers. That benefit entitles employees to a leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in the course of employment.

Article XIV, section 4 of the California Constitution vests the Legislature with plenary power to create and enforce a complete system of workers' compensation. The Legislature initially addressed the issue of workers' compensation in 1911 in the Workmen's Compensation Act,<sup>2</sup> which was amended significantly in 1913<sup>3</sup> and 1917.<sup>4</sup> The current statutory scheme, enacted in 1937, consolidated workers' compensation and worker health and safety provisions into the Labor Code.<sup>5</sup> The workers' compensation system provides for a compulsory and exclusive scheme of employer liability, without fault, for injuries arising out of and in the course of employment, with remedies for temporary and permanent disability, medical care and employer discrimination.<sup>6</sup>

Section 4850 was added to the Labor Code in 1939 to provide city police officers and fire fighters that were members of the State Employees' Retirement System (now the Public Employees' Retirement System [PERS]) a benefit that entitled them to leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in the course of employment.<sup>7</sup> Over the years, Labor Code section 4850 has been amended several times to expand the groups of employees covered and to address other provisions of the benefit. Section 4850, as amended in 1977 and thereafter, is the subject of this test claim.

Prior to 1977, section 4850 read:

Whenever any city policeman, city fireman, county fireman, fireman of any fire district, sheriff or any officer or employee of a sheriff's office, or any inspector, investigator, detective or personnel with comparable title in any district attorney's office, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 ... is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with the city or county, to leave of absence while so disabled without loss of salary, in lieu of temporary disability payments, if any, which would be payable under this chapter, for the period of such disability but not exceeding one year, or until such earlier

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<sup>2</sup> Statutes 1911, chapter 399.

<sup>3</sup> Statutes 1913, chapter 176.

<sup>4</sup> Statutes 1917, chapter 586.

<sup>5</sup> Labor Code sections 3200 et seq. and 6300 et seq., Statutes 1937, chapter 90.

<sup>6</sup> 65 California Jurisprudence Third (1998), Work Injury Compensation, section 7, pages 29-30.

<sup>7</sup> Statutes 1939, chapter 926.

date as he is retired on permanent disability pension ... It shall also apply to deputy sheriffs subject to the County Employees Retirement law of 1937 ....

The section excluded persons such as telephone operator, clerk, stenographer, machinist, mechanic or otherwise, whose functions did not clearly fall within active law enforcement service or active firefighting and prevention service. It also provided that if the employer was insured through the workers' compensation system, then any payments the workers' compensation system would be obligated to make, as disability indemnity could be paid to the employer. A later statute, not pled in this test claim, established a program for advanced disability pension payments.<sup>8</sup> Under that program, the local government agency may make advance pension payments to a local safety officer who has qualified for the continued salary benefit under section 4850; for PERS members, the local government is entitled to reimbursement from PERS for any such advance pension payments.

### Test Claim Statutes

The test claim statutes consist of several amendments to section 4850. Following is a summary of the changes relevant for this analysis.

#### *Statutes 1977, Chapter 981*

- Added lifeguards employed year round on a regular, full-time basis by Los Angeles County, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

#### *Statutes 1989, Chapter 1464*

- Reenacted section 4850, which would have sunset on January 1, 1990, without any changes that are relevant for this analysis.

#### *Statutes 1999, Chapter 270<sup>9</sup>*

- Added certain peace officers defined in Penal Code section 830.31<sup>10</sup> that are employed on a regular full time basis by Los Angeles County, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

#### *Statutes 1999, Chapter 970*

- Added county probation officers, group counselors, juvenile services officers, or officers or employees of a probation office, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

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<sup>8</sup> Statutes 1985, Chapter 1254; Labor Code section 4850.3.

<sup>9</sup> Claimant incorrectly identified Statutes 1999, chapter 224 on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

<sup>10</sup> Penal Code section 830.31 designates the following persons as peace officers: (a) a police officer of the County of Los Angeles; (b) a person designated by a local agency as a park ranger; (c) a peace officer of the Department of General Services of the City of Los Angeles; and (d) a housing authority patrol officer.

- Provided that safety employees employed by the County of San Luis Obispo could be entitled to the one-year paid leave benefit upon the adoption of a resolution of the board of supervisors of the County of San Luis Obispo, even though the employee is not a member of PERS or subject to the County Employees Retirement Law of 1937.

*Statutes 2000, Chapters 920 & 927 (double-joined)*

- Added the Los Angeles City Retirement System as another retirement program to which the specified employees may belong in order to receive the one-year paid leave benefit.
- Added the one-year paid leave benefit for the following employees:
  - airport law enforcement officers under subdivision (d) of section 830.33 of the Penal Code;
  - harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of section 830.1 or subdivision (b) of section 830.33 of the Penal Code; and
  - police officers of the Los Angeles Unified School District.

**Claimant's Position**

Claimant, the County of Los Angeles, contends that the test claim statutes constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that the County has incurred "new duties" and increased costs in complying with the new requirement that leave of absence with full salary must now be provided to specified employees instead of less costly temporary disability or maintenance payments required under prior law. The asserted increased costs in providing these benefits are the difference between the 70% temporary disability salary that was previously required and the 100% salary required for newly specified employees under the test claim statutes.

Claimant disagrees with the conclusion in the draft staff analysis that the test claim statutes do not create a reimbursable state-mandated program because they do not result in an increase in the actual level or quality of governmental service provided to the public. The County provided additional comments, citing a California Attorney General opinion that exceptional treatment of police officers and firefighters by Labor Code section 4850 is intended to ensure that these employees would not be deterred from "zealous performance of their mission of protecting the public by fear of loss of livelihood" and therefore the test claim statutes impose a new program or higher level of service under article XIII B, section 6. This argument is addressed in the staff analysis.

**Co-Claimant's Position**

Co-claimant, San Diego Unified School District, contends that the test claim statutes constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for the District's police officers, since the Fourth District Court of Appeal case of *San Diego Unified School District v.*

*Workers' Compensation Appeals Board*<sup>11</sup> upheld a Workers' Compensation Appeals Board determination that a San Diego Unified School District peace officer was entitled to the paid leave benefit provided in Labor Code section 4850.

### **Department of Finance Position**

Department of Finance submitted comments recommending that "the test claim be denied since the chaptered legislation cited in the test claim does not appear to mandate a new program or higher level of service of an existing program pursuant to Article XIII B, Section 6 of the California Constitution." The Department filed additional comments agreeing with the conclusions in the staff analysis.

### **Discussion**

The courts have found that article XIII B, section 6 of the California Constitution<sup>12</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>13</sup> "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."<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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

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<sup>11</sup> *San Diego Unified School District v. Workers' Compensation Appeals Board*, July 19, 2001, D038032 (nonpub. opn., cert. denied).

<sup>12</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

<sup>13</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>14</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>15</sup> *Long Beach Unified School Dist. v. State of California (Long Beach Unified School Dist.)* (1990) 225 Cal.App.3d 155, 174; *Kern High School Dist., supra*, 30 Cal.4th 727, 732.

<sup>16</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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.<sup>17</sup> To determine if the program is new or imposes a higher level of service, the test claim statutes must be compared with the legal requirements in effect immediately before the enactment of the test claim statutes.<sup>18</sup> A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."<sup>19</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>20</sup>

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.<sup>21</sup> 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."<sup>22</sup>

This test claim presents the following issue:

- Do the test claim statutes mandate a "new program or higher level of service" on local governments within the meaning of article XIII B, section 6 of the California Constitution?

**Issue 1: Do the test claim statutes mandate a "new program or higher level of service" on local governments within the meaning of article XIII B, section 6 of the California Constitution?**

Article XIII B, section 6 requires the state to reimburse local governments for the costs of a new program or higher level of service mandated by the Legislature or any state agency. Although the stated purpose of section 6 is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies which have limited resources, imposing increased costs alone does not require reimbursement under article XII B, section 6.<sup>23</sup>

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<sup>17</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874 [reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835].

<sup>18</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>19</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>20</sup> *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.

<sup>21</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>22</sup> *County of Sonoma v. Commission on State Mandates*, 84 Cal.App.4th 1264, 1280 (*County of Sonoma*), citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>23</sup> *Kern High School Dist.*, *supra*, 30 Cal.4<sup>th</sup> 727, 735.

Rather, a test claim statute 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,<sup>24</sup> and the required activity or task is new, constituting a “new program,” or it creates a “higher level of service” over the previously required level of service.<sup>25</sup> As noted above, the term “program” in the context of section 6 has been defined by the courts as a program 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.<sup>26</sup>

The test claim statutes modified Labor Code section 4850 to specify new categories of public safety employees that are eligible for a workers’ compensation leave benefit. When the specified employee is disabled by injury or illness arising out of his or her duties, he or she “shall become entitled ... to a leave of absence while so disabled without loss of salary...”<sup>27</sup> Section 4850 thus requires the employees to receive the benefit.

Claimant argues that it has incurred “new duties” and “costs” as a result of the test claim statutes. However, the plain language of the test claim statutes does not impose any state-mandated *activities*. Moreover, even if the test claim statutes were to impose additional *costs* on local agency employers for the newly eligible employees, staff finds that the test claim statutes do not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6, because case law uniformly holds that statutes that increase the cost of employee benefits do not mandate a new program or higher level of service in an existing program.

The Supreme Court, in the landmark decision *County of Los Angeles*, held that a general cost of living increase in workers’ compensation benefits did not impose on local agencies either a new program or a higher level of service in an existing program. The court made it clear that workers’ compensation is not a program administered by local agencies to provide a service to the public. The court stated:

Workers’ compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers’ compensation or to be providing services incidental to administration of the program. Workers’ compensation is administered by the state through the Division of Industrial Accidents and the Workers’ Compensation Appeals Board. (Citations omitted.)

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<sup>24</sup> *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 174; *Kern High School Dist.*, *supra*, 30 Cal.4<sup>th</sup> 727, 732.

<sup>25</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835-836.

<sup>26</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874 (reaffirming the test set out in *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

<sup>27</sup> Labor Code section 4850, subdivision (a).

Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.<sup>28</sup>

The court provided additional explanation regarding the effect of article XIII B, section 6 on general employee costs:

Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage – costs which all employers must bear – neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.<sup>29</sup>

In the years since the Supreme Court's *County of Los Angeles* decision, California courts have consistently denied reimbursement for increased costs for employee benefits where the benefit programs are not administered by a local government agency.

Thus, reimbursement was denied in *City of Anaheim v. State of California (City of Anaheim)* (1987) 189 Cal.App.3d 1478, where the City was seeking reimbursement for costs incurred as a result of a test claim statute that temporarily increased retirement benefits to public employees. The City argued that since the test claim statutes specifically dealt with pensions for public employees, the statutes imposed unique requirements on local governments that did not apply to all state residents or entities.<sup>30</sup> The court held that reimbursement was not required because the program involved, i.e., the Public Employees' Retirement System, was not a *locally*-administered program but a *state*-administered program.<sup>31</sup> Moreover, the court stated, "...[the] City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public."<sup>32</sup>

In *City of Sacramento v. State of California (City of Sacramento)* (1990) 50 Cal.3d 51, the Supreme Court likewise denied reimbursement for a state law extending mandatory coverage under the state's unemployment insurance law to include state and local governments. The court held that the requirement for local agencies to provide unemployment insurance benefits to their own employees "has not compelled provision of new or increased "service to the public" at the local level.<sup>33</sup> Nor did the requirement impose "a state policy 'unique[ly]' on local governments" since most private employers in the state were already required to provide unemployment insurance to their employees.<sup>34</sup>

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<sup>28</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 58.

<sup>29</sup> *Id.* at 61.

<sup>30</sup> *City of Anaheim, supra*, 189 Cal.App. 3d 1478, 1483-1484.

<sup>31</sup> *Id.* at 1484.

<sup>32</sup> *Ibid.*

<sup>33</sup> *City of Sacramento, supra*, 50 Cal.3d 51, 67.

<sup>34</sup> *Ibid.*



Where a workers' compensation death benefit was extended to local safety officers, the subject of *City of Richmond*, reimbursement was also denied. In that case, the City argued that the test claim statutes applied only to local safety members and therefore imposed a unique requirement on local governments that was not applicable to all residents and entities in the state.<sup>35</sup> The court held that the statutes merely eliminated a previous exemption from workers' compensation death benefits to local safety members, and thus made the workers' compensation death benefits "as applicable to local governments as they are to private employers ... [and] impose[] no 'unique requirement' on local governments."<sup>36</sup>

The City of Richmond further argued that "increased death benefits are provided to generate a higher quality of local safety officers and thus provide the public with a higher level of service" as did providing protective clothing and equipment for fire fighters in *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521.<sup>37</sup> The court rejected that argument since the program at issue addressed death benefits rather than equipment use by local safety members.<sup>38</sup> The court then reiterated the *City of Anaheim* conclusion that "[a] higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public."<sup>39</sup>

The Supreme Court reaffirmed and clarified what constitutes an "enhanced service to the public" in the *San Diego Unified School Dist.* case.<sup>40</sup> The court, in reviewing several cases on point including *City of Richmond*, stated that the cases "illustrate the circumstance that simply because a state law or order may *increase the costs* borne by local government *in providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting 'service to the public' under article XIII B, section 6, and Government Code section 17514." (Emphasis in original.)<sup>41</sup>

The Supreme Court went on to describe what *would* constitute a higher level of service:

By contrast, Courts of Appeal have found a reimbursable "higher level of service" concerning an existing program when a state law or executive order mandates not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided. In *Carmel Valley Fire Protection Dist. v. State of California* [citations omitted], for example, an executive order required that county firefighters be provided with protective clothing and

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<sup>35</sup> *Ibid.*

<sup>36</sup> *Id.* at 1199.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Id.* at 1196.

<sup>39</sup> *Ibid.*

<sup>40</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4<sup>th</sup> 859, 876-877.

<sup>41</sup> *Id.* at 877.

safety equipment. Because this increased safety equipment apparently was designed to result in more effective fire protection, the mandate evidently was intended to produce a higher level of service to the public

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The Supreme Court also cited circumstances in *Long Beach Unified School Dist.*, where an executive order required school districts to take specific steps to measure and address racial segregation in local public schools.<sup>43</sup> There, the appellate court held that the executive order constituted a “higher level of service” to the extent that it exceeded federal constitutional and case law requirements by mandating local school districts to “undertake defined remedial actions and measures that were merely advisory under prior governing law.”<sup>44</sup>

The reasoning in the aforementioned cases is applicable in the instant case. The workers’ compensation program is a *state*-administered program rather than a locally-administered program, one that provides a statewide compulsory and exclusive scheme of employer liability, without fault, for injuries arising out of and in the course of employment.<sup>45</sup> Labor Code section 4850 is part of that comprehensive statutory scheme. Moreover, although the claimants may be faced with a higher cost of compensating their employees as a result of extending the workers’ compensation leave benefits to additional employees, this does not equate to a higher cost of providing services to the public.

Claimant County of Los Angeles commented that the California Attorney General, in a 1968 opinion, finds that “Labor Code section 4850 results in an enhanced service to the public.”<sup>46</sup> Staff disagrees that Labor Code section 4850, for purposes of article XIII B, section 6 analysis, results in an enhanced service to the public. The Supreme Court in *San Diego Unified School Dist.* reaffirmed the finding in *City of Richmond* that providing a workers’ compensation death benefit *does not* equate to a higher level of service to the public.<sup>47</sup> The Supreme Court’s statements of law must be applied in any inferior court of the state where the facts of a case are not fairly distinguishable from the facts of the case in which the principle of law has been declared.<sup>48</sup> Here, the workers’ compensation paid leave benefit for newly specified local safety officers cannot be distinguished from the benefits at issue in *City of Richmond* or *City of Anaheim* for purposes of subvention. As the issue was further interpreted in *San Diego Unified School Dist.*, examples of an enhanced service to the public in this context were the

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> 65 California Jurisprudence Third (1998), Work Injury Compensation, section 7, pages 29-30.

<sup>46</sup> Letter from J. Tyler McCauley, Auditor-Controller, County of Los Angeles, received April 20, 2007, page 2.

<sup>47</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4<sup>th</sup> 859, 877.

<sup>48</sup> *People v. Triggs* (1973) 8 Cal.3d 884 (disapproved on other grounds by *People v. Lilienthal* (1978) 22 Cal.3d 891).

provision of protective clothing and safety equipment for firefighters, or undertaking defined remedial actions to address racial segregation, rather than increased benefits to employees.

Thus, the California Appellate and Supreme Court cases have consistently held that additional costs for increased employee benefits, in the absence of some increase in the actual level or quality of governmental services *provided to the public*, do not constitute an “enhanced service to the public” and therefore do not mandate a “new program or higher level of service” on local governments within the meaning of article XIII B, section 6 of the California Constitution.

Claimant County of Los Angeles asserted that a recent Los Angeles *Superior* Court case, *CSAC Excess Insurance Authority v. Commission on State Mandates*<sup>49</sup> was inconsistent with the staff’s conclusions. However, that case was recently appealed to and overturned by the Second District Court of Appeal in an unpublished decision.<sup>50</sup> The unpublished decision was subsequently appealed to the California Supreme Court, which denied the petition for review on March 21, 2007.<sup>51</sup>

### **Conclusion**

Staff finds that because the test claim statutes do not mandate a new program or higher level of service in an existing program, the statutes do not create a reimbursable state-mandated program on local governments within the meaning of article XIII B, section 6 of the California Constitution.

### **Recommendation**

Staff recommends that the Commission adopt this analysis and deny this test claim.

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<sup>49</sup> *CSAC Excess Insurance Authority v. Commission on State Mandates (CSAC)*, Superior Court, Los Angeles County, 2005, No. BS095456.

<sup>50</sup> *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Second District Court of Appeal, 2006, Case Number B188169 (nonpub. opn., cert. denied).

<sup>51</sup> *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, California Supreme Court, 2007, Case Number S149772.

**PAGES 14-100 LEFT BLANK INTENTIONALLY**

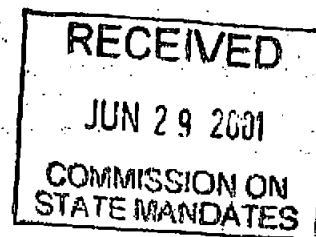
COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER



J. TYLER McCaULEY  
AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

June 25, 2001



Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Dear Ms. Higashi:

**County of Los Angeles Test Claim**  
**Labor Code Section 4850, as Amended by Chapters 920, 929,**  
**Statutes of 2000; Chapters 224, 970, Statutes of 1999; Chapter 1464,**  
**Statutes of 1989; and, Chapter 981, Statutes of 1977: Workers'**  
**Compensation Disability Benefits for Government Employees**

The County of Los Angeles submits and encloses herewith a test claim to obtain timely and complete reimbursement for the State-mandated local program, in the captioned above.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

J. Tyler McCauley  
Auditor-Controller

JTM:JN:LK-HY  
Enclosures

**County of Los Angeles Test Claim**  
**Labor Code Section 4850, as Amended by Chapters 920, 929, Statutes of**  
**2000; Chapters 224, 970, Statutes of 1999; Chapter 1464, Statutes of 1989;**  
**and, Chapter 981, Statutes of 1977: Workers' Compensation Disability**  
**Benefits for Government Employees**

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**County of Los Angeles Test Claim**  
**Labor Code Section 4850, as Amended by Chapters 920, 929, Statutes of 2000; Chapters 224, 970, Statutes of 1999; Chapter 1464, Statutes of 1989; and, Chapter 981, Statutes of 1977: Workers' Compensation Disability Benefits for Government Employees**

**Table of Exhibits**

1. Declarations:

A.	Dr. Constance Sullivan .....	Exhibit A
B.	William Mitchell .....	Exhibit B
C.	Cliff Caballero .....	Exhibit C
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E.	Leonard Kaye .....	Exhibit E

2. Test Claim Law

F.	Chapter 920/00 .....	Exhibit F
G.	Chapter 929/00 .....	Exhibit G
H.	Chapter 224/99 .....	Exhibit H
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J.	Chapter 1464/89 .....	Exhibit J
K.	Chapter 981/77 .....	Exhibit K
L.	CSM 4416- Statement of Decision .....	Exhibit L
M.	Redirected Effort Letter .....	Exhibit M

**County of Los Angeles Test Claim**

**Labor Code Section 4850, as Amended by Chapters 920, 929, Statutes of 2000; Chapters 224, 970, Statutes of 1999; Chapter 1464, Statutes of 1989; and, Chapter 981, Statutes of 1977: Workers' Compensation Disability Benefits for Government Employees**



State of California  
COMMISSION ON STATE MANDATES  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916)323-3562  
CSM 1 (12/89)

For Official Use Only
JUN 29 2001 COMMISSION ON STATE MANDATES 10:15 am
Claim No. 00-TC-20

**TEST CLAIM FORM**

**Local Agency or School District Submitting Claim**

Los Angeles County

**Contact Person**

**Telephone No.**

Leonard Kaye

(213) 974-8564

**Address**

500 West Temple Street, Room 603  
Los Angeles, CA 90012

**Representative Organization to be Notified**

California State Association of Counties

This test claim alleges the existence of "costs mandated by the state" within the meaning of section 17514 of the Government Code and section 6, article, XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code. Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

See page a

**IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.**

**Name and Title of Authorized Representative**

**Telephone No.**

J. Tyler McCauley  
Auditor-Controller

(213) 974-8301

**Signature of Authorized Representative**

**Date**

*Maria Ques For J.T. McCauley*

6/27/01

**County of Los Angeles Test Claim**  
**Labor Code Section 4850, as Amended by Chapters 920, 929, Statutes of**  
**2000; Chapters 224, 970, Statutes of 1999; Chapter 1464, Statutes of 1989;**  
**and, Chapter 981, Statutes of 1977: Workers' Compensation Disability**  
**Benefits for Government Employees**

**Notice of Filing**

The County of Los Angeles filed the reference test claim on June 27, 2001 with the Commission on State Mandates of the State of California at the Commission's Office, 980 Ninth Street, Suite 300, Sacramento, California 95814.

Los Angeles County does herein claim full and prompt payment from the State in implementing the State-mandated local program found in the subject law.

## County of Los Angeles Test Claim

Labor Code Section 4850, as Amended by Chapters 920, 929, Statutes of 2000; Chapters 224, 970, Statutes of 1999; Chapter 1464, Statutes of 1989; and, Chapter 981, Statutes of 1977; Workers' Compensation Disability Benefits for Government Employees

### Brief

The County of Los Angeles has incurred new duties and increased costs in providing government employees new workers' compensation disability benefits pursuant to the test claim legislation, captioned above.

Labor Code Section 4850 pertains to Police officers, firefighters, sheriff's officers, and other personnel; leave of absence with salary in lieu of temporary disability or maintenance payments and requires that:

"(a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3."

The County's activities, as claimed herein, are reasonably necessary in complying with the subject law, and cost the County in excess of \$200 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

## Section 4850 Covered Employees

Labor Code Section 4850, under subdivision (b), as amended by Chapter 929, Statutes of 2000, provides that "the persons eligible under subdivision (a) [of Section 4850] include all of the following:"

- "(1) City police officers.
- (2) City, county, or district firefighters.
- (3) Sheriffs.
- (4) Officers or employees of any sheriff's offices.
- (5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.
- (6) County probation officers, group counselors, or juvenile services officers.
- (7) Officers or employees of a probation office.
- (8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.
- (9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.
- (10) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.
- (11) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.
- (12) Police officers of the Los Angeles Unified School District.

### Excluded Employees

Labor Code Section 4850, under subdivision (c), as amended by Chapter 929, Statutes of 2000, provides that Section 4850 "... shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:"

"(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service."

### Payment to Insured

Labor Code Section 4850, under subdivision (d), as amended by Chapter 929, Statutes of 2000, provides that if the employer is insured "... the payment which, except for this section [4850], the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured".

### Family Care and Medical Leave

Labor Code Section 4850, under subdivision (d), as amended by Chapter 929, Statutes of 2000, provides that "... [n]o leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section

830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code".

#### Employees Granted Section 4850 Coverage After January 1, 1975

The Legislature granted certain employees Section 4850 coverage after January 1, 1975, the threshold date for finding that the County incurred reimbursable "costs mandated by the State" as defined in Government Code Section 17514, as follows:

##### Probation

Chapter 970, Statutes of 1999 amended Labor Code Section 4850 to add the new requirement that "any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office", including Los Angeles County's Probation Department employees, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

As a result, the County incurred increased costs in complying with the new requirement that leave of absence with full salary be now provided [the above] employees instead of less costly temporary disability or maintenance payments required under prior law.

##### Lifeguards

Chapter 981, Statutes of 1977 amended Labor Code Section 4850 to add the new requirement that a "lifeguard employed year round on a regular, full-time basis by a county of the first class", including Los Angeles County's lifeguards, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

As a result, the County incurred increased costs in complying with the new requirement that leave of absence with full salary be now provided [the above] employees instead of less costly temporary disability or maintenance payments required under prior law.

### Safety Police

Chapter 270, Statutes of 1999 amended Labor Code Section 4850 to add the new requirement that "any peace officer under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class", including Los Angeles County's public safety officers, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

As a result, the County incurred increased costs in complying with the new requirement that leave of absence with full salary be now provided [the above] employees instead of less costly temporary disability or maintenance payments required under prior law.

### Airport, Harbor Law Enforcement Officers

Chapter 920, Statutes of 2000 amended Labor Code Section 4850 to add the new requirement that Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code and Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

### Specified School Police Officers

Chapter 929, Statutes of 2000 amended Labor Code Section 4850 to add the new requirement that Police officers of the Los Angeles Unified School District, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

### Specified Firefighters

Chapter 1464, Statutes of 1989, amended Labor Code Section 4850, and amended and added a "local firefighter" definition in Government Code Section 20021.01.

The new "local firefighter" definition in Government Code Section 20021.01 was expanded and renumbered as Sections 20434 and Section 20435 by Chapter 379, Statutes of 1979 in order to address "contracting agency personnel

performing fire training" [Section 20435] separately from "officer or employee of fire department of contracting agency" [Section 20434].

Section 20434 provides that:

" "Local firefighter" also means any officer or employee of a fire department of a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service, but not excepting persons employed and qualifying as firefighters of equal or higher rank, irrespective of the duties to which they are assigned.

This section shall not apply to the employees of any contracting agency nor to any contracting agency until the agency elects to be subject to this section by amendment to its contract with the board, made pursuant to Section 20474 or by express provision in its contract with the board."

Section 20435 provides that:

"Local firefighter" means any officer or employee of a contracting agency performing a fire training function for a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, fire prevention, fire training, or fire investigation service even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, fire prevention, fire training, or fire investigation service, but not excepting persons employed and qualifying as firefighters or equal or higher rank, irrespective of the duties to which they are assigned."



## Increased Costs

The test claim legislation increased the County's costs. As explained by Dr. Constance Sullivan, Division Chief, Health, Safety & Disability Benefits Division, Department of Human Resources of the County of Los Angeles, in her attached declaration, [Exhibit A] page 2:

"... when a Labor Code Section 4850 is paid, the increased cost to the County is the difference between the 70% salary continuation benefits (Los Angeles County Code 6.20.070) and the 100% entitlement provided under Labor Code Section 4850."

"... the following is exemplary of increased costs incurred by the County in providing government employees new workers' compensation disability benefits pursuant to the test claim legislation: **For each day of work-related disability incurred by an employee newly entitled to Labor Code benefits, approximately \$1200.00 per month, additional, is to be paid to each such employee.**"

Dr. Sullivan also compiled a schedule of Labor Code Section 4850 claims made by County probation officers, probation personnel, safety officers, and lifeguards to further illustrate her declaration as follows:

"I. Numbers of lost-time workers' compensation claims made by employees who became eligible for LC4850 benefits in calendar year 2000 and by County Lifeguards previously eligible for LC4850.

Employee groups	1998	1999	2000
	Lost-time claims	Lost-time claims	Lost-time claims
Probation, Safety Police <sup>A</sup>	303	331	397 <sup>B</sup>
Lifeguards	49	50	56

<sup>A</sup>4850 covered employees became entitled to LC4850 benefits in 2000. This group includes members of the Probation Department and of the Office of Public Safety (Safety Police). In years 1998 and 1999, they received 70% salary continuation.

<sup>B</sup> 20% increase in lost time claims, but only a 3% increase in employee population.

- II. Average monthly salary for LC4850 covered Probation employees = \$4149.00.
- III. Average monthly salary for LC4850 covered Public Safety employees = \$3810.76.
- IV. Average monthly salary for County Lifeguards is \$5558.90."

#### Reimbursable Increased Costs

The Commission on State Mandates [Commission] has found similar types of new State-mandated benefit programs for local government employees to be reimbursable. For example, the Commission found the new benefit provided peace officers in Labor Code Section 3212.1 as amended by Chapter 1171, Statutes of 1989, to be reimbursable.

As noted by the Commission in their attached Statement of Decision [Exhibit L], on page 2, Section 3212.1 was amended by Chapter 1171, Statutes of 1989 to "... add cancer to the types of diseases/injuries which, when diagnosed in peace officers is presumed to be a job related illness for workers' compensation purposes".

The Commission further states, on page 2 of its decision, that the test claimant, the County of Sacramento, "... alleged that the provisions of this statute are identical to the current reimbursable state mandate, Chapter 1568, Statutes of 1982 ... which made cancer a presumed workers' compensation injury for firefighters."

The Commission agreed and found the new peace officer benefit to be reimbursable as well.

The Commission also explains, on page 5 of their decision, why the finding in County of Los Angeles v. State of California (1987) 43 Cal.3d 46, that "... providing workers' compensation benefits by local agencies is not subject to reimbursement as a state mandated program", is not applicable. Here, the Commission notes, on page 5, that:

"... the cancer presumption benefit extended to peace officers and firefighters is distinctive and is a reimbursable state mandated program because it requires local governments to implement a state

policy of providing an additional benefit to select employees that carry out the government function of providing public safety."

### Redirected Effort is Prohibited

When police officers, firefighters, sheriff's officers, and other personnel are granted leave of absence with salary in lieu of temporary disability or maintenance payments under Labor Code Section 4850 as set forth in the captioned test claim legislation, local governments' funds are redirected to pay for the State's program.

The State has not been allowed to circumvent restrictions on shifting its burden to localities by directing them to shift their efforts to comply with State mandates however noble they may be.

This prohibition of substituting the work agenda of the state for that of local government, without compensation, has been found by many in the California Constitution. On December 13, 1988, Elizabeth G. Hill, Legislative Analyst, Joint Legislative (California) Budget Committee wrote to Jesse Huff, Commission on State Mandates (Exhibit M) and indicated on page 6 that the State may not redirect local governments' effort to avoid reimbursement of local costs mandated by the State:

"Article XIII B, Section 6 of the State Constitution requires the state to reimburse local entities for new programs and higher levels of service. It does not require counties to reduce services in one area to pay for a higher level of service in another."

Therefore, reimbursement for the subject program is required as claimed herein.

### State Funding Disclaimers Are Not Applicable

There are seven disclaimers specified in GC Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in GC Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of GC Section 17556.

- (a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the

statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph."

- (a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.
- (b) "The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts."
- (b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.
- (c) "The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."
- (c) is not applicable as no federal law or regulation is implemented in the subject law.
- (d) "The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."
- (d) is not applicable because the subject law did not provide or include any authority to levy any service charges, fees, or assessments.
- (e) "The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue

that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.”

- (e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature.
- (f) “The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.”
- (f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.
- (g) “The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.”
- (g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction.

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the requirements set forth in the captioned test claim legislation as these disclaimers are all not applicable to the subject claim.

#### Costs Mandated by the State

The County has incurred costs in providing personnel, as specified above, with leave of absence with salary in lieu of temporary disability or maintenance payments under Labor Code Section 4850 and such costs are reimbursable "costs mandated by the State" under Section 6 of Article XIII B of the California Constitution and Section 17500 et seq of the Government Code.

The County's State mandated duties and resulting costs in implementing the subject law require the County to provide a new State-mandated program and thus incur reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" 'Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, 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."

Accordingly, for the County's costs to be reimbursable "costs mandated by the State", three requirements must be met:

1. There are "increased costs which a local agency is required to incur after July 1, 1980"; and
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975"; and
3. The costs are the result of "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".

All three of above requirements for finding cost mandated by the State are met herein.

First, local government is incurring increased Labor Code Section 4850 costs for specified personnel, detailed above, under the test claim legislation, currently, in 2001, and during recent years, as described in attached exhibits, well after July 1, 1980.

Second, the earliest statute to be included in the test claim legislation is Chapter 981, Statutes of 1977, enacted after January 1, 1975.

Third, Labor Code Section 4850 benefits for specified personnel, detailed above, under the test claim legislation, are new, not required under prior law. The County's has therefore, incurred costs as a result of implementing "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".

Therefore, reimbursement of the "costs mandated by the State" as claimed herein is required.



**COUNTY OF LOS ANGELES  
DEPARTMENT OF HUMAN RESOURCES**

579 KENNETH HAHN HALL OF ADMINISTRATION • LOS ANGELES, CALIFORNIA 90012  
(213) 974-2406 FAX (213) 621-0387

**MICHAEL J. HENRY**  
DIRECTOR OF PERSONNEL

ASSISTANT DIRECTORS  
TRAVIS J HOWLAND  
SUSAN TOY STERN

**County of Los Angeles Test Claim**

**Labor Code Section 4850, as Amended by Chapters 920, 929, Statutes of 2000;  
Chapters 224, 970, Statutes of 1999; Chapter 1464, Statutes of 1989; and,  
Chapter 981, Statutes of 1977: Workers' Compensation Disability Benefits for  
Government Employees**

**Declaration of Constance Sullivan, Dr.P.H.**

Dr. Constance Sullivan makes the following declaration and statement under oath:

I, Dr. Constance Sullivan, Division Chief, Health, Safety & Disability Benefits Division, Department of Human Resources of the County of Los Angeles, am responsible for implementing the subject law.

I declare that the County of Los Angeles has incurred new duties and incurred increased costs in providing government employees new workers' compensation disability benefits pursuant to the test claim legislation, captioned above.

I declare that Labor Code Section 4850 pertains to Police officers, firefighters, sheriff's officers, and other personnel; leave of absence with salary in lieu of temporary disability or maintenance payments and requires that:

"(a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier



date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3."

I declare that the County's activities are reasonably necessary in complying with the subject law, and cost the County of Los Angeles in excess of \$200 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I declare that when a Labor Code Section 4850 is paid, the increased cost to the County is the difference between the 70% salary continuation benefits (Los Angeles County Code 6.20.070) and the 100% entitlement provided under Labor Code Section 4850.

I declare that the following is exemplary of increased costs incurred by the County in providing government employees new workers' compensation disability benefits pursuant to the test claim legislation: For each day of work-related disability incurred by an employee newly entitled to Labor Code benefits, approximately \$1200.00 per month, additional, is to be paid to each such employee.

I declare that I have compiled the attached schedule of Labor Code Section 4850 claims made by County probation officers, probation personnel, safety officers, and lifeguards.

I declare that there appears to be an increase in workers' compensation claims being filed by government employees newly included under Labor Code Section 4850. As displayed in the attached document, approximately 20% more Labor Code 4850 claims were filed in the year after the benefit was extended to the newly included groups.

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the subject law require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, 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."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters, which are stated as information and belief, and as to those matters I believe them to be true.

6/27/2001 Los Angeles, California

Date and Place

Constance S Sullivan, DrPH

Signature

## Attachment

I. Numbers of lost-time workers' compensation claims made by employees who became eligible for LC4850 benefits in calendar year 2000 and by County Lifeguards previously eligible for LC4850.

Employee groups	1998 Lost-time claims	1999 Lost-time claims	2000 Lost-time claims
Probation, Safety Police <sup>A</sup>	303	331	397 <sup>B</sup>
Lifeguards	49	50	56

<sup>A</sup>4850 covered employees became entitled to LC4850 benefits in 2000. This group includes members of the Probation Department and of the Office of Public Safety (Safety Police). In years 1998 and 1999, they received 70% salary continuation.

<sup>B</sup> 20% increase in lost time claims, but only a 3% increase in employee population.

II. Average monthly salary for LC4850 covered Probation employees = \$4149.00.

III. Average monthly salary for LC4850 covered Public Safety employees = \$3810.76.

IV. Average monthly salary for County Lifeguards is \$5558.90.



RICHARD SHUMSKY  
Chief Probation Officer

# COUNTY OF LOS ANGELES PROBATION DEPARTMENT

9150 EAST IMPERIAL HIGHWAY, DOWNEY, CALIFORNIA 90242



## County of Los Angeles Test Claim

Labor Code Section 4850, as Amended by Chapters 920, 929, Statutes of 2000; Chapters 224, 970, Statutes of 1999; Chapter 1464, Statutes of 1989; and, Chapter 981, Statutes of 1977: Workers' Compensation Disability Benefits for Government Employees

## Declaration of William Mitchell

William Mitchell makes the following declaration and statement under oath:

I, William Mitchell, Administrative Deputy of the Los Angeles County Probation Department, am responsible for implementing the subject law.

I declare that the County of Los Angeles has incurred new duties and incurred increased costs in providing government employees new workers' compensation disability benefits pursuant to the test claim legislation, captioned above.

I declare that Labor Code Section 4850 pertains to Police officers, firefighters, sheriff's officers, probation officers and other personnel; leave of absence with salary in lieu of temporary disability or maintenance payments; and, requires that:

"(a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3."

I declare Chapter 970, Statutes of 1999 amended Labor Code Section 4850 to add the new requirement that "any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office", including Los Angeles County's Probation Department employees, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

I declare that the County incurred increased costs in complying with the new requirement that leave of absence with full salary be now provided to specified employees instead of less costly temporary disability or maintenance payments required under prior law.

I declare that the County has complied with the subject legislation and, as a consequence, incurred costs in excess of \$200 per annum; the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I have prepared the attached information on the subject program.

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the subject law require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, 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."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

6/21/01 -  
-----  
Date and Place

Will D. [Signature]  
-----  
Signature

## INDUSTRIAL ACCIDENT PEACE OFFICER PAYMENTS AFTER APPROVAL OF CLAIM

<u>Employee Number</u>	<u>Employee Name</u>	<u>Item No.</u>	<u>IA Start Date</u>	<u>IA Payments Thru 3/30/01</u>	<u>IA Payments Pre-4850 Cost</u>	<u>Difference</u>
		8655A	01/06/00	25,642	17,950	7,692
		8655A	02/18/00	34,224	23,957	10,267
		8655A	03/23/00	36,566	25,596	10,970
		8655A	04/20/00	37,468	26,228	11,240
	"	8618A	03/04/00	32,699	22,889	9,810
	"	8608A	02/28/00	32,368	22,657	9,711
	"	8618A	03/14/00	33,740	23,618	10,122
	"					
	"					
	"					
	"					
	"					

**CONFIDENTIAL**

# INDUSTRIAL ACCIDENT PEACE OFFICER EMPLOYEES

EMPLOYEE NUMBER	EMPLOYEE NAME	ITEM NUMBER	WORK LOC	IA START DATE
<b>CONFIDENTIAL</b>		8657A	38	7/19/00
		8609A	99	10/5/00
		8657A	38	12/25/00
	"	8657A	99	4/11/00
	"	8655A	38	2/3/01
	"	8618A	99	7/26/00
	"	8609A	58	1/18/01
	"	8609A	58	8/4/00
	"	8626A	99	6/7/00
	"	8655A	38	11/6/00
	"	8618A	99	3/4/00
	"	8655A	32	11/10/00
	"	8657A	32	2/15/01
		8655A	38	5/14/00
		8618A	99	7/30/00
		8618A	99	3/14/00
	8595A	33	2/3/01	
	8657A	40	8/2/00	

EMPLOYEE NUMBER	EMPLOYEE NAME	ITEM NUMBER	WORK LOC	IA START DATE
		8618A	40	3/5/01
		8610A	58	10/3/00
	<b>CONFIDENTIAL</b>	8607A	07	7/25/00
	"	8618A	99	6/5/00
	"	8618A	99	7/25/00
	"	8607A	06	4/4/00
	"	8608A	99	4/15/00
	"	8655A	38	9/18/00
	"	8626A	99	8/21/00
	"	8608A	99	11/28/00
	"	8618A	38	8/22/00
	"	8657A	40	8/24/00
	"	8657A	99	5/18/00
	"	8655A	38	1/26/01
		8610A	04	7/23/00
		8626A	86	7/13/00
		8607A	06	11/30/00
		8655A	40	6/23/00
		8607A	19	6/7/00



EMPLOYEE NUMBER	EMPLOYEE NAME	ITEM NUMBER	WORK LOC	IA START DATE
		8608A	55	3/10/01
		8626A	99	10/16/00
	<b>CONFIDENTIAL</b>	8655A	40	1/1/01
	"	8618A	51	10/4/00
	"	8618A	40	1/12/01
	"	8655A	40	12/17/00
	"	8618A	38	8/23/00
	"	8608A	65	11/13/00
	"	8618A	32	4/13/00
	"	8655A	40	10/20/00
	"	8655A	99	5/3/00
	"	8655A	38	2/18/00
	"	8655A	40	2/28/01
	"	8670A	27	6/22/00
		8655A	32	4/17/00
		8618A	38	8/13/00
		8655A	38	12/6/00
		8618A	40	8/27/00
		8626A	86	12/5/00

EMPLOYEE NUMBER	EMPLOYEE NAME	ITEM NUMBER	WORK LOC	IA START DATE
		8608A	99	11/13/00
		8655A	40	12/1/01
		8655A	99	8/5/00
		8655A	40	1/21/01
	"	8655A	38	5/10/00
	"	8655A	99	12/13/00
	"	8655A	38	1/31/01
	"	8626A	86	2/22/01
	"	8655A	40	12/30/00
	"	8655A	38	1/6/00
	"	8608A	55	1/1/01
	"	8655A	40	1/11/01
	"	8655A	32	12/11/00
	"	8618A	32	8/23/00
	"	8655A	40	1/9/01
		8655A	99	10/6/00
		8618A	40	10/7/00
		8655A	40	1/1/01
		8618A	38	8/14/00

**CONFIDENTIAL**

EMPLOYEE NUMBER	EMPLOYEE NAME	ITEM NUMBER	WORK LOC	IA START DATE
		8655A	99	5/9/00
		8655A	40	10/17/00
		8618A	38	9/30/00
	<b>CONFIDENTIAL</b>	8655A	38	10/3/00
	"	8655A	32	12/11/00
	"	8655A	40	4/16/00
	"	8655A	38	2/20/01
	"	8618A	32	6/13/00
	"	8655A	40	10/14/00
	"	8655A	40	2/4/01
	"	8608A	99	7/23/00
	"	8655A	40	1/5/01
	"	8607A	SQ	2/9/00
	"	8655A	99	12/7/00
	"	8608A	99	6/8/00
		8655A	99	8/31/00
		8655A	38	10/4/00
		8655A	99	3/23/00
		8655A	38	10/29/00

EMPLOYEE NUMBER	EMPLOYEE NAME	ITEM NUMBER	WORK LOC	IA START DATE
		8655A	99	10/21/00
		8655A	99	11/20/00
		8608A	99	9/8/00
		8655A	40	1/13/01
	"	8608A	99	2/28/00
	"	8655A	40	4/20/00
	"	8655A	40	6/24/00
	"	8608A	51	11/25/00
	"	8655A	38	11/12/00
	"	8655A	40	1/5/01
	"	8608A	61	9/11/00
	"	8655A	40	2/12/01
	"	8618A	40	11/27/00
	"	8655A	40	12/5/00
	"	8655A	40	2/12/01
	"	8618A	52	7/18/00
	"	8618A	40	12/17/00
	"	8655A	38	11/29/00
	"	8618A	38	1/2/01

**CONFIDENTIAL**

EMPLOYEE NUMBER	EMPLOYEE NAME	ITEM NUMBER	WORK LOC	IA START DATE
<b>CONFIDENTIAL</b>		8655A	40	3/12/01
		8655A	38	12/19/00
		8618A	40	1/25/01

ESTIMATED ANNUAL SALARY \$ 85,059

STATEMENT OF DUTIES FOR NEW AND ADDITIONAL POSITIONS

Department: Probation

Number of Positions: 1 Title Requested: APPROVED HEAD DEPT PERSONNEL  
Administrative Services Manager-II TCN

Item No. 1003 Sub A

Allocation of an additional position to: Existing Class X New Class \_\_\_\_\_

Allocation of a transferred position:

Transferred from: \_\_\_\_\_ Transferred to: \_\_\_\_\_  
Bureau-or-Branch/Div/Section/Unit Bureau-or-Branch/Div/Section/Unit

Organizational Assignment: (Attach organization chart (s))

Bureau/Branch: Administrative Services Bureau  
Division: Personnel Services Office  
Section/Unit: Return To Work Unit  
Title of Immediate Supervisor: Administrative Services Manager III

The additional position(s) is/are needed to: Provide administrative and technical supervision to subordinate staff engaged in workers compensation and early return to work activities. Currently, the department has no supervisor for its Return To Work Unit (RTW). Staff assigned to the unit consists of one Sr. Departmental Personnel Technician, two Departmental Personnel Technician positions and one Intermediate Typist Clerk to handle over 600 workers compensation cases. The department receives 60 new cases/claims a month; projected caseload for 2001 is 1,288 in addition to the current case workload. The department anticipates that number will grow even higher due to the fact that the department has approximately 4,800 safety positions and these employees when injured on the job receive 100% of their salary as opposed to 70%.

In addition to the above, the supervisor will be responsible for overseeing staff involved in preparing family leave and work restriction letters; handling Long Term Disability issues; and responding to LACERA requests for information.

We are requesting an Administrative Services Manager II position to supervise the RTW Unit not only because this level supervisor is comparable to our unit supervisors in our Personnel Services Office, it is also comparable to RTW Unit supervisors found in other county departments. For example, DPSS has a Human Services Administrator I at salary schedule 85A for its RTW Unit supervisor, Public Works has a Safety Officer II at salary schedule 84D, ISD has a Section Manager, Administration, ISD at salary schedule 95H, and the Fire Department has a Fiscal Officer II at salary schedule R10. The Sheriff's Department has a Sergeant supervising its Return To Work Unit.

The position will also be responsible for implementing on a department-wide basis, the department's Early Return To Work Program, which will have the effect of minimizing the department's growing workers compensation costs. The Program is specifically designed to address employees off work due to an occupational injury and whose physician has prescribed "light duty" for more than twelve (12) weeks. In conjunction with the Program, the position will be responsible for providing training and orientation to first-line supervisors and top-level managers, which is currently being done on an as needed basis due to workload demands.

Proposed Duties (List in order of importance):

Percent of Time

(Do not copy the duties from the class specification.)

Assigns, directs and reviews the work of subordinate staff engaged in processing workers compensation claims and other related activities. Supervises staff performing Early Return To Work duties and ensures consistent application of the Program's policies and procedures. 40%

Plans, schedules and coordinates the activities of the RTW Unit with those of the Early Return To Work Program and other affected units. Oversees the development of policies, procedures and forms and ensures an effective data-tracking system for the Early Return To Work Program. 20%

Plans and carries out the training and orientation of first-line supervisors for the department's Early Return To Work Program and instructs subordinate staff on how to provide such training. Trains subordinate staff, supervisors and managers regarding their responsibilities related to the Early RTW Program. 20%

Resolves problems related to workers compensation issues and the Early RTW Program. Evaluates employees work performance, providing feedback to enhance employee development. 10%

Monitors and audits the Early RTW Program for cost effectiveness and to ensure the department is meeting Program goals and objectives. Prepares reports to higher-level supervisors and management. 10%

ESTIMATED ANNUAL SALARY \$34,209

STATEMENT OF DUTIES FOR NEW AND ADDITIONAL POSITIONS

Department: Probation

Number of Positions: 1 Title Requested: APPROVED! INTERMEDIATE TYPIST CL  
Departmental Personnel Assistant

Item No. 1842 Sub A

Allocation of an additional position to: Existing Class X New Class \_\_\_\_\_

Allocation of a transferred position:

Transferred from: \_\_\_\_\_ Transferred to: \_\_\_\_\_  
Bureau-or-Branch/Div/Section/Unit Bureau-or-Branch/Div/Section/Unit

Organizational Assignment: (Attach organization chart (s))

Bureau/Branch: Administrative Services Bureau  
Division: Personnel Services Office  
Section/Unit: Return-To-Work Unit  
Title of Immediate Supervisor: Administrative Services Manager II

The additional position(s) is/are needed to: Provide clerical personnel support to technical staff engaged in the performance of Early Return To Work activities.

Proposed Duties (List in order of importance): Percent of Time  
(Do not copy the duties from the class specification.)

Provides clerical support to Early Return To Work Program personnel staff by scheduling first-line supervisors and managers for training and orientation; preparing notification letters, flyers and training schedules and packets; and maintaining the official Early RTW manual and logs of pending action requests. 40%

Responds to requests for information and Early RTW forms and assists the requestor in completing the forms; searches out and organizes Early RTW subject matter facts and information for letters and reports; and creates files on injured employees and maintains such files according to established system. 20%

Maintains records of temporary work assignments and reminds early RTW personnel staff and supervisor of when employees exceed the 12-week temporary modified/light-duty work assignment to not put the department in jeopardy of making the assignment a permanent one. 20%

Provides information to supervisors; explains Early RTW Program procedures; and provides clerical assistance to staff working on workers compensation cases by assisting with preparing case files, mailings and filing letters and documents received. 20%



Proposed Duties (List in order of importance):

(Do not copy the duties from the class specification.)

Percent of Time

Identifies appropriate light-duty assignments for employees released for temporary modified "light-duty" work assignments. Explains to the first-line supervisors their responsibility in monitoring employee compliance with work restrictions and the 12-week light-duty work assignment period. 40%

Provides orientation and training to first-line supervisors including instructions on how to complete and file appropriate forms. Provides information on the proper way to handle work related injuries. 30%

Assists in developing policies, procedures and forms that are Probation Department user friendly for the RTW Program. Assists in the development of an effective data-tracking system for the Early Return To Work Program. 10%

Telephones physicians, nurses, DHR RTW Technical staff and others for policy interpretations and to discuss problematic matters related to the Early Return To Work Program and workers compensation issues. 10%

Handles cases in which no accommodation can be made for the employee released for "light-duty" work assignment and assists staff in processing workers compensation cases. 10%

~~ESTIMATED~~  
ANNUAL SALARIES  
\$ 139,946

STATEMENT OF DUTIES FOR NEW AND ADDITIONAL POSITIONS

Department: Probation

Number of Positions: 2 Title Requested: Departmental Personnel Technician

Item No. 1848 Sub A

Allocation of an additional position to: Existing Class X New Class \_\_\_\_\_

Allocation of a transferred position:

Transferred from: \_\_\_\_\_ Transferred to: \_\_\_\_\_  
Bureau-or-Branch/Div/Section/Unit Bureau-or-Branch/Div/Section/Unit

Organizational Assignment: (Attach organization chart (s))

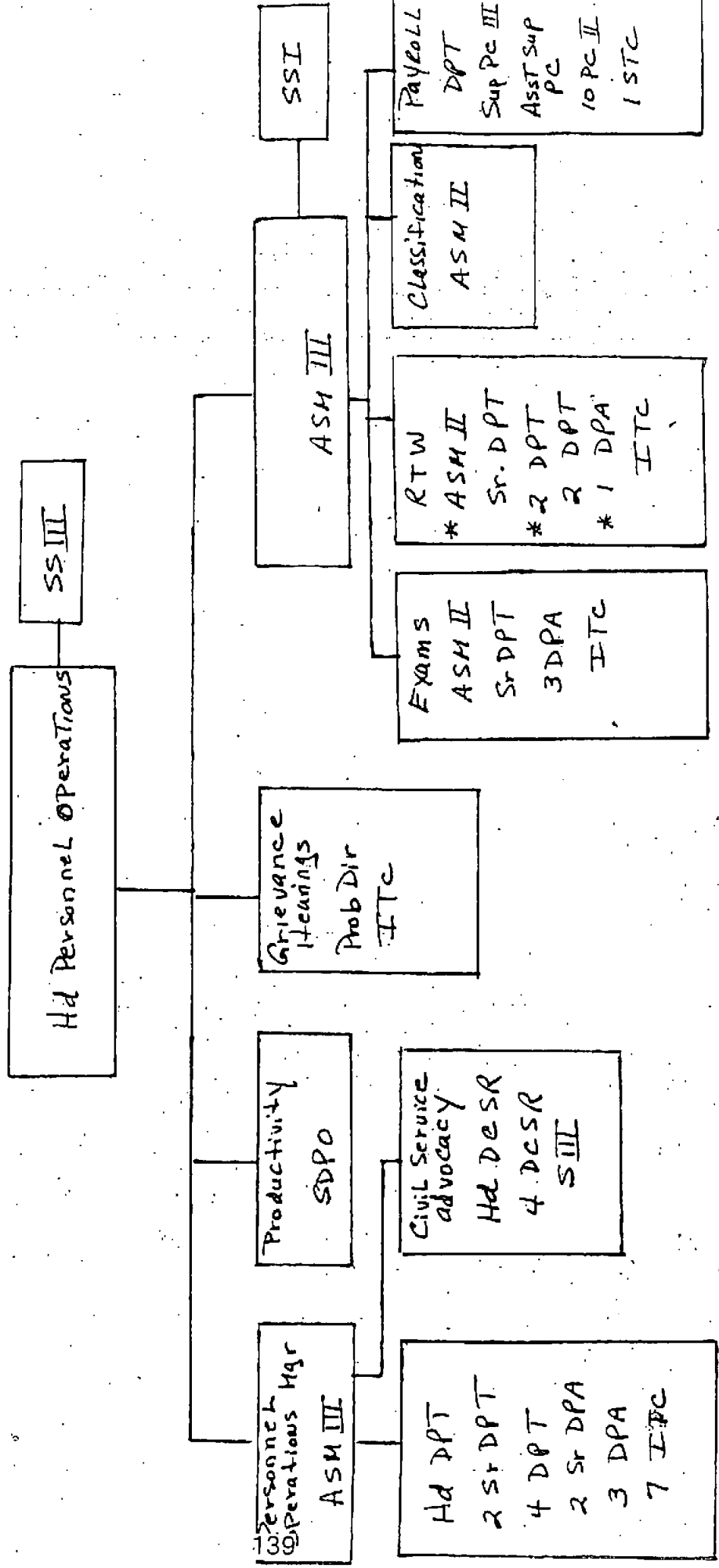
Bureau/Branch: Administrative Services Bureau  
Division: Personnel Services Office  
Section/Unit: Return-To-Work Unit  
Title of Immediate Supervisor: Administrative Services Manager II

The additional position(s) is/are needed to: Provide technical staff support in the implementation of the department's Early Return To Work Program in the RTW Unit. The Early Return To Work Program is specifically designed to address employees off work due to an occupational injury and whose physician has prescribed "light duty" for more than twelve (12) weeks. We are requesting the journey-level positions to work as part of a team with the injured employee, the supervisor, the department's Return-To-Work Coordinators, DHR RTW technical staff and the third party administrator. When not performing Early Return To Work duties, the positions will assist in processing the increased workers compensation claims workload.

The addition of the requested positions will result in a total of four Departmental Personnel Technician positions in the RTW Unit. This will enable the Sr. DPT to function more as a team leader to RTW Coordinators and to process the more difficult and complex workers compensation cases including cases being litigated, and/or cases involving multiple injuries or re-injured employees.

The positions must have good writing and oral communication skills to effectively communicate and consult with a variety of individuals including third party administrator staff, DHR technical RTW staff, doctors, nurses, attorneys, supervisors and managers and investigators. The positions must also be able to effectively explain and advise supervisors and others regarding the department's policies and procedures related to the Early Return To Work Program and contend with supervisors who are resistant to take back an employee who has been released for "light duty" work.

# PERSONNEL SERVICES OFFICE



\* Positions being requested

SAL RATE ==>> 3 MX 2001-02  
 SEL BOTH ==>> Y  
 SEL % RATES ==>> MF  
 FULL & STANDARD COST

15-May-01

PROBATION DEPARTMENT ----- MAIN

10:33 AM

FISCAL YEAR 2001-02

ITEM NO.	ITEM LETTER (CAPS)	TITLE OF POSITION	REP? (Y/N)	BENEFITS (H/F/C/860)	BUDGET POS	MONTH/ DAY/HOUR	MX 2001-02 SALARY RATE	ANNUAL SALARY
1850	A	Head Dept'l Personnel Technclan	N	F	1.0	12	5,602.09	67,225
TOTALS (W/O NO-COUNTS LETTER "F")					1.0	12		67,225
BUDGETED POSITIONS (INCLUDING NO-COUNTS)				1.0				
AUG FILLED SALARY - TOP STEP								
						<b>STANDARD COST</b>	<b>FULL COST</b>	
LESS: MAPP				7.4080%		0	0	0
LESS: SALARY SAVINGS/VACANCY @				6.5400%		4,397	4,397	4,397
TOTAL NET SALARIES						62,828		62,828
ADD: COUNTY RETIREMENT - PERM EMPL				4.4727%		2,810		2,810
CHOICES (\$ * ELIGIBLE MONTHS)				\$420.54		0		0
SAVINGS PLAN (RATE * NON REP ELIG SAL)				4.6051%		2,893		2,893
FLEXMEGAFLEX (NONREP SAL * RATE)				22.3813%		14,062		14,062
OASDI (RATE * TOTAL SALARIES)				0.8272%		394		394
OPTIONS (LOCAL 660) (\$ * ELIGIBLE MONTHS)				\$422.42		0		0
HORIZONS PLAN (RATE * TOTAL NET PERM SAL)				1.5716%		987		987
MISCELLANEOUS BENEFITS				1.2840%		807		807
PENSION SAVINGS PLAN				8.5110%		0		0
HEALTH SUBSIDY				0.1836%		115		115
DENTAL BUYDOWN				0.2601%		163		163
OVERTIME (ENTER \$ AMOUNT)				-				0
RET DEBT SVC & PENSION BOND-NET PERM				5.2346%				3,289
RETIREE INS -NET PERM				2.5237%				1,586
LONG-TERM DISABILITY-NET PERM				0.3798%				238
UNEMPLOYMENT INS-NET PERM				0.0063%				4
WORKERS COMPENSATION-NET PERM				2.5426%				1,597
SHIFT DIFFERENTIAL-NET PERM				0.0140%				9
TOTAL EMPLOYEE BENEFITS						22,231		28,954
TOTAL SALARIES AND EMPLOYEE BENEFITS						85,059		91,782
SERVICES AND SUPPLIES								
OTHER (FIXED ASSETS, CHARGES)								
GROSS TOTAL						85,059		91,782
INTRAFUND TRANSFER						0		0
						85,059		91,782
REVENUE						0		0
NET COUNTY COST						85,059		91,782

SAL RATE ==>> 3 MX 2001-02  
 SEL BOTH ==>> Y  
 SEL % RATES ==>> MF  
 FULL & STANDARD COST

15-May-01

PROBATION DEPARTMENT ----- MAIN

10:32 AM

FISCAL YEAR 2001-02

ITEM NO.	ITEM LETTER (CAPS)	TITLE OF POSITION	REP? (Y/N)	BENEFITS (H/F/C/660)	BUDGET POS	MONTH/ DAY/HOUR	MX 2001-02 SALARY RATE	ANNUAL SALARY
2214	A	Intermediate Typist-Clerk	Y	660	1.0	12	2,397.00	28,764
TOTALS (W/O NO-COUNTS LETTER 'F')					1.0	12		28,764
BUDGETED POSITIONS (INCLUDING NO-COUNTS)					1.0			
AUG FILLED SALARY - TOP STEP								
						STANDARD COST	FULL COST	
LESS: MAPP				7.4080%		0	0	0
LESS: SALARY SAVINGS/VACANCY @				6.5400%		1,881	1,881	1,881
TOTAL NET SALARIES						28,883	28,883	28,883
ADD: COUNTY RETIREMENT - PERM EMPL CHOICES (\$ * ELIGIBLE MONTHS)				4.4727%		1,202	1,202	1,202
SAVINGS PLAN (RATE * NON REP ELIG SAL)				\$420.54		0	0	0
FLEX/MEGAFLEX (NONREP SAL * RATE)				4.6061%		0	0	0
OASDI (RATE * TOTAL SALARIES)				22.3813%		0	0	0
OPTIONS (LOCAL 660) (\$ * ELIGIBLE MONTHS)				0.6272%		169	169	169
HORIZONS PLAN (RATE * TOTAL NET PERM SAL)				\$422.42		5,069	5,069	5,069
MISCELLANEOUS BENEFITS				1.5716%		422	422	422
PENSION SAVINGS PLAN				1.2840%		345	345	345
HEALTH SUBSIDY				8.5110%		0	0	0
DENTAL BUYDOWN				0.1838%		49	49	49
OVERTIME (ENTER \$ AMOUNT)				0.2601%		70	70	70
RET DEBT SVC & PENSION BOND-NET PERM				--		0	0	0
RETIREE INS -NET PERM				5.2346%		1,407	1,407	1,407
LONG-TERM DISABILITY-NET PERM				2.5237%		678	678	678
UNEMPLOYMENT INS-NET PERM				0.3798%		102	102	102
WORKERS COMPENSATION-NET PERM				0.0063%		2	2	2
SHIFT DIFFERENTIAL-NET PERM				2.5426%		684	684	684
				0.0140%		4	4	4
TOTAL EMPLOYEE BENEFITS						7,326	10,203	10,203
TOTAL SALARIES AND EMPLOYEE BENEFITS						34,209	\$37,086	\$37,086
SERVICES AND SUPPLIES								
OTHER (FIXED ASSETS, CHARGES)								
GROSS TOTAL						34,209	37,086	37,086
INTRAFUND TRANSFER						0	0	0
						34,209	37,086	37,086
REVENUE						0	0	0
NET COUNTY COST						34,209	37,086	37,086

SAL RATE ==>> 3 MX 2001-02  
 SEL BOTH ==>> Y  
 SEL % RATES ==>> MF  
 FULL & STANDARD COST

08-May-01

PROBATION DEPARTMENT --- MAIN  
 Return to Work - DPT  
 FISCAL YEAR 2001-02

11:32 AM

ITEM NO.	ITEM LETTER (CAPS)	TITLE OF POSITION	REP? (Y/N)	BENEFITS (H/F/C/B60)	BUDGET POS	MONTH/ DAY/HOUR	MX 2001-02 SALARY RATE	ANNUAL SALARY
1848	A	Dept'l Personnel Technician	N	F	2.0	24	4,509.64	108,231
TOTALS (W/O NO-COUNTS LETTER "F")					2.0	24		108,231
BUDGETED POSITIONS (INCLUDING NO-COUNTS)					2.0			
AUG FILLED SALARY - TOP STEP								
							<b>STANDARD COST</b>	<b>FULL COST</b>
LESS: MAPP							0	0
LESS: SALARY SAVINGS/VACANCY @							7,078	7,078
TOTAL NET SALARIES							101,153	101,153
ADD: COUNTY RETIREMENT - PERM EMPL							4,524	4,524
CHOICES (\$ * ELIGIBLE MONTHS)							0	0
SAVINGS PLAN (RATE * NON REP ELIG SAL)							4,858	4,858
FLEX/MEGAFLEX (NONREP SAL * RATE)							22,639	22,639
OASDI (RATE * TOTAL SALARIES)							634	634
OPTIONS (LOCAL 680) (\$ * ELIGIBLE MONTHS)							0	0
HORIZONS PLAN (RATE * TOTAL NET PERM SAL)							1,590	1,590
MISCELLANEOUS BENEFITS							1,299	1,299
PENSION SAVINGS PLAN							0	0
HEALTH SUBSIDY							186	186
DENTAL BUYDOWN							263	263
OVERTIME (ENTER \$ AMOUNT)							0	0
RET DEBT SVC & PENSION BOND-NET PERM							5,295	5,295
RETIREE INS -NET PERM							2,553	2,553
LONG-TERM DISABILITY-NET PERM							384	384
UNEMPLOYMENT INS-NET PERM							6	6
WORKERS COMPENSATION-NET PERM							2,572	2,572
SHIFT DIFFERENTIAL-NET PERM							14	14
TOTAL EMPLOYEE BENEFITS							35,793	46,617
TOTAL SALARIES AND EMPLOYEE BENEFITS							136,946	\$147,770
SERVICES AND SUPPLIES								
OTHER (FIXED ASSETS, CHARGES)								
GROSS TOTAL							136,946	147,770
INTRAFUND TRANSFER							0	0
							136,946	147,770
REVENUE							0	0
NET COUNTY COST							136,946	147,770



service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3."

I declare Chapter 981, Statutes of 1977 amended Labor Code Section 4850 to add the new requirement that a "lifeguard employed year round on a regular, full-time basis by a county of the first class", including Los Angeles County's lifeguards, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

I declare that the County incurred increased costs in complying with the new requirement that leave of absence with full salary be now provided specified employees instead of less costly temporary disability or maintenance payments required under prior law.

I declare that the County has complied with the subject legislation and, as a consequence, incurred costs in excess of \$200 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I have prepared the attached information on the subject program.

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the subject law require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State," as defined in Government Code section 17514:

" 'Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, 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."



I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

6-21-01 Los Angeles, California  
-----  
Date and Place

  
-----  
Signature

**LOS ANGELES COUNTY FIRE DEPARTMENT  
ESTIMATED SALARY OF TIMECODE 4850  
FROM 7/1/99 TO 12/31/00**

CLAIM  PERIOD	TOTAL OF PERM/SAFETY LIFEGUARD EMPLOYEE		BLENDED ANNUAL SALARY	PRODUCTIVITY		CLAIM		TOTAL SALARY COST
	NUMBER  (FROM MASTER LABOR LIST)	ANNUAL SALARY		WORK- HOURS	HOURLY RATE	DAYS	HOURS	
7/1/99 - 12/31/99	121	\$7,203,615.24	\$59,534.01	1762	\$33.79	421	3368	\$113,797.13
1/1/00 - 12/31/00	123	\$7,566,214.20	\$61,513.94	1763	\$34.89	1993	15944	\$556,312.08
<b>TOTAL OF ESTIMATED SALARY COST</b>								<b>\$670,109.22</b>

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be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3."

I declare Chapter 270, Statutes of 1999 amended Labor Code Section 4850 to add the new requirement that "any peace officer under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class", including Los Angeles County's public safety officers, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

I declare that the County incurred increased costs in complying with the new requirement that leave of absence with full salary be now provided specified employees instead of less costly temporary disability or maintenance payments required under prior law.

I declare that the County has complied with the subject legislation and, as a consequence, incurred costs in excess of \$200 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the subject law require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

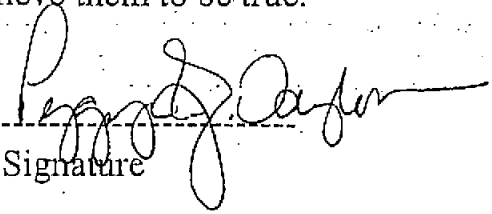
" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates 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."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

June 20, 2001, Downey, California

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Date and Place

  
-----  
Signature

COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER



J. TYLER MCCAULEY  
AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

County of Los Angeles Test Claim  
Labor Code Section 4850, as Amended by Chapters 920, 929, Statutes of  
2000; Chapters 224, 970, Statutes of 1999; Chapter 1464, Statutes of 1989;  
and, Chapter 981, Statutes of 1977: Workers' Compensation Disability  
Benefits for Government Employees

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's & G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, 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."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

6/25/01, Los Angeles, CA  
Date and Place

*Carl Kaye*  
Signature

CHAPTER 920

(Assembly Bill No. 1883)

An act to amend Sections 4850 and 4850.3 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 29, 2000. Filed with the Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1883, Lowenthal. Workers' compensation: disability benefits for airport law enforcement officers and harbor and port police.

Existing workers' compensation law provides that certain peace officers, firefighters, and other specified state and local public employees are entitled to a leave of absence without loss of salary while disabled by injury or illness arising out of and in the course of employment. This leave of absence is in lieu of temporary disability payments or maintenance allowance payments otherwise payable.

This bill would extend this provision to specified airport law enforcement officers, harbor and port police officers, wardens, and special officers.

This bill would incorporate additional changes in Section 4850 of the Labor Code proposed by AB 1124 and SB 2081, to become operative only if those bills are enacted, as specified, and become operative on or before January 1, 2001, and this bill is enacted last.

*The people of the State of California do enact as follows:*

SECTION 1.5. Section 4850 of the Labor Code is amended to read:

§ 4850. (a) Whenever *any person listed in subdivision (b)* who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the *city, county, or district*, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) *The persons eligible under subdivision (a) include all of the following:*

- (1) *City police officers.*
- (2) *City, county, or district firefighters.*
- (3) *Sheriffs.*
- (4) *Officers or employees of any sheriff's offices.*
- (5) *Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.*

\*\*\*

- (6) *County probation officers, group counselors, or juvenile services officers.*
- (7) *Officers or employees of a probation office.*

*Italics indicate changes or additions. \* \* \* indicate omissions.*

\*\*\*

(8) *Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.*

(9) *Lifeguards employed year round on a regular, full-time basis by a county of the first class.*

(10) *Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.*

(11) *Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.*

(12) *Police officers of the Los Angeles Unified School District.*

(c) This section shall apply only to *persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:*

(1) *Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service \*\*\**

(2) *Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.*

(3) *Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.*

(4) *Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active fire fighting and prevention service.*

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 2. Section 4850.3 of the Labor Code is amended to read:

§ 4850.3. A city, county, special district, or harbor district *that* is a member of the Public Employees' Retirement System, *is* subject to the County Employees Retirement Law of 1937, *or is subject to the Los Angeles City Employees' Retirement System*, may make advanced disability pension payments to any local safety officer who has qualified for benefits under Section 4850 and is approved for a disability allowance. The payments shall be no less than 50 percent of the estimated highest average annual compensation earnable by the local safety officer during the three consecutive years of employment immediately preceding the effective date of his or her disability retirement, unless the local safety officer chooses an optional settlement in the permanent disability retirement application process which would reduce the pension allowance below 50 percent. In the case where the local safety officer's choice lowers the disability pension allowance below 50 percent of average annual compensation as calculated, the advanced pension payments shall be set at an amount equal to the disability pension allowance. If a local agency has an adopted policy of paying for any accumulated sick leave after the safety officer is eligible for a disability allowance, the advanced disability pension payments under this section may only be made when the local safety officer has exhausted all sick leave payments. Advanced disability pension payments shall not be considered a salary under

*Italics indicate changes of additions; \* \* \* indicate omissions.*

this or any other provision of law. All advanced disability pension payments made by a local agency, with membership in the Public Employees' Retirement System shall be reimbursed by the Public Employees' Retirement System pursuant to Section 21293.1 of the Government Code.

SEC. 3. Section 1.3 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by both this bill and AB 1124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) SB 2081 does not amend Section 4850 of the Labor Code, (3) each bill amends Section 4850 of the Labor Code, and (4) this bill is enacted after AB 1124, in which case Sections 1, 1.5, and 1.7 of this bill shall not become operative:

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by this bill and SB 2081. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) AB 1124 does not amend Section 4850 of the Labor Code, (3) each bill amends Section 4850 of the Labor Code, and (4) this bill is enacted after SB 2081, in which case Sections 1, 1.3, and 1.7 of this bill shall not become operative.

SEC. 5. Section 1.7 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by this bill, AB 1124, and SB 2081. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 4850 of the Labor Code, and (3) this bill is enacted after AB 1124 and SB 2081, in which case Sections 1, 1.3, and 1.5 of this bill shall not become operative.

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*Italics* indicate changes or additions. \* \* \* indicate omissions.



CHAPTER 929

(Senate Bill No. 2081)

An act to amend Section 4850 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2081, Alarcon. Workers' compensation: disability benefits.

Existing workers' compensation law provides that certain peace officers, firefighters, and other specified state and local public employees are entitled to a leave of absence without loss of salary while disabled by injury or illness arising out of and in the course of employment. This leave of absence is in lieu of temporary disability payments or maintenance allowance payments otherwise payable.

This bill would extend this provision to peace officers of the Los Angeles Unified School District.

This bill would incorporate additional changes in Section 4850 of the Labor Code proposed by AB 1124 and AB 1883, to become operative only if those bills are enacted, as specified, and become operative on or before January 1, 2001, and this bill is enacted last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 4850 of the Labor Code is amended to read:

§ 4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

- (1) City police officers.
- (2) City, county, or district firefighters.
- (3) Sheriffs.
- (4) Officers or employees of any sheriff's offices.
- (5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.
- (6) County probation officers, group counselors, or juvenile services officers.
- (7) Officers or employees of a probation office.
- (8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

*Italics indicate changes or additions. \* \* \* indicate omissions.*

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 2. Section 4850 of the Labor Code is amended to read:

§ 4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

*Italics indicate changes or additions; \* \* \* indicate omissions.*

(9) Lifeguards employed year-round on a regular, full-time basis by a county of the first class.

(10) Custody assistants employed on a regular, full-time basis by a county of the first class.

(11) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 3. Section 4850 of the Labor Code is amended to read:

§ 4850. (a) Whenever any *person listed in subdivision (b)* who is a member of the Public Employees' Retirement System or *the Los Angeles City Employees' Retirement System* or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, *or district*, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) *The persons eligible under subdivision (a) include all of the following:*

(1) *City and police officers.*

(2) *City, county, or district firefighters.*

(3) *Sheriffs.*

(4) *Officers or employees of any sheriff's offices.*

(5) *Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.*

(6) *County probation officers, group counselors, or juvenile services officers.*

(7) *Officers or employees of a probation office.*

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*Italics indicate changes or additions. \* \* \* indicate omissions.*

(8) *Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.*

(9) *Lifeguards employed year round on a regular, full-time basis by a county of the first class.*

(10) *Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.*

(11) *Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.*

(12) *Police officers of the Los Angeles Unified School District.*

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) *Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.*

(2) *Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.*

(3) *Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. \*\*\**

(4) *Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.*

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 4. Section 4850 of the Labor Code is amended to read:

§ 4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Custody assistants employed on a regular, full-time basis by a county of the first class.

(11) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.

(12) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.

(13) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 5. Section 2 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by both this bill and AB 1124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) AB 1883 does not amend Section 4850 of the Labor Code, (3) each bill amends Section 4850 of the Labor Code, and (4) this bill is enacted after AB 1124, in which case Sections 1, 3, and 4 of this bill shall not become operative.

SEC. 6. Section 3 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by this bill and AB 1883. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) AB 1124 does not amend Section 4850 of the Labor Code, (3) each bill amends Section 4850 of the Labor Code, and (4) this bill is enacted after AB 1883, in which case Sections 1, 2, and 4 of this bill shall not become operative.

*Italics indicate changes or additions. \* \* \* indicate omissions.*

SEC. 7. Section 4 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by this bill, AB 1124, and AB 1883. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 4850 of the Labor Code, and (3) this bill is enacted after AB 1124 and AB 1883, in which case Sections 1, 2, and 3 of this bill shall not become operative.

Section 4850 of the Labor Code shall be amended to read:

Section 4850 of the Labor Code shall be amended to read:

Section 4850 of the Labor Code shall be amended to read:

*Italics* indicate changes or additions. \* \* \* indicate omissions.

CHAPTER 224

(Assembly Bill No. 787)

An act to amend Sections 15275 and 15278 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 23, 1999. Filed with Secretary of State August 24, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 787, Dickerson. Commercial vehicles: driver's license endorsements: exemption.

Existing law generally requires the driver of a commercial vehicle to obtain a driver's license endorsement issued by the Department of Motor Vehicles.

This bill would exempt a driver issued a restricted firefighter's license and driving a vehicle operated for the purpose of hauling compressed air tanks for breathing apparatus that do not exceed 2,500 pounds from that endorsement requirement.

*The people of the State of California do enact as follows:*

SECTION 1. Section 15275 of the Vehicle Code is amended to read:

§ 15275. (a) No person may operate a commercial motor vehicle described in this chapter unless that person has in his or her possession a valid commercial driver's license for the appropriate class, and an endorsement issued by the department to permit the operation of the vehicle *unless exempt from the requirement to obtain an endorsement pursuant to subdivision (b) of Section 15278.*

(b) An endorsement to drive vehicles specified in this article shall be issued only to applicants qualified by examinations prescribed by the department and that meet the minimum standards established in Part 383 of Title 49 of the Code of Federal Regulations.

(c) The department may deny, suspend, revoke, or cancel an endorsement to drive vehicles specified in this article when the applicant does not meet the qualifications for the issuance or retention of the endorsement.

SEC. 2. Section 15278 of the Vehicle Code is amended to read:

§ 15278. (a) A driver is required to obtain an endorsement issued by the department to operate any commercial motor vehicle *that* is any of the following:

(1) A double trailer.

(2) A passenger transportation vehicle, which includes, but is not limited to, a bus, farm labor vehicle, or general public paratransit vehicle when designed, used, or maintained to carry more than 10 persons including the driver.

(3) A tank vehicle.

(4) A vehicle carrying hazardous materials *that* is required to display placards or markings pursuant to Section 27903 or *that* is hauling hazardous waste, as defined in Sections 25115 and 25117 of the Health and Safety Code, unless the driver is exempt from the endorsement requirement as provided in subdivision (b). This paragraph does not apply to either of the following:

(A) Any person operating an implement of husbandry who is not required to obtain a driver's license under this code.

(B) Any person operating a vehicle transporting asphalt or coal tar pitch at a temperature that requires the display of a marking on the vehicle pursuant to Section

*Italics indicate changes or additions. \* \* \* indicate omissions.*

27903 and that is described and classified by the United States Department of Transportation as "elevated temperature liquid n.o.s. Division 9."

(b) This section does not apply to any person exempted pursuant to Section 25163 of the Health and Safety Code, to any person operating a vehicle in an emergency situation at the direction of a peace officer pursuant to Section 2800, *or to a driver issued a restricted firefighter's license and driving a vehicle operated for the purpose of hauling compressed air tanks for breathing apparatus that do not exceed 2,500 pounds.*

EXPLANATORY NOTES ASSEMBLY BILL 787:

Veh C § 15275. Added "unless exempt from the requirement to obtain an endorsement pursuant to subdivision (b) of Section 15278" at the end of subd (a).

Veh C § 15278. In addition to making technical changes, added "*, or to a driver issued a restricted firefighter's license and driving a vehicle operated for the purpose of hauling compressed air tanks for breathing apparatus that do not exceed 2,500 pounds*" in subd (b).



## CHAPTER 970

(Assembly Bill No. 1387)

An act to amend Sections 4850 and 4850.5 of the Labor Code, relating to public employee disability.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

## LEGISLATIVE COUNSEL'S DIGEST

AB 1387, Florez. Public employee disability benefits.

(1) Under existing law, certain peace officers and other specified public employees are entitled to a leave of absence without loss of salary while disabled by injury or illness arising out of and in the course of their duties.

This bill would extend that provision to specified employees of a probation office.

(2) This bill would incorporate additional changes in Section 4850 of the Labor Code proposed by AB 224, to be operative if AB 224 and this bill are both enacted and become effective on or before January 1, 2000, and this bill is enacted last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 4850 of the Labor Code is amended to read:

§ 4850. (a) Whenever any city police officer, city, county, or district firefighter, sheriff or any officer or employee of a sheriff's office, any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office, or lifeguard employed year round on a regular, full-time basis by a county of the first class, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city or county, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) This section shall apply only to city police officers, sheriffs or any officer or employee of a sheriff's office, and any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, or any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office, who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service, and excludes employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer,

*Italics indicate changes or additions. [6] \* \* \* indicate omissions.*

machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. It also excludes employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. It shall also apply to city, county, or district firefighters who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), and excludes employees of the city fire department, county fire department, and of any fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service. It shall also apply to deputy sheriffs subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). It shall also apply to probation officers, group counselors, juvenile services officers, or any officer or employee of a probation office, subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). It shall also apply to lifeguards employed year round on a regular, full-time basis by counties of the first class who are subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).

(c) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(d) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

SEC. 1.5. Section 4850 of the Labor Code is amended to read:

§ 4850. (a) Whenever any city *police officer*, city, county, or district firefighter, sheriff or any officer or employee of a sheriff's office, any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, *any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office, any peace officer under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class*, or lifeguard employed year round on a regular, full-time basis by a county of the first class, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city or county, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until *that* earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) This section shall apply only to city *police officers*, sheriffs or any officer or employee of a sheriff's office, and any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, *or any county probation officer, group counselor, or juvenile services officer or any officer, or employee of a probation office*,

*Italics indicate changes or additions. \* \* \* indicate omissions.*

who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service, and excludes employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. *It also excludes employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.* It shall also apply to city, county, or district firefighters who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of the city fire department, county fire department, and of any fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service. It shall also apply to deputy sheriffs, *and to peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class, who are* subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). *It shall also apply to probation officers, group counselors, juvenile service officers, or any officer or employee of a probation office, subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).* It shall also apply to lifeguards employed year round on a regular, full-time basis by a county of the first class who are subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).

(c) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(d) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

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SEC. 2. Section 4850.5 of the Labor Code is amended to read:

§ 4850.5. Any firefighter employed by the County of San Luis Obispo, and the sheriff or any officer or employee of the sheriff's office of the County of San Luis Obispo, *and any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office, employed by the County of San Luis Obispo,* shall, upon the adoption of a resolution of the board of supervisors so declaring, be entitled to the benefits of this article, if otherwise entitled to these benefits, even though the employee is not a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).

SEC. 3. The Legislature finds and declares with respect to Section 1.5 of this act that a special law is necessary and that a general law cannot be made applicable within the

*Italics* indicate changes or additions | 63 | \* indicate omissions.

meaning of Section 16 of Article IV of the California Constitution because the work of peace officers under Section 830.31 of the Penal Code who are employed on a regular full-time basis by a county of the first class require the disability benefits of Section 4850 of the Labor Code.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by both this bill and AB 224. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 4850 of the Labor Code, and (3) this bill is enacted after AB 224, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 3 of this act shall only become operative if Section 1.5 of this act becomes operative.

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*Italics* indicate changes or additions. \* \* \* indicate omissions.

Accounting Manual published by the State Department of Education.

(g) The statewide average of the percentage of school district budgets allocated for the salaries of teachers for the appropriate size and type of district for the most recent fiscal year, provided by the Superintendent of Public Instruction, pursuant to subdivision (a) of Section 41409.

(h) The percentage allocated under the district's corresponding fiscal budget for the salaries of teachers, as defined in Section 1100 of the California School Accounting Manual published by the State Department of Education.

SEC. 4. The sum of fifty thousand dollars (\$50,000) is hereby appropriated from the General Fund to the Legislative Analyst for the purpose of conducting or contracting for the study for the reporting and monitoring of the allocation of school district resources required by Section 41408 of the Education Code.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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## CHAPTER 1464

An act to amend Sections 20021, 20100.2, 20607, and 21293.1 of, to add Sections 20021.01, 20022.01, 20450.1, and 20938.1 to, and to add and repeal Section 21252.023 of, the Government Code, and to amend Sections 4850 and 4850.3 of the Labor Code, relating to the Public Employees' Retirement System, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989. Filed with  
Secretary of State October 2, 1989.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 20021 of the Government Code is amended to read:

20021. "Local firefighter" means any officer or employee of a fire department of a contracting agency, except one whose principal

duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, or active firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials, active firefighting and fire or arson investigation, or active firefighting and emergency medical services, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, or active firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials, active firefighting and fire or arson investigation, or active firefighting and emergency medical services, but not excepting persons employed and qualifying as firefighters of equal or higher rank, irrespective of the duties to which they are assigned.

SEC. 2. Section 20021.01 is added to the Government Code, to read:

20021.01. "Local firefighter" also means any officer or employee of a fire department of a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service, but not excepting persons employed and qualifying as firefighters of equal or higher rank, irrespective of the duties to which they are assigned.

This section shall not apply to the employees of any contracting agency nor to any contracting agency unless and until the contracting agency elects to be subject to this section by amendment to its contract with the board, made pursuant to Section 20461.5 or by express provision in its contract with the board.

SEC. 3. Section 20022.01 is added to the Government Code, to read:

20022.01. A contracting agency may report an amount for each member that is equal to a uniformly applied percentage of salary in lieu of computing and reporting under subdivision (a) of Section 20022 the actual compensation attributable to each individual member if the contracting agency has agreed in a memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 that the aggregate amount to be reported by the contracting agency for all members within a membership classification bears a reasonable relation to the aggregate amount that would otherwise be required to be reported pursuant to Section 20022.

SEC. 4. Section 20100.2 of the Government Code is amended to

read:

20100.2. Each employing agency which employs an elected member of the board and which employs a person to replace the member during attendance at meetings of the board, or meetings of committees or subcommittees of the board, or when serving as a panel member of the system, thereof, or when carrying out other powers or duties as may be approved by the board, shall be reimbursed from the Public Employees' Retirement Fund for the costs incurred by employing a replacement, not to exceed 25 percent of the member's total annual compensation.

SEC. 5. Section 20450.1 is added to the Government Code, to read:

20450.1. The board may refuse to contract with, or to agree to an amendment proposed by, any public agency for any benefit provisions which are not specifically authorized by this part and which the board determines would adversely affect the administration of the system.

SEC. 6. Section 20607 of the Government Code is amended to read:

20607. (a) The normal rate of contribution for state peace officer/firefighter members and for local safety members subject to Section 21252.02 shall be 8 percent of the compensation in excess of two hundred thirty-eight dollars (\$238) per month paid those members.

(b) This subdivision shall apply only to a city with a population in excess of 300,000 in a county of the eighth class, as defined by Sections 28020 and 28029, as amended by Chapter 1204 of the Statutes of 1971, which, prior to June 30, 1991, amends its contract to provide for the transfer of all or part of the safety members of an existing local retirement system to this system. Subdivision (a) shall not apply to a contracting agency which so elects by amendment to its contract made in the manner prescribed for approval of contracts by express provision in the contract. If the election is so made, the normal rate of contribution for local safety members of that contracting agency subject to Section 21252.02 shall, notwithstanding Section 20605.55, be 9 percent of compensation paid those members.

(c) Notwithstanding any other provision of this part, state member contributions on premium compensation for planned overtime paid at the "half-time" rate as part of the regular shift under the federal Fair Labor Standards Act (29 U.S.C. Sec. 201 et seq.) or the Memorandum of Understanding of State Bargaining Unit 8 are waived for the period April 15, 1985, through June 30, 1988.

This subdivision applies to State Bargaining Unit 8 and becomes effective only if the board approves a waiver of employer contributions on the same premium compensation for the same period of time. If this subdivision is approved by the board, benefits shall be calculated to include overtime paid at the one-half time rate.

SEC. 7. Section 20938.1 is added to the Government Code, to read:

20938.1. This section shall apply only to a city with a population in excess of 300,000 in a county of the eighth class, as defined by Sections 28020 and 28029, as amended by Chapter 1204 of the Statutes of 1971, which, prior to June 30, 1991, amends its contract to provide for the transfer of all or part of the safety members of an existing local retirement system to this system. Only those transferred members who had less than 11 years of service credit on the date of transfer shall be entitled under Section 20938 to cancel prospectively an election to receive credit for service.

SEC. 8. Section 21252.023 is added to the Government Code, to read:

21252.023. (a) Notwithstanding any other provision of law, a city with a population in excess of 300,000 in a county of the eighth class, as defined by Sections 28020 and 28029, as amended by Chapter 1204 of the Statutes of 1971, may simultaneously:

(1) Provide benefits pursuant to Section 21230 to members retiring after the effective date of the contract amendment who are transferred from the local system to this system on that date.

(2) Provide the benefit formula specified in Section 21252.02 for local safety members who become local safety members after the effective date of the contract amendment.

(b) This section shall remain in effect only until June 30, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1991, deletes or extends that date.

SEC. 9. Section 21293.1 of the Government Code is amended to read:

21293.1. The Public Employees' Retirement System shall deduct the amount of advanced disability pension payments made to a local safety member pursuant to Section 4850.3 of the Labor Code from the member's retroactive disability allowance, and reimburse the local agency which has made the advanced disability pension payments. If the retroactive disability allowance is not sufficient to reimburse the total advanced disability pension payments, an amount no greater than 10 percent of the member's monthly disability allowance shall be deducted and reimbursed to the local agency until the total advanced disability pension payments have been repaid. The local safety member and the Public Employees' Retirement System may agree to any other arrangement or schedule for the member to repay the advanced disability pension payments.

SEC. 10. Section 4850 of the Labor Code, as amended by Section 5.5 of Chapter 114 of the Statutes of 1984, is amended to read:

4850. Whenever any city policeman, city, county, or district firefighter, sheriff or any officer or employee of a sheriff's office, any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, or lifeguard employed year round on a regular, full-time basis by a county of the first class, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3



of the Government Code) is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city or county, to leave of absence while so disabled without loss of salary in lieu of temporary disability payments, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until such earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3. This section shall apply only to city policemen, sheriffs or any officer or employee of a sheriff's office, and any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service, and excludes employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. It shall also apply to city, county, or district firefighters who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of the city fire department, county fire department, and of any fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service. It shall also apply to deputy sheriffs subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). It shall also apply to lifeguards employed year round on a regular, full-time basis by counties of the first class who are subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

This section shall become operative on January 1, 1990.

SEC. 11. Section 4850.3 of the Labor Code is amended to read:  
4850.3. A city, county, special district, or harbor district which is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 may make advanced

disability pension payments to any local safety officer who has qualified for benefits under Section 4850 and is approved for a disability allowance. The payments shall be no less than 50 percent of the estimated highest average annual compensation earnable by the local safety officer during the three consecutive years of employment immediately preceding the effective date of his or her disability retirement, unless the local safety officer chooses an optional settlement in the permanent disability retirement application process which would reduce the pension allowance below 50 percent. In the case where the local safety officer's choice lowers the disability pension allowance below 50 percent of average annual compensation as calculated, the advanced pension payments shall be set at an amount equal to the disability pension allowance. If a local agency has an adopted policy of paying for any accumulated sick leave after the safety officer is eligible for a disability allowance, the advanced disability pension payments under this section may only be made when the local safety officer has exhausted all sick leave payments. Advanced disability pension payments shall not be considered a salary under this or any other provision of law. All advanced disability pension payments made by a local agency with membership in the Public Employees' Retirement System shall be reimbursed by the Public Employees' Retirement System pursuant to Section 21293.1 of the Government Code.

SEC. 12. The Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution due to the unique circumstances concerning the retirement programs of the City of Sacramento.

SEC. 13. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that Sections 1, 2, 3, 4, 9, 10, and 11 of this act contain costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of Sections 1, 2, 3, 4, 9, 10, and 11 of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 14. No reimbursement is required by Sections 5, 6, 7, 8, and 12 of this act pursuant to Section 6 of Article XIII B of the California Constitution because Sections 5, 6, 7, 8, and 12 of this act are in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in Sections 5, 6, 7, 8, and 12 of this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of Sections 5, 6, 7, 8, and 12 of this act shall become operative on the same date that the act takes effect pursuant to the

California Constitution.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that unintended potential consequences and confusion resulting from a recent revision of the definition of "local safety members" in the Public Employees' Retirement System may be remedied at the earliest possible time, that needed reimbursement may be made to all employers of members of the Board of Administration at the earliest possible time, and that an amendment to the contract of the City of Sacramento may be effective, and members may be transferred from its local retirement system to the Public Employees' Retirement System, prior to the date upon which gross pension allowance limits established by the Internal Revenue Code become applicable, it is necessary that this act take effect immediately.

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#### CHAPTER 1465

An act to amend Section 1861.02 of, to add Chapter 13 (commencing with Section 679.80) to Part 1 of Division 1 of, and Section 1861.025 to, the Insurance Code, to amend Sections 1808.7, 1816, and 23140 of the Vehicle Code, and to add Section 784 to the Welfare and Institutions Code, to amend Sections 16028, 16029, 16030, 16031, 16032, 16033, 16034, and 16035 of, and to amend and repeal Section 16028.4 of, the Vehicle Code, relating to insurance.

[Approved by Governor October 2, 1989. Filed with  
Secretary of State October 2, 1989.]

*The people of the State of California do enact as follows:*

SEC. 1.3. Section 1861.02 of the Insurance Code, as added by Proposition 103 at the November 8, 1988, general election, is amended to read:

1861.02. (a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:

- (1) The insured's driving safety record.
- (2) The number of miles he or she drives annually.
- (3) The number of years of driving experience the insured has had.

(4) Such other factors as the commissioner may adopt by regulation that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums.

CHAPTER 981

An act to amend Section 4850 of the Labor Code, relating to lifeguards.

[Became law without Governor's signature September 22, 1977. Filed with Secretary of State September 22, 1977.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 4850 of the Labor Code is amended to read:  
4850. Whenever any city policeman, city fireman, county fireman, fireman of any fire district, sheriff or any officer or employee of a sheriff's office, any inspector, investigator, detective or personnel with comparable title in any district attorney's office, or lifeguard employed year round on a regular, full-time basis by a county of the first class, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450), Part 3, Division 4, Title 3, Government Code) is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with the city or county, to leave of absence while so disabled without loss of salary in lieu of temporary disability payments, if any, which would be payable under this chapter, for the period of such disability but not exceeding one year, or until such earlier date as he is retired on permanent disability pension. This section shall apply only to city policemen, sheriffs or any officer or employee of a sheriff's office, and any inspector, investigator, detective or personnel with comparable title in any district attorney's office, who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450), Part 3, Division 4, Title 3, Government Code) and excludes such employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active law enforcement service, and excludes such employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. It shall also apply to city firemen, county firemen, and firemen of any fire district who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450), Part 3, Division 4, Title 3, Government Code) and excludes such employees of the city fire department, county fire department and of any fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or

otherwise and whose functions do not clearly fall within the scope of active firefighting and prevention service. It shall also apply to deputy sheriffs subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450), Part 3, Division 4, Title 3, Government Code). It shall also apply to lifeguards employed year round on a regular, full-time basis by counties of the first class who are subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450), Part 3, Division 4, Title 3, Government Code). If the employer is insured, the payments which, except for the provisions of this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be an appropriation made by this act because the duties, obligations, or responsibilities imposed on local government by this act are minor in nature and will not cause any financial burden to local government.

CHAPTER 982

An act to amend Sections 11450 and 11452 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 22, 1977. Filed with Secretary of State September 23, 1977.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 11450 of the Welfare and Institutions Code is amended to read:

11450. (a) For each needy family which includes one or more needy children qualified for aid under this chapter, except as provided in Section 11403, there shall be paid, notwithstanding minimum basic standards of adequate care established by the department under Section 11452, an amount of aid each month which when added to his income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (d) of this section or Section 11453.1, is equal to the sums specified in the following table, as adjusted for cost-of-living increases or decreases pursuant to Section 11453:

Number of eligible needy persons in the same home	Maximum aid
1 .....	\$166
2 .....	273

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- 3 .....
- 4 .....
- 5 .....
- 6 .....
- 7 .....
- 8 .....
- 9 .....
- 10 or more .....

If, when and during increases or decreases children in this state the amounts specified decreased by an amount United States government decrease shall be Section 11453.

(b) For children under the provision 11403, there shall be of each child, but not hundred twenty dollars in each county received and the county shall adequate care of such

(c) As used in this home or institution

(d) (1) In addition of this section and receive an allowance majority of recipient additional aid furnished after first deduction government. Such limited to special unusual costs of telephone, and up each family per month multiplying the sum in the family which

(2) A family : county expense : from the federal by sudden and needy family; pr into consideration

(3) The department the uniform a subdivision.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

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Claim of:	)	
	)	
County of Sacramento	)	No. CSM-4416
	)	Labor Code
Claimant	)	Section 3212.1
	)	Chapter 1171, Statutes of 1989
	)	<u>Cancer Presumption-Peace Officers</u>

STATEMENT OF DECISION.

This claim was heard by the Commission on State Mandates (Commission) on July 23, 1992, in Sacramento, California, during a regularly scheduled hearing.

Mr. Allan Burdick, Mr. Ed Lambert, Ms. Linda Sera and Mr. Anthony Wright appeared on behalf of County of Sacramento. Mr. James Apps appeared on behalf of Department of Finance.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

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ISSUES

1  
2  
3 Do the provisions of Labor Code section 3212.1, as amended by  
4 Chapter 1171, Statutes of 1989, impose a new program or higher  
5 level of service in an existing program on local agencies, within  
6 the meaning of Government Code 17514 and section 6, article XIII B  
7 of the California Constitution?

8  
9 If so, are local government agencies entitled to reimbursement  
10 pursuant to section 6 of article XIII B?

BACKGROUND AND FINDINGS OF FACT

11  
12  
13  
14 County of Sacramento (Sacramento) filed this test claim with the  
15 Commission on December 3, 1991.

16  
17 The elements for filing a test claim, as specified in section 1183  
18 of Title 2 of the California Code of Regulations, were satisfied.

19  
20 Sacramento alleged that Chapter 1171, Statutes of 1989 (Chapter  
21 1171/89), resulted in a reimbursable state mandate by amending  
22 Labor Code section 3212.1, to add cancer to the types of  
23 diseases/injuries which, when diagnosed in peace officers is  
24 presumed to be a job related illness for workers' compensation  
25 purposes. Sacramento alleged that the provisions of this statute  
26 are identical to the current reimbursable state mandate, Chapter  
27 1568, Statutes of 1982, (Chapter 1568/82) which made cancer a  
28 presumed workers' compensation injury for firefighters.

1 Sacramento alleged that prior to the amendment of Labor Code  
2 section 3212.1 by Chapter 1171/89, there was no cancer presumption  
3 for peace officers.

4  
5 Labor Code 3212.1, as amended by Chapter 1171/89, states in  
6 pertinent part:

7  
8 "In the case of active firefighting members of fire  
9 departments of cities, counties, cities and counties,  
10 districts, . . . and peace officers as defined in  
11 Section 830.1 and subdivision (a) of Section 830.2 of the  
12 Penal Code who are primarily engaged in active law  
13 enforcement activities, the term "injury" as used in this  
14 division includes cancer which develops or manifests  
15 itself during a period while the member is in the service  
16 of the department or unit if the member demonstrates that  
17 he or she was exposed, while in the service of the  
18 department or unit, to a known carcinogen as defined by  
19 the International Agency for Research on Cancer, or as  
20 defined by the director, and that the carcinogen is  
21 reasonable linked to the disabling cancer.

22  
23 "\*\*\*\*\*

24  
25 "The cancer so developing or manifesting itself in these  
26 cases shall be presumed to arise out of and in the course  
27 of the employment. This presumption is disputable and  
28 may be controverted by other evidence, but unless so



4

1 controverted, the appeals board is bound to find in  
2 accordance with it. This presumption shall be extended  
3 to a member following termination of service for a period  
4 of three calendar months for each full year of the  
5 requisite service, but not to exceed 60 months in any  
6 circumstance, commencing with the last date actually  
7 worked in the specified capacity."

8 (Amendments made by Chapter 1171/89 are underlined)  
9

10 The Commission noted that Labor Code 3212.1, as amended by Chapter  
11 1171/89, extends the cancer presumption benefit to peace officers  
12 as specified in Penal Code sections 830.1 and 830.2 subdivision (a)  
13 which includes peace officers employed by noted state agencies as  
14 well as those employed by local agencies.  
15

16 The Commission found that prior to the amendment of Labor Code  
17 section 3212.1, there was no presumption regarding workers'  
18 compensation cancer claims made by peace officers. Peace officers'  
19 cancer claims were subject to the same conditions as that of most  
20 other employees. That is, in order to receive workers'  
21 compensation for cancer claims, the burden of proof rested with the  
22 peace officer to show:  
23

- 24 1) an employment relationship
- 25 2) an injury occurred in the course of that relationship
- 26 3) that the cancer was proximately caused by the employment.

27 //

28 //

1 In short, the Commission noted that Chapter 1171/89, amended Labor  
2 Code section 3212.1, to provide an additional benefit to peace  
3 officers by removing the burden of proof on the employee to provide  
4 evidence that the cancer was proximately caused by the employment.  
5 Instead, the cancer is presumed to be caused by the employment,  
6 provided that the peace officer can show exposure to a recognized  
7 carcinogen while employed as a peace officer and establish a  
8 reasonable link between the carcinogen and the cancer.

9  
10 The Commission also noted that since the February 23, 1984, Board  
11 of Control decision on Chapter 1568/82, the California Supreme  
12 Court issued its decision in County of Los Angeles v. State of  
13 California (1987) 43 Cal.3d 46. In that case, the court determined  
14 that providing workers' compensation benefits by local agencies is  
15 not subject to reimbursement as a state mandated program. However,  
16 the cancer presumption benefit extended to peace officers and  
17 firefighters is distinctive and is a reimbursable state mandated  
18 program because it requires local governments to implement a state  
19 policy of providing an additional benefit to select employees that  
20 carry out the governmental function of providing public safety.

21  
22 The Commission found that by amending Labor Code section 3212.1 to  
23 extend the cancer presumption benefit to peace officers, the  
24 Legislature intended to provide peace officers with an additional  
25 benefit not available to most other workers. The Commission  
26 observed the Zipton v. Workers' Compensation Appeals Board case  
27 (1990) 218 Cal.App.3d 980, where the court noted that:

28 //

1 "The foremost purpose of the presumptions of industrial  
 2 causation found in Labor Code [section 3212 et seq.] is  
 3 to provide additional benefits to certain public  
 4 employees who provide vital and hazardous services, by  
 5 easing the burden of proof of industrial causation."

6  
 7 The Commission observed that the County of Los Angeles court  
 8 decision also went on to define the term "program" for purposes of  
 9 costs mandated by the state. On page 56 of its decision, the court  
 10 determined the following:

11  
 12 ". . . . We conclude that the drafters and the  
 13 electorate had in mind the commonly understood  
 14 meanings of the term-programs that carry out the  
 15 governmental function of providing services to the  
 16 public, or laws which, to implement state policy,  
 17 impose unique requirements on local governments and  
 18 do not apply generally to all residents and  
 19 entities in the state."

20  
 21 The Commission found that Labor Code section 3212.1 meets the first  
 22 part of the County of Los Angeles definition of the term program,  
 23 for the purposes of costs mandated by the state, since both  
 24 firefighters and peace officers carry out the governmental function

25 //  
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1 of providing public safety. The Commission noted the Carmel Valley  
2 Fire Protection District v. State of California (1987) 190  
3 Cal.App.3d 521, where the court stated on page 537:

4  
5 "First, fire protection is a peculiarly governmental  
6 function.... 'Police and fire protection are two of the  
7 most essential and basic functions of local government'".  
8

9 The Commission found that Labor Code section 3212.1 also meets the  
10 second part of the County of Los Angeles definition of the term  
11 program for the purposes of cost mandated by the state since it  
12 imposes unique requirements on local governments by requiring them  
13 to implement a state policy of providing cancer presumption as an  
14 additional benefit to peace officers and firefighters.  
15

16 The Commission found that Chapter 1171/89 requires local  
17 governments to implement a state policy by providing cancer  
18 presumption as an additional benefit to peace officers.  
19

20 APPLICABLE LAW RELEVANT TO THE DETERMINATION  
21 OF A REIMBURSABLE STATE MANDATED PROGRAM  
22

23 Government Code section 17500 and following, and section 6, article  
24 XIIIIB of the California Constitution and related case law.

25 //  
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CONCLUSION

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2  
3 The Commission determines that it has the authority to decide this  
4 claim under the provisions of Government Code sections 17500 and  
5 17551, subdivision (a).  
6

7 The Commission concludes that the provisions of Labor Code section  
8 3212.1, as amended by Chapter 1171/89, impose a new program or  
9 higher level of service in an existing program on local agencies,  
10 within the meaning of Government Code 17514 and section 6, article  
11 XIIIIB of the California Constitution.  
12

13 The foregoing determination pertaining to Labor Code  
14 section 3212.1, is subject to the following conditions:  
15

16 The determination of a reimbursable state mandated  
17 program does not mean that all increased costs claimed  
18 will be reimbursed. Specifically, reimbursement shall be  
19 limited to the additional workers' compensation costs  
20 directly attributable to the cancer presumption benefit.  
21 Reimbursement, if any, is subject to Commission approval  
22 of parameters and guidelines for reimbursement of the  
23 mandated program; approval of a statewide cost estimate;  
24 a specific legislative appropriation for such purpose; a  
25 timely-filed claim for reimbursement; and subsequent  
26 review of the claim by the State Controller's Office.

27 //

28 //

1 If the statewide cost estimate for this mandate does not  
2 exceed one million dollars (\$1,000,000) during the first  
3 twelve (12) month period following the operative date of  
4 the mandate, the Commission shall certify such estimated  
5 amount to the State Controller's Office, and the State  
6 Controller shall receive, review, and pay claims from the  
7 State Mandates Claims Fund as claims are received.  
8 (Government Code section 17610.)

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880 Ninth Street, Suite 300  
Sacramento, Ca 95814  
P - 916-323-3682  
F - 916-446-0278

**Commission on State Mandates**

# Fax

To: Larry Kay From: CSM

Fax: \_\_\_\_\_ Page: 9

Phone: \_\_\_\_\_ Date: 5/8/01

Re: SOD for Cancer Prescription CCI  
Peace Officers

- Urgent     For Review     Please Comment     Please Reply     Please Recycle

\* Comments:

CHAIRMAN  
WILLIAM CAMPBELL

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GOVERNMENT CODE SECTIONS 9140-9143

## ASSEMBLY

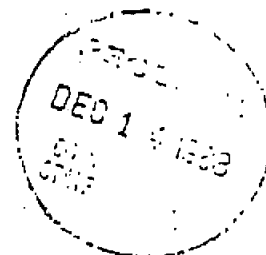
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# CALIFORNIA LEGISLATURE

LEGISLATIVE ANALYST  
ELIZABETH G. HILL

925 L STREET, SUITE 650  
SACRAMENTO, CALIFORNIA 95814  
(916) 445-4630

December 13, 1988



Mr. Jesse Huff, Chairman  
Commission on State Mandates  
1130 K Street, Suite LL50  
Sacramento, CA 95814

Dear Mr. <sup>Jesse</sup>Huff:

This letter responds to your request for a recommendation on Claim No. CSM-4313, related to the reporting of cases involving the abuse of elderly persons. In this claim, Fresno County requests reimbursement for the increased costs it has allegedly incurred in providing protective services in reported cases of elder abuse. The county claims that Chapter 769, Statutes of 1987, requires the county Department of Social Services to investigate a reported incident of elder abuse, assess the needs of the victim, provide various social or medical services, and follow-up to ensure a satisfactory outcome.

Our examination of the current law reveals, however, that most of the existing requirements with regard to county response to reported elder abuse preceded the enactment of Chapter 769. The statute which initially allowed reporting of dependent adult abuse was enacted in 1982. This reporting requirement was extended by legislation enacted in 1983 and 1985. Our analysis indicates, however, that Chapter 769 does impose increased workload on counties in the following manner:

- o Chapter 769 repealed the 1990 sunset date on the existing law regarding reporting of dependent adult abuse. This imposes a mandate in 1990 and subsequent years by increasing county costs associated with reporting known or suspected dependent adult abuse cases. In addition, to the extent that the dependent adult abuse reporting program results in increased reports of abuse, it will increase county workload associated with investigation and resolution of these cases.

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- Chapter 769 requires county Adult Protective Services (APS) or law enforcement agencies receiving a report of abuse occurring within a long-term care facility to report the incident to the appropriate facility licensing agency.

Our analysis further indicates that the increased costs associated with Chapter 769 appear to be state-reimbursable to the extent that counties have augmented their County Services Block Grant (CSBG) with county funding to pay for these costs. A detailed analysis of the claim follows below.

### Background

Adult Protective Services. Welfare and Institutions (W&I) Code Chapter 5.1 generally requires county governments to provide an APS program. The purpose of this program is to ensure the safety and well-being of adults unable to care for themselves. The program attempts to accomplish these objectives by providing social services and/or referrals to adults in need.

The state provides funding for APS through the County Services Block Grant (CSBG), which counties also use to fund a variety of other social service programs, including administration of In-Home Supportive Services. Under current law, each county generally has discretion as to the types of adult protective services to provide, the number of adults who receive such services, and the amount of CSBG funding allocated to these services. However, the state does require the county APS program to record and investigate reports of suspected elder or dependent adult abuse.

Reporting. Welfare and Institutions Code Chapter 11 (Section 15600 et seq.) requires dependent care custodians, health care providers, and specified public employees to report known or suspected physical abuse of an elderly or dependent adult. An elderly adult is defined as anyone aged 65 years or older. A dependent adult is any person between the ages of 18 and 64 years who is unable to care for himself or herself due to physical or mental limitations, or who is admitted as an inpatient to a specified 24-hour health facility. Care providers are permitted but not required to make such reports if the suspected abuse is not physical in nature.

Upon receiving a report, counties are required to file appropriate reports with the local law enforcement agency, the state long-term care ombudsman, and long-term care facility licensing agencies. In addition, the county is required to report monthly to the state Department of Social Services (DSS) regarding the number of abuse reports it has received.

### Analysis

Fresno County claims that Chapter 769 requires the county Department of Social Services to investigate a reported incident of elder abuse, assess the needs of the victim, provide various social or medical services, and follow-up to ensure a satisfactory outcome. In our view, the central question before the commission is what Chapter 769 actually requires a county to do upon receiving a report of elder abuse. We examine

requirements with regard to three areas of county response: reporting, investigation, and case resolution.

Reporting. Our review of the APS program's statutory history reveals that most of the current reporting requirements were in existence prior to the enactment of Chapter 769. Chapter 1184, Statutes of 1982, established W&I Code Chapter 11, which allowed any person witnessing or suspecting that a dependent adult was subject to abuse to report the suspected case to the county adult protective services agency. At that time, "dependent adult" included individuals over age 65 years. Chapter 11 initially was scheduled to sunset on January 1, 1986. Subsequent legislation expanded the reporting requirements. Specifically:

- o Ch 1273/83 enacted W&I Code Chapter 4.5, which established a separate reporting system for suspected abuse of individuals aged 65 or older. This statute required elder care custodians, medical and nonmedical practitioners and employees of elder protective agencies to report suspected or known cases of physical abuse to the local APS agency. It also required county APS agencies to report the number of reports received to the state DSS.
- o Ch 1164/85 amended W&I Code Chapter 11 to require similar mandatory reporting of physical abuse of a dependent adult. This statute also required law enforcement agencies and APS agencies to report to each other any known or suspected incident of dependent adult abuse. In addition, Chapter 1164 extended the program's sunset date to January 1, 1990.

Chapter 769, Statutes of 1987, consolidated the reporting requirements for elderly and dependent adult abuse within the same statute, and repealed the January 1, 1990 sunset date for dependent adult abuse reporting. The statute also made minor changes in the reporting requirements, including the following:

- o The statute required abuse occurring within a long-term care facility to be reported to a law enforcement agency or the state long-term care ombudsman.
- o The statute required county APS or law enforcement agencies receiving a report of abuse occurring within a long-term care facility to report the incident to the appropriate facility licensing agency.

In sum, various provisions of existing law impose increased reporting workload on local governments by requiring them to receive reports of suspected abuse made by other care providers, and to report specific information to other state and local agencies. However, our analysis indicates that the bulk of these requirements were imposed prior to Chapter 769. Therefore, only the marginal increase in workload imposed by Chapter 769 would appear to be subject to the current claim. These requirements include the following:

- o Reporting workload associated with reports of dependent adult abuse occurring after January 1, 1990. By repealing the January 1, 1990 sunset date for the dependent adult abuse reporting program, Chapter 769 imposes increased reporting workload on counties in 1990 and subsequent years.
- o The workload required to report abuse incidents to the appropriate long-term care facility licensing agency.

We note that Chapter 769 also could reduce county workload to the extent that reports of abuse in a 24-hour health facility are made to the state long-term care ombudsman rather than to the local APS agency. We are unable to determine the potential magnitude of this reduction in costs. However, it appears unlikely that the reduction in costs in this area will fully offset the cost increases identified above, and particularly the costs associated with dependent adult abuse reporting in 1990 and beyond.

In addition to increasing reporting costs, Chapter 769 will increase county costs associated with investigating and resolving dependent adult abuse cases, to the extent that the mandatory reporting requirement results in identification of increased cases of abuse.

Investigation. Chapter 30-810.2 of the state Department of Social Services' (DSS) regulations, requires counties to investigate promptly most reports or referrals of adult abuse or neglect. Welfare and Institutions Code Section 15610 (m) defines "investigation" as the activities required to determine the validity of a report of elder or dependent adult abuse, neglect or abandonment. Thus, it appears that state law requires county APS agencies to act promptly to determine the validity of a reported incident of abuse.

Resolution. Welfare and Institutions Code Section 15635 (b) requires the county to maintain an inventory of public and private service agencies available to assist victims of abuse, and to use this inventory to refer victims in the event that the county cannot resolve the immediate or long-term needs of the victim. This referral requires assessment of the needs of the client, and identification of the appropriate agency to serve these needs. Depending on the needs of the client and the resources available, a county may refer the client to a county, state or federally funded program, or to a private organization. When serving an indigent client, the county is required to be the service provider of last resort if the client does not qualify for state or federal programs (W&I Section 17000).

To the extent that mandatory reporting of dependent adult abuse increases the number of cases reported to the county, it increases the county's APS workload. Presumably, the sunset of the reporting requirements would have led to a reduction in this workload. Thus, by repealing the January 1, 1990 sunset date on the dependent adult abuse reporting program, Chapter 769 probably results in increased county APS workload, in terms of both investigation and resolution, in 1990 and subsequent years. Again, the

requirements with regard to elder abuse cases, and with regard to dependent adult cases reported prior to January 1, 1990, are imposed by earlier statutes. Consequently, any increased workload associated with these cases does not appear to be subject to the current claim.

Are costs reimbursable? The second question before the commission is whether the increased county costs associated with this mandate are state-reimbursable. Specifically, you must determine whether the costs associated with dependent adult and elder abuse reporting are reimbursable, given that the Legislature currently provides funding for the APS program in the form of the CSBG.

In order to determine whether the CSBG fully funds the increased workload imposed by Chapter 769, it is useful to understand the history of funding for APS. Prior to 1981, the state DSS' social services regulations contained detailed requirements identifying the minimum level of APS service that counties had to provide to clients. In 1981, however, the federal government reduced its support for social service programs (Title XX of the Social Security Act) by approximately 20 percent. To help the counties accommodate this reduction, DSS eliminated the specific requirements from its APS regulations and from the regulations governing various other social services programs, thereby giving the counties substantial discretion in the level of service they provide and in the amount of federal Title XX funds they allocate to APS.

In recognition of this increased county discretion, the Legislature, in the Budget Act of 1985, created the CSBG, which provides funds for the various social services programs, including APS, over which counties have substantial discretion. (In contrast, the counties have limited discretion over two major social services programs -- Child Welfare Services and In-Home Supportive Services. These programs are budgeted and their funds are allocated based on county caseloads and costs.) The level of funding provided through the CSBG was not tied to any measurement of the workload in any of the CSBG programs. Rather, it was based on county expenditures for all of the programs in 1982-83, with the expectation that counties would allocate CSBG funds to the various programs based on local priorities.

In sum, counties have considerable flexibility as to the types and level of services provided under APS, and as to the level of CSBG funding each county devotes to the APS program. Moreover, the amount of CSBG funds provided to each county does not necessarily reflect workload in that county. Thus, in response to the increased workload requirements imposed by Chapter 769, counties with insufficient CSBG funding to pay for the workload increase generally face two choices:

- o The county can fund the increased APS workload by reducing expenditures in other areas of the APS program, or in other programs funded through CSBG. This, in effect, requires the county to realign its existing program priorities in order to redirect CSBG money to pay for the recording, investigation, and referral of reported abuse cases.

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December 13, 1988

- The county can use its own funds to augment CSBG funding in order to provide an increased level of service within the existing program, while maintaining existing program priorities.

Article XIII B, Section 6 of the State Constitution requires the state to reimburse local entities for new programs and higher levels of service. It does not require counties to reduce service in one area to pay for a higher level of service in another. Moreover, in enacting Chapter 11, the Legislature did not require that counties realign their social service priorities in order to accommodate the increased workload. Therefore, we conclude that the costs associated with Chapter 769, are state-reimbursable to the extent that a county uses its own funding to pay for these costs. If, however, a county exercises its discretion to redirect CSBG funds to pay for the costs of elder and dependent adult abuse reporting, investigation, and resolution, these costs are not state-reimbursable.

Sincerely,

*Elizabeth G. Hill*

Elizabeth G. Hill  
Legislative Analyst

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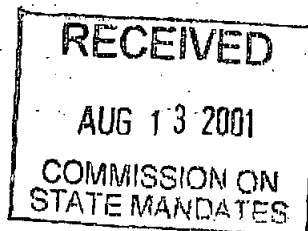

**DEPARTMENT OF  
FINANCE**

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 8, 2001

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814



Dear Ms. Higashi:

As requested in your letter of July 9, 2001, the Department of Finance has reviewed the test claim submitted by the County of Los Angeles (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 920, Statutes of 2000, (AB 1883, Lowenthal), and Chapter 929, Statutes of 2000 (SB 2081, Alarcon) et al., are reimbursable state mandated costs (Claim No. CSM-00-TC-20 "County of Los Angeles"). Commencing with Page 1, Section IV, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- Increased benefit costs as a result of providing leaves of absence with salary in lieu of temporary disability or maintenance payments pursuant to Labor Code Section 4850.

We recommend that the test claim be denied since the chaptered legislation cited in the test claim does not appear to mandate a new program or higher level of service of an existing program pursuant to Article XIII B, Section 6 of the California Constitution.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 9, 2001 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Todd Jerue, Principal Program Budget Analyst at (916) 445-8913 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

S. Calvin Smith  
Program Budget Manager

Attachments

Attachment A

DECLARATION OF TODD JERUE  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-00-TC-20

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter No. 920, Statutes of 2000, (AB 1883, Lowenthal); and Chapter 929, Statutes of 2000 (SB 2081, Alarcon) et al., sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

August 8, 2001  
August 8, 2001 at Sacramento, CA

Todd Jerue  
Todd Jerue



PROOF OF SERVICE

Test Claim Name: "County of Los Angeles"  
Test Claim Number: CSM-00-TC-20

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California; I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, Floor, Sacramento, CA 95814.

On August 8, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, Floor, for Interagency Mail Service, addressed as follows:

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

B-8  
State Controller's Office  
Division of Audits  
Attention: Jim Spano  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

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

Ms. Pam Stone, Legal Counsel  
DMG-MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 West Temple Street, Suite 603  
Los Angeles, CA 90012

Mr. Paul Minney  
Spector, Middleton, Young & Minney, LLP  
7 Park Center Drive  
Sacramento, CA 95825

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

Dr. Carol Berg, Ph. D  
Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Harmeet Barkschat  
Mandate Resource Services  
8254 Heath Peak Place  
Antelope, CA 95843

Executive Director  
California Peace Officers' Association  
1455 Response Rd.  
Sacramento, CA 95815

Executive Director  
Association of California Water Agencies  
910 K Street, Suite 250  
Sacramento, CA 95814

Mr. Steve Keil  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814-3941

Ms. Sandy Reynolds, President  
Reynolds Consulting Group, Inc.  
P.O. Box 987  
Sun City, CA 92586

Executive Director  
Public Employees' Retirement System  
Benefit Application Services  
PO Box 942702  
Sacramento, CA 94229-2702

Ms. JoAnn Speers, Legal Counsel  
League of California Cities  
1400 K Street, #400  
Sacramento, CA 95814

B-8  
Mr. Glenn Haas, Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. Keith B. Petersen, President  
Sixten & Associates  
5252 Balboa Ave., Suite 807  
San Diego, CA 92117

Mr. Steve Smith, CEO  
Mandated Cost Systems, Inc.  
2275 Watt Avenue, Suite C  
Sacramento, CA 95825

Executive Director  
California State Firefighters' Association  
2701 K Street, Suite 201  
Sacramento, CA 95816

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 8, 2001 at Sacramento, California.

Mary Latorre

COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

August 31, 2001

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Dear Ms. Higashi:

**Review of State Agency Comments: County of Los Angeles Test Claim  
Workers' Compensation Disability Benefits for Government Employees**

The County of Los Angeles submits the attached review of State agency comments on the subject test claim.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

A handwritten signature in cursive script that reads "J. Tyler McCauley".

J. Tyler McCauley  
Auditor-Controller

JTM:JN:LK  
Enclosures

Review of State Agency Comments: County of Los Angeles Test Claim: Labor Code Section 4850, Amended by Chapters 920, 929, Statutes of 2000; Chapters 224, 970, Statutes of 1999; Chapter 1464, Statutes of 1989; Chapter 981, Statutes of 1977: Workers' Compensation Disability for Government Employees.

### State Agency Comments

As of August 31, 2001, only the State Department of Finance has commented on the County's claim.

On August 8, 2001, Mr. S. Calvin Smith, Program Budget Manager for the State Department of Finance wrote Ms. Paula Higashi, Executive Director of the Commission on State Mandates, and indicated that:

"We recommend that the test claim be denied since the chaptered legislation cited in the test claim does not appear to mandate a new program or higher level of service of an existing program pursuant to Article XIII B, Section 6 of the California Constitution."

The above statement constitutes Mr. Smith's entire analysis. No explanation for his conclusion is given.

### The County's Claim

The County claims that new duties and increased costs in providing government employees new workers' compensation disability benefits were imposed by the claim legislation. This claim essentially remains unexamined, if not unrefuted, by State agencies.

The County, therefore, continues to maintain that Labor Code Section 4850 pertains to Police officers, firefighters, sheriff's officers, and other personnel; leave of absence with salary in lieu of temporary disability or maintenance payments and requires that:

"(a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees

Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3."

The County's activities, as claimed herein, are reasonably necessary in complying with the subject law, and cost the County in excess of \$200 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

#### Section 4850 Covered Employees

Labor Code Section 4850, under subdivision (b), as amended by Chapter 929, Statutes of 2000, provides that "the persons eligible under subdivision (a) [of Section 4850] include all of the following:"

- "(1) City police officers.
- (2) City, county, or district firefighters.
- (3) Sheriffs.
- (4) Officers or employees of any sheriff's offices.
- (5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.
- (6) County probation officers, group counselors, or juvenile services officers.
- (7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.

(11) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.

(12) Police officers of the Los Angeles Unified School District.

#### Excluded Employees

Labor Code Section 4850, under subdivision (c), as amended by Chapter 929, Statutes of 2000, provides that Section 4850 "... shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:"

"(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator,

clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service."

#### Payment to Insured

Labor Code Section 4850, under subdivision (d), as amended by Chapter 929, Statutes of 2000, provides that if the employer is insured "... the payment which, except for this section [4850], the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured".

#### Family Care and Medical Leave

Labor Code Section 4850, under subdivision (d), as amended by Chapter 929, Statutes of 2000, provides that "... [n]o leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code".

#### Employees Granted Section 4850 Coverage After January 1, 1975

The Legislature granted certain employees Section 4850 coverage after January 1, 1975, the threshold date for finding that the County incurred reimbursable "costs mandated by the State" as defined in Government Code Section 17514, as follows:

#### Probation

Chapter 970, Statutes of 1999 amended Labor Code Section 4850 to add the new requirement that "any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office", including Los Angeles County's Probation Department employees, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

As a result, the County incurred increased costs in complying with the new requirement that leave of absence with full salary be now provided [the above] employees instead of less costly temporary disability or maintenance payments required under prior law.

### Lifeguards

Chapter 981, Statutes of 1977 amended Labor Code Section 4850 to add the new requirement that a "lifeguard employed year round on a regular, full-time basis by a county of the first class", including Los Angeles County's lifeguards, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

As a result, the County incurred increased costs in complying with the new requirement that leave of absence with full salary be now provided [the above] employees instead of less costly temporary disability or maintenance payments required under prior law.

### Safety Police

Chapter 270, Statutes of 1999 amended Labor Code Section 4850 to add the new requirement that "any peace officer under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class", including Los Angeles County's public safety officers, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

As a result, the County incurred increased costs in complying with the new requirement that leave of absence with full salary be now provided [the above] employees instead of less costly temporary disability or maintenance payments required under prior law.

### Airport, Harbor Law Enforcement Officers

Chapter 920, Statutes of 2000 amended Labor Code Section 4850 to add the new requirement that Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code and Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code, be provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

### Specified School Police Officers

Chapter 929, Statutes of 2000 amended Labor Code Section 4850 to add the new requirement that Police officers of the Los Angeles Unified School District, be



provided with leave of absence with salary in lieu of temporary disability or maintenance payments.

### Specified Firefighters

Chapter 1464, Statutes of 1989 amended Labor Code Section 4850, and amended and added a "local firefighter" definition in Government Code Section 20021.01.

The new "local firefighter" definition in Government Code Section 20021.01 was expanded and renumbered as Sections 20434 and Section 20435 by Chapter 379, Statutes of 1979 in order to address "contracting agency personnel performing fire training" [Section 20435] separately from "officer or employee of fire department of contracting agency" [Section 20434].

Section 20434 provides that:

" "Local firefighter" also means any officer or employee of a fire department of a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service, but not excepting persons employed and qualifying as firefighters of equal or higher rank, irrespective of the duties to which they are assigned.

This section shall not apply to the employees of any contracting agency nor to any contracting agency until the agency elects to be subject to this section by amendment to its contract with the board, made pursuant to Section 20474 or by express provision in its contract with the board."

Section 20435 provides that:

"Local firefighter" means any officer or employee of a contracting agency performing a fire training function for a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, fire prevention, fire training, or fire investigation service even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, fire prevention, fire training, or fire investigation service, but not excepting persons employed and qualifying as firefighters or equal or higher rank, irrespective of the duties to which they are assigned."

### Increased Costs

The test claim legislation increased the County's costs. As explained by Dr. Constance Sullivan, Division Chief, Health, Safety & Disability Benefits Division, Department of Human Resources of the County of Los Angeles, in her declaration:

"... when a Labor Code Section 4850 is paid, the increased cost to the County is the difference between the 70% salary continuation benefits (Los Angeles County Code 6.20.070) and the 100% entitlement provided under Labor Code Section 4850."

"... the following is exemplary of increased costs incurred by the County in providing government employees new workers' compensation disability benefits pursuant to the test claim legislation: **For each day of work-related disability incurred by an employee newly entitled to Labor Code benefits, approximately \$1200.00 per month, additional, is to be paid to each such employee.**"

Dr. Sullivan also compiled a schedule of Labor Code Section 4850 claims made by County probation officers, probation personnel, safety officers, and lifeguards to further illustrate her declaration as follows:

"I. Numbers of lost-time workers' compensation claims made by employees who became eligible for LC4850 benefits in calendar year 2000 and by County Lifeguards previously eligible for LC4850.

Employee groups	1998 Lost-time claims	1999 Lost-time claims	2000 Lost-time claims
Probation, Safety Police <sup>A</sup>	303	331	397 <sup>B</sup>
Lifeguards	49	50	56

<sup>A</sup>4850 covered employees became entitled to LC4850 benefits in 2000. This group includes members of the Probation Department and of the Office of Public Safety (Safety Police). In years 1998 and 1999, they received 70% salary continuation.

<sup>B</sup>20% increase in lost time claims, but only a 3% increase in employee population.

- II. Average monthly salary for LC4850 covered Probation employees = \$4149.00.
- III. Average monthly salary for LC4850 covered Public Safety employees = \$3810.76.
- IV. Average monthly salary for County Lifeguards is \$5558.90."

#### Reimbursable Increased Costs

The Commission on State Mandates [Commission] has found similar types of new State-mandated benefit programs for local government employees to be reimbursable. For example, the Commission found the new benefit provided peace officers in Labor Code Section 3212.1 as amended by Chapter 1171, Statutes of 1989, to be reimbursable.

As noted by the Commission in their Statement of Decision, on page 2, Section 3212.1 was amended by Chapter 1171, Statutes of 1989 to "... add cancer to the types of diseases/injuries which, when diagnosed in peace officers is presumed to be a job related illness for workers' compensation purposes".

The Commission further states, on page 2 of its decision, that the test claimant, the County of Sacramento, "... alleged that the provisions of this statute are identical to the current reimbursable state mandate, Chapter 1568, Statutes of 1982 ... which made cancer a presumed workers' compensation injury for firefighters."

The Commission agreed and found the new peace officer benefit to be reimbursable as well.

The Commission also explains, on page 5 of their decision, why the finding in County of Los Angeles v. State of California (1987) 43 Cal.3d 46, that "... providing workers' compensation benefits by local agencies is not subject to reimbursement as a state mandated program", is not applicable. Here, the Commission notes, on page 5, that:

"... the cancer presumption benefit extended to peace officers and firefighters is distinctive and is a reimbursable state mandated program because it requires local governments to implement a state policy of providing an additional benefit to select employees that carry out the government function of providing public safety."

### Redirected Effort is Prohibited

When police officers, firefighters, sheriff's officers, and other personnel are granted leave of absence with salary in lieu of temporary disability or maintenance payments under Labor Code Section 4850 as set forth in the captioned test claim legislation, local governments' funds are redirected to pay for the State's program.

The State has not been allowed to circumvent restrictions on shifting its burden to localities by directing them to shift their efforts to comply with State mandates however noble they may be.

This prohibition of substituting the work agenda of the state for that of local government, without compensation, has been found by many in the California Constitution. On December 13, 1988, Elizabeth G. Hill, Legislative Analyst, Joint Legislative (California) Budget Committee wrote to Jesse Huff, Commission on State Mandates and indicated on page 6 that the State may not redirect local governments' effort to avoid reimbursement of local costs mandated by the State:

"Article XIII B, Section 6 of the State Constitution requires the state to reimburse local entities for new programs and higher levels of service. It does not require counties to reduce services in one area to pay for a higher level of service in another."

Therefore, reimbursement for the subject program is required as claimed herein.

## State Funding Disclaimers Are Not Applicable

There are seven disclaimers specified in GC Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in GC Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of GC Section 17556:

- (a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph."
- (a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.
- (b) "The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts."
- (b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.
- (c) "The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."
- (c) is not applicable as no federal law or regulation is implemented in the subject law.

- (d) "The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."
- (d) is not applicable because the subject law did not provide or include any authority to levy any service charges, fees, or assessments.
- (e) "The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate."
- (e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature.
- (f) "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election."
- (f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.
- (g) "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."
- (g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction.

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the requirements set forth in the

captioned test claim legislation as these disclaimers are all not applicable to the subject claim.

Costs Mandated by the State

The County has incurred costs in providing personnel, as specified above, with leave of absence with salary in lieu of temporary disability or maintenance payments under Labor Code Section 4850 and such costs are reimbursable "costs mandated by the State" under Section 6 of Article XIII B of the California Constitution and Section 17500 et seq of the Government Code.

The County's State mandated duties and resulting costs in implementing the subject law require the County to provide a new State-mandated program and thus incur reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, 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."

Accordingly, for the County's costs to be reimbursable "costs mandated by the State", three requirements must be met:

1. There are "increased costs which a local agency is required to incur after July 1, 1980"; and
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975"; and
3. The costs are the result of "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".

All three of above requirements for finding cost mandated by the State are met herein.

First, local government is incurring increased Labor Code Section 4850 costs for specified personnel, detailed above, under the test claim legislation, currently, in 2001, and during recent years, as described in attached exhibits, well after July 1, 1980.

Second, the earliest statute to be included in the test claim legislation is Chapter 981, Statutes of 1977, enacted after January 1, 1975.

Third, Labor Code Section 4850 benefits for specified personnel, detailed above, under the test claim legislation, are new, not required under prior law. The County's has therefore, incurred costs as a result of implementing "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".

Therefore, reimbursement of the "costs mandated by the State" as claimed herein is required.



COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER



J. TYLER CAULEY  
AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

Review of State Agency Comments: County of Los Angeles Test Claim: Labor Code Section 4850, Amended by Chapters 920, 929, Statutes of 2000; Chapters 224, 970, Statutes of 1999; Chapter 1464, Statutes of 1989; Chapter 981, Statutes of 1977: Workers' Compensation Disability Benefits for Government Employees

**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath:

I Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject review of State agency comments.

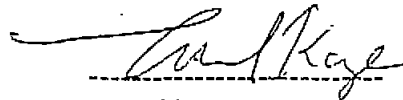
Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, 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."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

8/31/01; Los Angeles, CA  
Date and Place

  
Signature

COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER



KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY  
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 31st day of August 2001, I served the attached:

Documents: Review of State Agency Comments: County of Los Angeles Test Claim, Workers' Compensation Disability Benefits for Government Employees, including a 1 page letter of J. Tyler McCauley dated 8/31/01, a 13 page narrative, and a 1 page declaration of Leonard Kaye, all pursuant to CSM-00-TC-20, now pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

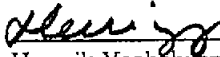
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates and State Controller's Office- FAX as well as mail of originals.
- by placing  true copies  original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of August, 2001, at Los Angeles, California.

  
Hasmik Yaghobyan

# Commission on State Mandates

List Date: 07/06/2001

Mailing Information

SACRAMENTO - PERIS  
MAIL ROOM - 8

## Mailing List

01 SEP -7 AM 2:06

Claim Number 00-TC-20 Claimant County of Los Angeles

Subject Labor code section 4850, as amended by Statutes of 2000, Chapters 920 and 929 et al.

Issue Workers' Compensation Disability Benefits for Government Employees

Ms. Harneet Barkschat,  
Mandate Resource Services

8254 Heath Peak Place  
Antelope CA 95843

Tel: (916) 727-1350  
FAX: (916) 727-1734

Interested Person

Dr. Carol Berg,  
Education Mandated Cost Network

1121 L Street Suite 1060  
Sacramento CA 95814

Tel: (916) 446-7517  
FAX: (916) 446-2011

Interested Person

Executive Director,  
California Probation, Parole & Conccotional Association

755 Riverpoint Drive Suite 200  
Sacramento CA 95660

Tel: (916) 927-4888  
FAX: (916) 000-0000

State Agency

Executive Director,  
Association of California Water Agencies

910 K Street Suite 250  
Sacramento CA 95814

Tel: (916) 372-6060  
FAX: (916) 000-0000

Interested Person

Executive Director,  
Public Employees' Retirement System  
Benefit Application, Services Division

400 P Street PO Box 942702  
Sacramento CA 94229-2702

Tel: (916) 446-9880  
FAX: (916) 000-0000

State Agency

RECEIVED

OCT 09 2001

Claim Number 00-TC-20 Claimant County of Los Angeles

Subject Labor code section 4850, as amended by Statutes of 2000, Chapters 920 and 929 et al.

Issue Workers' Compensation Disability Benefits for Government Employees.

Executive Director,  
California Peace Officers' Association

1455 Response Road Suite 190  
Sacramento Ca 95815

Tel: (916) 263-0541  
FAX: (916) 000-0000

Interested Person

Executive Director,  
California State Firefighters' Association

2701 K Street Suite 201  
Sacramento Ca 95816

Tel: (800) 451-2732  
FAX: (916) 446-9889

Mr. Glenn Haas, Bureau Chief (B-8)

State Controller's Office  
Division of Accounting & Reporting

3301 C Street Suite 500  
Sacramento CA 95816

Tel: (916) 445-8757  
FAX: (916) 323-4807

State Agency

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates

980 Ninth Street, Suite 300 Tel: (916) 323-3562  
Sacramento, California 95814 Fax: (916) 445-0278

nt

Mr. Steve Keil,  
California State Association of Counties

1100 K Street Suite 101  
Sacramento CA 95814-3941

Tel: (916) 327-7523  
FAX: (916) 441-5507

Interested Person

Mr. James Lombard, Principal Analyst (A-15)

Department of Finance

915 L Street, 6th Floor  
Sacramento CA 95814

Tel: (916) 445-8913  
FAX: (916) 327-0225

State Agency

Claim Number

00-TC-20

Claimant

County of Los Angeles

ject  
Issue

Labor code section 4850, as amended by Statutes of 2000, Chapters 920 and 929 et al.  
Workers' Compensation Disability Benefits for Government Employees

Mr. Paul Minney,  
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive,  
Sacramento Ca 95825

Tel: (916) 646-1400  
FAX: (916) 646-1300

Interested Person

Mr. Art Palkowitz, Legislative Mandates Specialist  
San Diego Unified School District

4100 Normal Street Room 3159  
San Diego CA 92103

Tel: (619) 725-7565  
FAX: (619) 725-7569

Interested Party

Mr. Keith B. Petersen, President  
Sixten & Associates

5252 Balboa Avenue Suite 807  
San Diego CA 92117

Tel: (858) 514-8605  
FAX: (858) 514-8645

Interested Person

Ms. Sandy Reynolds, President  
Reynolds Consulting Group, Inc.

P.O. Box 987  
Sun City CA 92586

Tel: (909) 672-9964  
FAX: (909) 672-9963

Interested Person

Mr. Mark Sigman, Specialized Accounting  
Auditor-Controller's Office  
Riverside County  
4080 Lemon Street, 3rd Floor  
Riverside CA 92501

Tel: (909) 955-2709  
FAX: (909) 955-2428

Interested Person

Mr. Steve Smith, CEO  
Mandated Cost Systems, Inc.

2275 Watt Avenue  
Sacramento CA 95825

Tel: (916) 487-4435  
FAX: (916) 487-9662

Interested Person

Claim Number 00-TC-20 Claimant County of Los Angeles

Subject Labor code section 4850, as amended by Statutes of 2000, Chapters 920 and 929 et al.

Issue Workers' Compensation Disability Benefits for Government Employees

Mr. Jim Spano,  
State Controller's Office  
Division of Audits (B-8)  
300 Capitol Mall, Suite 518  
Sacramento CA 95814

Tel: (916) 323-5849

FAX: (916) 327-0832

State Agency

Ms. JoAnn Speers, Legal Counsel  
League of California Cities

1400 K Street, #400  
Sacramento CA 95814

Tel: (916) 658-8200

FAX: (916) 658-8240

Interested Person

Ms. Pam Stone, Legal Counsel  
DMG-MAXIMUS

4320 Auburn Blvd. Suite 2000  
Sacramento CA 95841

Tel: (916) 485-8102

FAX: (916) 485-0111

Interested Person

Mr. David Wellhouse,  
David Wellhouse & Associates, Inc.

9175 Kiefer Blvd Suite 121  
Sacramento CA 95826

Tel: (916) 368-9244

FAX: (916) 368-5723

Interested Person

COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER



KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY  
AUDITOR-CONTROLLER

July 16, 2002

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

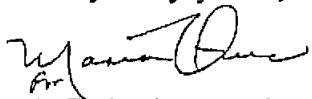
Dear Ms. Higashi:

**County of Los Angeles Amendment to Test Claim [CSM 00-TC-20]  
Workers' Compensation Disability Benefits for Government Employees**

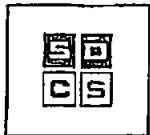
We request that our test claim entitled *Workers' Compensation Disability Benefits for Government Employees - CSM 00-TC-20*, filed with the Commission on June 27, 2001, be amended to include the San Diego Unified School District [District] as co-claimant. Enclosed is a letter, signed by Richard J. Knott, Controller for the District, requesting co-claimant status; a declaration of Kandra Olsen, with the District's Risk Management Department, describing the District's costs resulting from the subject law; and pertinent attachments.

The County of Los Angeles has agreed to continue as lead claimant. Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

  
J. Tyler McCauley  
Auditor-Controller

JTM:JN:LK  
Enclosures



# SAN DIEGO CITY SCHOOLS

EUGENE BRUCKER EDUCATION CENTER  
4100 Normal St., Room 3209, San Diego, CA 92103-2682

(619) 725-7560  
Fax: (619) 725-7564  
E-Mail: rknot@mail.sandl.net

FINANCE DIVISION  
Richard J. Knott, Controller

June 19, 2002

J. Tyler McCauley  
County of Los Angeles  
Department of Auditor-Controller  
500 West Temple Street, Room 603  
Los Angeles, CA 90012

Attention: Leonard Kaye

Dear Mr. McCauley:

RE: WORKERS' COMPENSATION DISABILITY BENEFITS FOR  
GOVERNMENT EMPLOYEES, 00-TC-20

Please be advised that the San Diego Unified School District, on behalf of school agencies, wishes to join the County of Los Angeles as co-claimants in the above mentioned test claim since we have incurred costs directly related to the recently enacted legislation.

I have enclosed a supporting declaration to be submitted to the Commission on State Mandates. Please contact Arthur M. Palkowitz at (619) 725-7565, if you have any questions. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Richard J. Knott".

Richard J. Knott  
Controller

RJK:jv

Enc.



DECLARATION OF KANDRA OLSEN

SAN DIEGO UNIFIED SCHOOL DISTRICT

No. CSM 00-TC-20

Labor Code Section 4850

Chapter 920, 929 Statutes of 2000; Chapters 224, 970, Statutes of 1999

Chapters 1464, Statutes of 1989; Chapter 981, Statutes of 1977

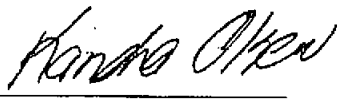
**Workers' Compensation Disability Benefits for Government Employees**

I, Kandra Olsen, make the following declaration and statement:

1. I am currently employed in the Risk Management Department for the San Diego Unified School District (the "District").
2. I am familiar with the provisions and requirements of Labor Code Section 4850.
3. Prior to the enactment of the amended Labor Code Section 4850 police officers of the San Diego Unified School District were not required to be paid up to one year of their salary if they became disabled as a result of a work related injury.
4. I declare that the "District's" activities are reasonably necessary in complying with the subject law, and cost the "District" in excess of \$200.00 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17562(a).

I know the foregoing facts personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to matters, which are stated as information and belief that I believe them to be true.

EXECUTED June 19, 2002 in San Diego, California.



Kandra Olsen

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. SDO 0268247

CARL CAMPBELL,

*Applicant,*

v.

SAN DIEGO UNIFIED SCHOOL  
DISTRICT,

*Defendant.*

FINDINGS AND AWARD

FINDINGS OF FACT

1. Carl Campbell, born November 1, 1943, while employed during the period August 18, 1975, to February 10, 2000, as a school police officer as defined in Penal Code § 830.32 at San Diego, California; by the San Diego Unified School District, then permissibly self-insured as to workers' compensation liability, sustained injury arising out of and in the course of employment to his left minor shoulder.

2. The functions of the worker's occupation come within the scope of active law enforcement service as defined in Labor Code §4850.

3: The worker is a member of the Public Employees Retirement System.

4. Worker is entitled to salary continuation pay pursuant to Labor Code section 4850 from January 21, 2000, through March 28, 2000, and from July 20, 2000, through March 23, 2001, less credit to defendant for temporary disability indemnity and vocational rehabilitation maintenance allowance previously paid on account thereof.

5. The worker's permanent disability shall be adjusted using the variants for occupational group 490.

6. This injury caused permanent disability of 38%, entitling worker to 182.0 weeks of disability indemnity at the weekly rate of \$170.00, in the total sum of \$30,940.00 less credit to defendant to all sums heretofore paid on account thereof, if any.

7. A reasonable attorney's fee is \$7,220.00.

AWARD

AWARD IS MADE in favor of CARL CAMPBELL against SAN DIEGO UNIFIED SCHOOL DISTRICT of:

(a). Salary continuation pay in accordance with Finding No. 4 above

(b). Permanent disability in accordance with Finding No. 6 above less the attorney fee in Finding No. 7 above.

DATED: 3-29-02

Filed and served by mail on all parties

Checked on the Official Address Record

By: E. Abano *E. Abano*

*J. P. McHenry*

J. P. McHENRY  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

CARL CAMPBELL,

*Applicant,*

v.

SAN DIEGO UNIFIED SCHOOL  
DISTRICT,*Defendants.*

CASE NO. SDO 0268247

## OPINION ON DECISION

## OPINION

Carl Campbell, born November 1, 1943, while employed during the period August 18, 1975, to February 10, 2000, as a school police officer as defined in Penal Code § 830.32 at San Diego, California, by the San Diego Unified School District, then permissibly self-insured as to workers' compensation liability, sustained injury arising out of and in the course of employment to his left minor shoulder.

OCCUPATIONAL GROUP.

The worker contends that his standard permanent disability should be adjusted using the variants for occupational group 490. This occupational group includes mostly government service employees and includes correction officers, court deputies, detectives, vice investigators, motorcycle police officers, police officers, and deputy sheriffs. The employer contends that his permanent disability should be adjusted using the variants for occupational group 390. This group does not include any government service employees, specifically, but does include such occupations as animal trainer, armored car guard, body guard, bouncer, store detective, motion picture double, security officer, special policeman, and physical education teacher. The difference between the two occupational groups is based on the physical requirements of the positions. The physical requirements of occupational group 490 are more arduous than those of occupational group 390, require the worker to perform demanding activities in unpredictable and dangerous circumstances and impose significant demand on all parts of the body.

The worker's job was that of a school detective. He was required to go through advanced officer training at the San Diego Police Academy two times per year for 40 hours each session. He worked on various school grounds during the day and at night worked when there were dances, football and basketball games, school meetings and stakeouts. At the games he and another officer supervised four to five hired security guards. At the games he made one or two arrests per month and the arrestees were mostly adults who were combative about 50% of the time. He made an additional 10 to 15 arrests per month on the school grounds. Two

thirds of these arrestees were minor students and a third were adults. Two or three of his arrests each week were for felonies and five of his arrests per week were for weapons offenses. He was expected to exclude non-students from the school grounds. He broke up about 10 fights per week and in 30% of these fights he had to restrain combative suspects.

He was one of 50 sworn officers under the supervision of the police chief for the San Diego Unified School District, Thomas W. Hall. These officers were charged with providing general law enforcement services for the entire school district. These officers provided the normal police function for the school district and also acted in roles usually associated with private security. The officers made arrests, wrote citations and were involved in personal disputes. On rare occasion the officers became involved in high speed vehicle chases.

The duties of the worker's position required him to investigate criminal acts occurring on school district property, make arrests as required by law, investigate crimes against persons and property, including incidents occurring in areas surrounding school sites, and maintain orderly control of large crowds at athletic events, dances, plays, and open houses. He was required to possess a valid, current Police Officer Standards and Training (P.O.S.T.) certificate and was required to have five years of paid law enforcement experience. Officer Campbell satisfied this requirement due to his employment with the Phoenix, Arizona, police department from 1967 to 1974.

"Detective" and "police officer" are both "scheduled" occupations within occupational group 490.<sup>1</sup> Designation as "school police officer" is required by Penal Code section 830.32 because the worker is P.O.S.T. certified. Designation of the occupation as "scheduled" is sufficient reason, standing alone, to conclude that the worker should be included in occupational group 490. However, a review of the requirements of the worker's job, as set forth above, show that he performed duties which are analogous to the duties expected of the occupations listed above under occupational group 490. In addition, the duties show that he was called upon to perform demanding activities in unpredictable and dangerous circumstances; duties which placed significant demand on all parts of his body. Even if some of the worker's duties required him to work at tasks other than the ones enumerated above, such as encouraging community awareness for crime prevention, participating in education programs, assisting with the behavior of students, and investigating activities of the staff which are not criminal in nature but are violations of the rules and the Education Code, he is still entitled to have his permanent disability adjusted for the occupation which carries the highest adjustment so long as that occupation is an integral part of his employment. *National Kinney of Calif. v. Workers' Comp. Appeals Bd. (Casillas)* (1980) 113 Cal.App.3d 203, 45 Cal.Comp.Cases 1266. Based on the forgoing, I conclude that the worker is entitled to have his standard permanent disability adjusted using the variants for occupational group 490.

<sup>1</sup> "Scheduled" means that they are listed in the occupation section of the Schedule for Rating Permanent Disabilities under provisions of the Labor Code of the State of California (1997).

### PERMANENT DISABILITY

Based on the stipulations of the parties as to age and permanent disability and the conclusion above regarding occupational group, I conclude that the worker's disability should be rated according to the following formula:

7.3-25-490-I-33-38

Based on the foregoing rating formula, I conclude that the worker has sustained permanent disability of 38% entitling him to 182.0 weeks of disability indemnity at the weekly rate of \$170.00, in the total sum of \$30,940.00.

### SALARY CONTINUATION PAY

The worker contends that he is entitled to continuation of his regular salary during the periods January 21, 2000, to March 28, 2000, and from July 20, 2000, through March 23, 2001. During these periods he was entitled to (and defendant paid) temporary disability indemnity at the weekly rate of \$490.00 and vocational rehabilitation maintenance allowance at the weekly rate of \$246.00. The worker was retired due to his left shoulder injury on March 23, 2001. The worker's contention is based on Labor Code §4850, and the benefit he seeks is often referred to as "4850 pay" or "salary continuation pay." There is no dispute over the periods but whether the rate for salary continuation pay in Labor Code section 4850 should apply.

The worker contends that the San Diego Unified School District is barred by the doctrine of res judicata from relitigating the salary continuation pay issue in this case because it lost an identical issue in another case. The test for application of the doctrine of res judicata has three parts.

- a. Was the issue decided in the prior adjudication identical with the one presented in the action in question?
- b. Was there a final judgment on the merits in the prior adjudication?
- c. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?

Res judicata has two aspects. Its primary aspect is to bar the maintenance of a second suit between the same parties on the same cause of action. Its secondary aspect, commonly referred to as collateral estoppel, precludes relitigation of issues in a second action that were previously resolved by litigation and a determination in an earlier action. The doctrine applies to determinations of a court of competent jurisdiction, including determinations of an administrative agency acting in a judicial capacity.

Addressing the prongs of the test in reverse order, the San Diego Unified School District was a party in the case of *Elmore v. San Diego Unified School District* (2001) 66 Cal.Comp.Cases 1141 (writ denied). Therefore, the doctrine can be asserted to preclude the San

Diego Unified School District from relitigating an identical issue that was litigated to final judgment on the merits by a court of competent jurisdiction in *Elmore*.

A determination by a worker's compensation administrative law judge (WCJ) is a final adjudication. In *Elmore* the defendant petitioned for reconsideration of the determination of the WCJ. After remand for a finding whether Officer Elmore was a member of the Public Employees Retirement System (PERS)<sup>2</sup>, the Appeals Board upheld the WCJ's determination that Officer Elmore, a member of PERS and a police officer for the San Diego Unified School District, was entitled to benefits pursuant to Labor Code section 4850. Upon defendant's petition to the Court of Appeals for writ of review, the court said that it could not determine that the WCAB acted unreasonably or in excess of its powers in denying the petition for reconsideration. The Supreme Court denied the defendant's subsequent petition for review. The determination by the WCJ in *Elmore* is final.

There is no question that the issue presented in *Elmore* and the issue in this case are identical. The issue can be stated: Is a police officer employed by the San Diego Unified School District entitled to benefits under Labor Code section 4850?

As can be seen from the Findings, Award and Order I issued on August 31, 2001, and the accompanying opinion, I disagree with the determination of the WCJ in *Elmore* on the issue of whether a police officer for the San Diego Unified School District is entitled to benefits under Labor Code section 4850.<sup>3</sup> However, that decision was rescinded and the parties were given the opportunity to raise and argue whether the doctrine of res judicata, and its secondary aspect of collateral estoppel, barred the San Diego Unified School District from relitigating the issue.<sup>4</sup> Based on the analysis above, I conclude that the San Diego Unified School District is barred from relitigating the issue of whether one of its police officers is entitled to benefits under Labor Code section 4850.

Defendant argues that application of the doctrine of res judicata would create a chamber of horrors. Defendant says that a judicial determination that police officers are eligible to receive increased benefits under Labor Code section 4850 will have a negative impact on every school district through out the State in times when funding has been stretched to its absolute maximum. Regardless of the lack of evidence of this contention, the argument is not relevant to the limited issue presented here. The writ denied decision of the Court of Appeal in *Elmore* has no precedential value in litigation by any other school district. However, the San Diego Unified School District has had its day in court on this issue and cannot litigate it again.<sup>5</sup>

<sup>2</sup> The parties stipulated that the worker is a member of the Public Employees Retirement System.

<sup>3</sup> At the time the Findings, Award and Order and Opinion on Decision were issued on August 31, 2001, the judgment in *Elmore* was not final.

<sup>4</sup> The parties filed briefs on the new issue but offered no additional evidence.


<sup>5</sup> "Rather than affecting questions of great economic consequence, this case involves whether or not officers of one local agency are eligible for an increased disability benefit for the period of one year. To apply the public interest exception here would mean that any time a public agency is subject to a judicial or quasi-judicial determination with an adverse economic consequence, that agency would not be bound by the doctrine of collateral estoppel. Such an approach would effectively eviscerate the rule that collateral estoppel applies to determinations of law. Accordingly, the approach is rejected." *Housing Authority of the City of Los Angeles v. Workers' Comp. Appeals Bd. (Chandler)* (1998) 61 Cal.App.4<sup>th</sup> 109 [63 Cal.Comp.Cases].

Based on the foregoing discussion, I conclude the worker is entitled to salary continuation pay pursuant to Labor Code section for the period from January 21, 2000, to March 28, 2000, and from July 20, 2000, through March 23, 2001.

ATTORNEY FEES.

Based on the WCAB Rules of Practice and Procedure, I conclude that an attorney's fee of \$7,220.00 is reasonable.

DATED: 3-29-02  
Filed and served by mail on all parties  
Checked on the Official Address Record  
By: E. Abano *EAbano*

  
\_\_\_\_\_  
J. P. McHENRY  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE



Court of Appeal, Fourth Appellate District, Division One - No. D038032  
8099482

**IN THE SUPREME COURT OF CALIFORNIA**

En Banc

SUPREME COURT  
FILED

SAN DIEGO UNIFIED SCHOOL DISTRICT, Petitioner,

SEP 19 2001

v.

Frederick K. Ohlrich Clerk

WORKERS' COMPENSATION APPEALS BOARD et al., Respondent <sup>DEPUTY</sup>

Petition for review DENIED.  
Chin, J., was absent and did not participate.

GEORGE

Chief Justice

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

F I L E D  
Srinivas M. Vittal, Clerk  
JUL 19 2001

Court of Appeal Fourth District

SAN DIEGO UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

WORKERS' COMPENSATION APPEALS BOARD and JOSEPH W. ELMORE,

Respondents.

D038032

(WCAB Nos. SDO-0200582,  
SDO-0200586, SDO-0252347)

THE COURT:

The petition for writ of review, answer and reply have been read and considered by Justices Huffman, McIntyre and O'Rourke.

The San Diego Unified School District (District) filed a petition for reconsideration on March 20, 2001, challenging a decision after remand by the Workers' Compensation Judge (WCJ), finding Joseph W. Elmore, Jr., entitled to benefits under Labor Code<sup>1</sup> section 4850, in that as a school district police officer he was a sworn

<sup>1</sup> All statutory references are to the Labor Code unless otherwise indicated.

MAY-20-2002 MON 02:10 PM

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P. 04

officer engaged in active law enforcement.<sup>2</sup> Section 4850 allows full pay during a leave of absence for up to one year for city police officers, firemen, sheriffs and other enumerated peace officers who are disabled by injury or illness arising out of the course of their duties.

The WCJ issued a report recommending denial of the petition for reconsideration citing to the evidence and to cases in which police officers other than city police officers had been found to be covered by section 4850. The WCJ also noted section 3202 requires workers' compensation law be construed to extend protection to injured workers. The WCJ found no basis for a distinction in coverage between officers defined in Penal Code section 830.31 and those in Penal Code section 830.32. The Workers' Compensation Board (WCAB) denied the petition for reconsideration, adopting the reasoning in the WCJ's report.

In the present petition District argues the WCAB improperly denied its petition in that section 4850 clearly indicates those who are included in its provisions and those who are not. It claims Blmore is clearly excluded. It argues because section 4850 is not ambiguous the rule of liberal construction is inapplicable, and the Legislature has drawn a clear distinction in coverage between peace officers defined in Penal Code section 830.31 and school officers defined in Penal Code section 830.32. It also points out the

---

<sup>2</sup> The matter was remanded to the WCJ because he had made no specific finding that Blmore was a member of the Public Employees' Retirement System, a threshold requirement for application of section 4850. The WCJ's second decision included this finding.

Legislature recently specifically extended section 4850's coverage to particular officers and most importantly to Los Angeles Unified School District police officers. The District reasons if school officers were already covered it would not be necessary to add specifically Los Angeles Unified School District school police.

Review of a decision of the WCAB is limited to whether the WCAB acted without or in excess of its powers, and whether the order, decision or award was unreasonable, not supported by substantial evidence, or procured by fraud. (§ 5952.)

We cannot say the WCAB acted unreasonably or in excess of its powers in denying this petition for reconsideration. Elmore, as a school police officer, is engaged in active law enforcement duties. His stipulated job duties indicate he is faced with the same life-threatening situations as city or county police officers. We are not persuaded by District's argument there is a distinction in coverage between those peace officers defined in Penal Code section 830.31 and those in Penal Code section 830.32. Further, cases cited by District do not support its position. For example, *Biggers v. Workers' Comp. Appeals Bd.* (1999) 69 Cal.App.4th 431, did not rest on a narrow interpretation of section 4830. There, the court found a court bailiff's duties within the area of active law enforcement.

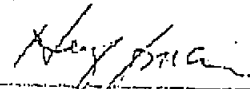
The recent amendment to section 4850 to include specifically school police officers employed by the Los Angeles Unified School District does not show that other school police officers are excluded. Before the amendment school police officers employed by the Los Angeles Unified School District were not covered by section 4850 because they are not members of the Public Employees' Retirement System. The

amendment to section 4850 extends its benefits to members of that retirement system.

Elmore, as a District school police officer and member of the Public Employees'

Retirement System, was already covered by section 4850.

The petition is denied.



HUFFMAN, Acting P. J.

Copies to: All parties

## SAN DIEGO CITY SCHOOLS

### POSITION DESCRIPTION

---

<b>TITLE:</b>	Police Officer I	<b>REPORTS TO:</b>	Assigned Supervisor
<b>DEPARTMENT:</b>	School Police Services	<b>CLASSIFICATION:</b>	Classified
<b>FLSA:</b>	Non-Exempt	<b>WORK YEAR/HOURS:</b>	12 Mos/8hrs
<b>REVISED:</b>	April 8, 2002	<b>SALARY GRADE:</b>	41 School Police Services

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#### **BASIC FUNCTION:**

As a peace officer of the State of California authorized by Section 830.32 of the California Penal Code and as a school district police officer authorized by Education Code Sections 39670 et. seq., protect life and property in assigned geographic areas of the school district in a marked, caged, radio-equipped school police vehicle and provide protective school police services and back up activities in assigned geographic areas of the district.

**REPRESENTATIVE DUTIES:** (Incumbents may perform any combination of the essential functions shown below. This position description is not intended to be an exhaustive list of all duties, knowledge, or abilities associated with this classification, but is intended to accurately reflect the principal job elements.)

**E = Essential Functions**

Patrol roads, buildings, and grounds in a marked, caged, radio-equipped school police vehicle to provide protection against vandalism, burglary, arson, trespass, and theft. **E**

Wear a standard issue school police uniform including protective vest and carry standard police equipment. **E**

Make arrests as required by law, transport juveniles/adults to appropriate facility, and attend court hearings and trials as required. **E**

Respond to emergency situations on district sites and property. **E**

Provide back-up school police protection for police officers, detectives, and non-sworn community services officers. **E**

Conduct investigations into criminal acts occurring on district property including bus transportation. **E**

Make recommendations regarding security matters. **E**

Prepare written reports to be submitted to prosecuting agencies and/or appropriate district offices for possible suspension or expulsion. **E**

Counsel juvenile offenders and advise parents. **E**

Conduct investigations of crimes against persons and property; identify type of crime and collect, preserve, and impound physical evidence. **E**

Prepare cases to obtain restitution for damage to or theft of district property. **E**

Maintain orderly control of large crowds and enforces safety regulations when assigned to special school or district events. E

Participate in programs related to law enforcement and safety education. E

Provide positive role-modeling for district pupils and give classroom talks regarding youth and the law. E

Enforce parking regulations on district property. E

Walk-test schools and central offices to ensure intrusion systems are working properly. E

Assist and cooperate with other law enforcement agencies. E

Respond to alarms and calls for assistance after hours, on weekends, and holidays. E

Perform related duties as assigned.

**MINIMUM QUALIFICATIONS:**

**EDUCATION AND EXPERIENCE:**

Any combination of training, experience, and/or education equivalent to completion of applicable criminal justice courses in an accredited college and completion of a California P.O.S.T. approved municipal law enforcement training academy.

**LICENSES AND OTHER REQUIREMENTS:**

Possession of a valid California driver's license.

United States citizenship.

Must be qualified to render basic first aid and CPR.

**NOTE:** An incumbent in the job class of Police Officer I may be promoted to the next higher classification of Police Officer II upon certification by the School Police Chief that the incumbent meets the minimum qualifications for the Police Officer II classification.

**KNOWLEDGE AND ABILITIES:**

**KNOWLEDGE OF:**

Modern investigative and law enforcement procedures, techniques, and equipment.

Applicable municipal and state codes.

Court procedures.

Oral and written communication skills.

**ABILITY TO:**

Prepare cases for complaint and to represent the district in court.

Collect and analyze information and make independent judgments.

Write complete and concise reports.

Communicate effectively, orally and in writing.

Establish and maintain effective working relationships with others.

Plan and organize work, and meet schedules and time lines.

Read, interpret, apply, and explain laws, codes, rules, regulations, policies, and procedures.

**WORKING CONDITIONS:**

**ENVIRONMENT:**

Work may be performed in an indoor or outdoor setting; exposure to dissatisfied or abusive individuals including possible confrontations, fights, and use of weapons.

**PHYSICAL REQUIREMENTS:**

Emotional stability and physical condition necessary to perform the duties of the job class; hearing and speaking to exchange information in person and on the telephone; seeing to read, prepare, and proofread documents and perform assigned duties; sitting or standing for extended periods of time; dexterity of hands and fingers to perform duties including driving a vehicle and using standard police equipment; lifting light objects.

NOTE: Incumbents may be assigned evening and night hours or round-the-clock protection of pupils, staff, and facilities.

PT 8716

PH



# Mailing List

Claim Number:  
ue:

00-TC-20  
Workers' Compensation Disability Benefits for Government  
Employees

Ms. Susan Geanacou, Senior Staff Attorney  
Department of Finance  
915 L Street, Suite 1190  
Sacramento, CA 95814

Executive Director  
California Peace Officers' Association  
1455 Response Road, Suite 190  
Sacramento, California 95815

Mr. Glenn Haas, Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, California 95816

Ms. Harmeet Barkschat,  
Mandate Resource Services  
8254 Heath Peak Place  
Antelope, California 95843

Mr. Jim Spano,  
State Controller's Office  
Division of Audits ( B-8)  
300 Capitol Mall, Suite 518, P.O. Box  
942850  
Sacramento, California 95814

Executive Director  
California Probation & Parole, Corr. Asso.  
755 Riverpoint Drive, Suite 200  
Sacramento, CA 95660

Dr. Carol Berg, Ph.D,  
Education Mandated Network  
1121 L Street, Suite 1060  
Sacramento, California 95814

Mr. Tom Lutzenberger, Principal Analyst  
Department of Finance  
915 L Street, 6<sup>th</sup> Floor  
Sacramento, CA 95814

Mr. Gerry Shelton, Administrator  
Department of Education  
560 J Street, Suite 150  
Sacramento, CA 95814

Mr. Steve Keil,  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, California 95814

Executive Director,  
California State Firefighters' Association  
2701 K Street, Suite 201  
Sacramento, California 95816

Mr. Keith B. Petersen, President  
Sixten & Associates  
5252 Balboa Ave., Suite 807  
San Diego, California 92117

Ms. Pam Stone, Legal Counsel  
DMG-MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, California 95841

Ms. JoAnn Speers, Legal Counsel  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, California 95814

Mr. Paul Minney,  
Spector, Middleton, Young & Minney, LLP  
7 Park Center Drive  
Sacramento, California 95825

Mr. Steve Smith, CEO  
Mandated Cost Systems  
11130 Sun Center Drive, Suite 121  
Rancho Cordova, CA 95670

Mr. Art Palkowitz, Legislative Mandates  
Specialist  
San Diego Unified School District  
4100 Normal Street, Room 3159  
San Diego, California 92103

Ms. Sandy Reynolds, President  
Reynolds Consulting, Inc.  
P. O. Box 987  
Sun City, California 92586

Mr. David Wellhouse,  
Wellhouse & Associates  
9175 Kiefer Blvd., Suite 121  
Sacramento, California 95826

Mr. Mark Sigman, Specialized  
Accounting  
Auditor-Controller's Office  
Riverside County  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, California 92501

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Mr. Steve Shields,  
Shields Consulting Group, Inc.  
1536 36<sup>th</sup> Street  
Sacramento, CA 95816

*Original*

COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER



KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY  
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 17th day of July 2002, I served the attached:

Documents: Review of State Agency Comments: County of Los Angeles Amendment to Teat Claim [CSM 00-TC-20], Workers' Compensation Disability Benefits for Government Employees, including a 1 page letter of J. Tyler McCauley dated 7/16/02, a 1 page letter of Richard J. Knott, a 1 page declaration of Kandra Olsen, and a 15 page attachment, all pursuant to CSM-00-TC-20, now pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

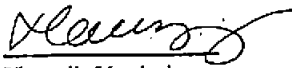
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates and State Controller's Office- FAX as well as mail of originals.
- by placing  true copies  original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of July, 2002, at Los Angeles, California.

  
Hasmik Yaghobyan

STATE OF CALIFORNIA

**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

PHONE: (916) 323-3562

FAX: (916) 445-0278

E-mail: csmlinfo@csm.ca.gov



July 25, 2002

Leonard Kaye, Esq.  
 County of Los Angeles  
 Auditor-Controller's Office  
 Kenneth Hahn Hall of Administration  
 500 West Temple Street, Room 525  
 Los Angeles, Ca 90012-2766

*And Affected Parties and State Agencies (See Enclosed Mailing List)*

Re: *Workers' Compensation Disability Benefits for Government Employees -*  
 02-TC-02 (Amendment to 00-TC-20)  
 County of Los Angeles, Claimant  
adding San Diego Unified School District, Co-Claimant  
 Labor Code Section 4850, as amended by Statutes 2000, Chapters 920 and 929  
 Statutes 1999, Chapters 224 and 970  
 Statutes 1989, Chapter 1464  
 Statutes 1977, Chapter 981

Dear Mr. Kaye:

Your request to amend the above named test claim to add the San Diego Unified School District as co-claimant is approved.

Commission staff has reviewed the above-named test claim amendment and determined that it is complete. A copy of the amendment is being provided to affected state agencies and interested parties because of their interest in the Commission's determination. Since comments have already been filed on the test claim, we request that state agency comments be limited to the amendment.

The key issues before the Commission are:

- Do the provisions listed above in the test claim amendment impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim amendment provisions impose costs mandated by the state?

Mr. Leonard Kaye

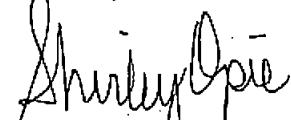
July 25, 2002

Page 3

Finally, the Commission is required to adopt a statewide cost estimate of the reimbursable state-mandated program within 12 months of receipt of an amended test claim. This deadline may be extended for up to six months upon the request of either the claimant or the Commission.

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,



SHIRLEY OPIE

Assistant Executive Director

Enclosures: Mailing List and Test Claim

j:\mandates\2000\tc\00-tc-20\complete\tr4amendment.doc

# Commission on State Mandates

Original List Date: 07/06/2001

Mailing Information Completeness Determination

Last Updated: 07/25/2002

List Print Date: 07/25/2002

Claim Number: 00-TC-20

## Mailing List

Issue: Workers' Compensation Disability Benefits for Government Employees

Ms. Harriet Bartschat,  
Mandate Resource Services

5325 Blkhorn Blvd. #307  
Sacramento CA 95842

Tel: (916) 727-1350 Fax: (916) 727-1734 Interested Person

Executive Director,  
California State Firefighters' Association

2701 K Street Suite 201  
Sacramento CA 95816

Tel: (800) 451-2732 Fax: (916) 446-9889 State Agency

Dr. Carol Berg,  
Education Mandated Cost Network

1121 L Street Suite 1060  
Sacramento CA 95814

Tel: (916) 446-7517 Fax: (916) 446-2011 Interested Person

Executive Director, (B-08)  
State Board of Education

721 Capitol Mall Room 558  
Sacramento CA 95814

Tel: (916) 657-5478 Fax: (916) 653-7016 State Agency

Annette Chinn,  
Coast Recovery Systems

705-2 East Blvdwell Street #294  
Folsom CA 95630

Tel: (916) 939-7901 Fax: (916) 939-7801 Interested Person

Ms. Susan Geancou, Senior Staff Attorney (A-15)  
Department of Finance

915 L Street, Suite 1190  
Sacramento CA 95814

Tel: (916) 445-3274 Fax: (916) 327-0220 State Agency

Executive Director,  
California Probation, Parole & Correctional Association

755 Riverpoint Drive Suite 200  
Sacramento CA 95660

Tel: (916) 927-4888 Fax: (916) 000-0000 Interested Person

Mr. Michael Havey, Bureau Chief (B-8)  
State Controller's Office

Division of Accounting & Reporting  
3301 C Street Suite 500  
Sacramento CA 95816

Tel: (916) 445-8757 Fax: (916) 323-4807 State Agency

Executive Director,  
California Peace Officers' Association

1455 Response Road Suite 190  
Sacramento CA 95815

Tel: (916) 263-0541 Fax: (916) 000-0000 Interested Person

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

Tel: (213) 974-8564 Fax: (213) 617-8106 Claimant

# Commission on State Mandates

Original List Date: 07/06/2001

Mailing Information Completeness Determination

Last Updated: 07/25/2002

List Print Date: 07/25/2002

## Mailing List

Claim Number: 00-TC-20

Issue: Workers' Compensation Disability Benefits for Government Employees

Mr. Steve Kall,  
California State Association of Counties

1100 K Street Suite 101  
Sacramento CA 95814-3941

Tel: (916) 327-7523 Fax: (916) 441-5507 Interested Person

Ms. Sandy Reynolds, President  
Reynolds Consulting Group, Inc.

P.O. Box 987  
Sun City CA 92586

Tel: (909) 672-9964 Fax: (909) 672-9963 Interested Person

Mr. Tom Lutzenberger, Principal Analyst (A-15)  
Department of Finance

915 L Street, 6th Floor  
Sacramento CA 95814

Tel: (916) 445-8913 Fax: (916) 327-0225 State Agency

Mr. Gerry Shelton, Administrator (E-8)

Department of Education  
School Fiscal Services  
560 J Street Suite 150  
Sacramento CA 95814

Tel: (916) 323-2068 Fax: (916) 322-5102 State Agency

Mr. Paul Minney,  
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive  
Sacramento CA 95825

Tel: (916) 646-1400 Fax: (916) 646-1300 Interested Person

Mr. Steve Shields,  
Shields Consulting Group, Inc.

1536 36th Street  
Sacramento CA 95816

Tel: (916) 454-7310 Fax: (916) 454-7312 Interested Person

Mr. Arthur Palkowitz, Legislative Mandates Specialist  
San Diego Unified School District

4100 Normal Street Room 3159  
San Diego CA 92103-8363

Tel: (619) 725-7565 Fax: (619) 725-7569 Claimant

Mr. Mark Sigman, Accountant II  
Riverside County Sheriff's Office

4095 Lemon Street P O Box 512  
Riverside CA 92502

Tel: (909) 955-6579 Fax: Interested Person

Mr. Keith B. Petersen, President  
SixTen & Associates

5252 Balboa Avenue Suite 807  
San Diego CA 92117

Tel: (858) 514-8605 Fax: (858) 514-8645 Interested Person

Mr. Steve Smith, CEO  
Mandated Cost Systems, Inc.

11130 Sun Center Drive Suite 100  
Rancho Cordova CA 95670

Tel: (916) 669-0888 Fax: (916) 669-0889 Interested Person

# Commission on State Mandates

Original List Date: 07/06/2001

Mailing Information Completeness Determination

Last Updated: 07/25/2002

List Print Date: 07/25/2002

Claim Number: 00-TC-20

## Mailing List

Issue: Workers' Compensation Disability Benefits for Government Employees

Mr. Jim Spano, (B-8)  
State Controller's Office  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento CA 95814  
Tel: (916) 323-5849 Fax: (916) 327-0832 State Agency

Ms. JoAnn Speers, Legal Counsel  
League of California Cities  
  
1400 K Street, #400  
Sacramento CA 95814  
Tel: (916) 658-8200 Fax: (916) 658-8240 Interested Person

Pam Stone, Legal Counsel  
MAXIMUS  
  
4320 Auburn Blvd. Suite 2000  
Sacramento CA 95841  
Tel: (916) 485-8102 Fax: (916) 485-0111 Interested Person

Mr. David Wellhouse,  
David Wellhouse & Associates, Inc.  
  
9175 Kiefer Blvd Suite 121  
Sacramento CA 95826  
Tel: (916) 368-9244 Fax: (916) 368-5723 Interested Person

TO ALL PARTIES AND INTERESTED PARTIES In commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)







DEPARTMENT OF  
**FINANCE**  
OFFICE OF THE DIRECTOR

GRAY DAVIS, GOVERNOR  
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ www.dof.ca.gov

August 23, 2002

**RECEIVED**

**AUG 23 2002**

**COMMISSION ON  
STATE MANDATES**

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of July 25, 2002, the Department of Finance has reviewed the test claim submitted by the San Diego Unified School District. This test claim, CSM-02-TC-02, simply amends test claim CSM-00-TC-20, "Workers' Compensation Disability Benefits for Government Employees," by adding an additional claimant.

Our comments provided in response to test claim CSM-00-TC-20 (in our letter dated August 8, 2001) also apply to this amended test claim.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 25, 2002 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact, Principal Program Budget Analyst Jennifer Osborn or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

*Calvin Smith*

S. Calvin Smith  
Program Budget Manager

Attachments

## PROOF OF SERVICE

Test Claim Name: Worker's Compensation Disability Benefits for Government Employees  
 Test Claim Number: CSM-02-TC-02

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, Floor, Sacramento, CA 95814.

On August 23, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, Floor, for Interagency Mail Service, addressed as follows:

A-16

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

Annette Chinn

Cost Recovery Systems  
 705-2 East Bidwell Street #294  
 Folsom, CA 95630

B-29

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

Jim Spano

State Controller's Office  
 Division of Audits  
 300 Capitol Mall, Suite 518  
 Sacramento, CA 95814

County of Los Angeles  
 Department of Auditor-Controller  
 Kenneth Hahn Hall of Administration  
 Attention: Leonard Kaye  
 500 West Temple Street, Suite 525  
 Los Angeles, CA 90012

Mark Sigman, Accountant II  
 Riverside County Sheriff's Office  
 4095 Lemon Street  
 P.O. Box 512  
 Riverside, CA 92502

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

Executive Director  
 California Peace Officer's Association  
 1455 Response Road, Suite 190  
 Sacramento, CA 95815

Michael Havey, Bureau Chief  
 State Controller's Office  
 Division of Accounting and Reporting  
 3301 C Street  
 Sacramento, CA 95816

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

Attachment A

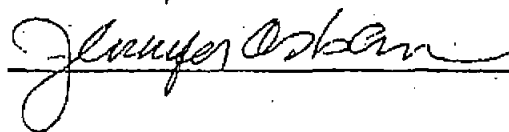
DECLARATION OF  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-02-TC-02

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter No. 920, Statutes of 2000, (AB 1883, Lowenthal) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

---

at Sacramento, CA



---

Steve Shields  
Shields Consulting Group, Inc.  
1536 36th Street  
Sacramento, CA 95816

Dr. Carol Berg, PhD,  
Education Mandated Network  
1121 L Street, Suite 1080  
Sacramento, CA 95814

Steve Keil  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814

Keith B. Peterson, President  
Six Ten and Associates  
6252 Balboa Ave., Suite 807  
San Diego, CA 92117

JoAnn Speers, Legal Counsel  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, California 95814

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

Sandy Reynolds, President  
Reynolds Consulting Group, Inc.  
P.O. Box 987  
Sun City, California 92586

Executive Director  
California Probation and Parole, Corr. Asso.  
755 Riverpoint Drive, Suite 200  
Sacramento, CA 95660

Gerry Shelton, Administrator  
Department of Education  
560 J Street, Suite 150  
Sacramento, CA 95814

Executive Director  
California State Firefighters' Association  
2701 K Street, Suite 201  
Sacramento, CA 95816

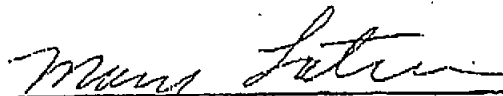
Pam Stone, Legal Counsel  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Paul Minney  
Spector, Middleton, Young and Minney, LLP  
7 Park Center Drive  
Sacramento, CA 95825

Arthur Palkowitz, Legislative Mandates  
Specialist  
San Diego Unified School District  
4100 Normal Street, Room 3159  
San Diego, California 92103

Executive Director  
State Board of Education  
721 Capitol Mall, Room 558  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 23, 2002 at Sacramento, California.

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

**COMMISSION ON STATE MANDATES**

880 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

PHONE: (916) 323-3682

FAX: (916) 445-0278

E-mail: csmInfo@csm.ca.gov



April 28, 2006

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

Mr. Arthur M. Palkowitz  
Legislative Mandates Specialist  
San Diego Unified School District  
4100 Normal Street, Room 3159  
San Diego, CA 92103

*And Interested Parties and Affected State Agencies (See Enclosed Mailing List)*

**RE: Draft Staff Analysis and Hearing Date**

*Workers' Compensation Disability Benefits for Government Employees  
(00-TC-20, 02-TC-02)*

County of Los Angeles, Claimant

San Diego Unified School District, Co-Claimant

Labor Code Section 4850

Statutes 2000, Chapter 920 & 929; Statutes 1999, Chapters 270 & 970;

Statutes 1989, Chapter 1464; Statutes 1977, Chapter 981

Dear Mr. Kaye and Mr. Palkowitz:

The draft staff analysis of this test claim is enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the draft staff analysis by Friday, May 19, 2006. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

**Hearing**

This test claim is set for hearing on **Thursday, July 27, 2006** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about July 13, 2006. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

*Paula Higashi*  
PAULA HIGASHI

Executive Director

Enc. Draft Staff Analysis

MAILED: \_\_\_\_\_  
DATE: 4/12/80  
INITIAL: JB  
FILE: \_\_\_\_\_  
WORKING BINDER: \_\_\_\_\_

ITEM \_\_\_\_\_  
**TEST CLAIM**  
**DRAFT STAFF ANALYSIS**

Labor Code Section 4850  
Statutes 2000, Chapters 920 & 929  
Statutes 1999, Chapters 270<sup>1</sup> & 970  
Statutes 1989, Chapter 1464  
Statutes 1977, Chapter 981

*Workers' Compensation Disability Benefits for Government Employees*  
(00-TC-20, 02-TC-02)

County of Los Angeles, Claimant  
San Diego Unified School District, Co-Claimant

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**EXECUTIVE SUMMARY**

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS.

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<sup>1</sup> Claimant incorrectly identified Statutes 1999, chapter 224 on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

## STAFF ANALYSIS

### Claimant

County of Los Angeles

### Co-Claimant

San Diego Unified School District

### Chronology

- 06/29/01 County of Los Angeles filed test claim with the Commission.
- 08/13/01 The Department of Finance filed comments on test claim with the Commission.
- 08/31/01 County of Los Angeles filed reply to Department of Finance comments.
- 07/17/02 County of Los Angeles filed amendment to test claim requesting addition of San Diego Unified School District as co-claimant.
- 07/25/02 Commission approved request to add co-claimant.
- 08/23/02 The Department of Finance filed comments on test claim with the Commission.
- 04/28/06 Commission staff issued draft staff analysis.

### Background

This test claim involves legislation that provides workers' compensation leave benefits for local safety officers.

Article XIV, section 4 of the California Constitution vests the Legislature with plenary power to create and enforce a complete system of workers' compensation. The Legislature initially addressed the issue of workers' compensation in 1911 in the Workmen's Compensation Act,<sup>2</sup> which was amended significantly in 1913<sup>3</sup> and 1917.<sup>4</sup> The current statutory scheme, enacted in 1937, consolidated workers' compensation and worker health and safety provisions into the Labor Code.<sup>5</sup> The workers' compensation system provides for a compulsory and exclusive scheme of employer liability, without fault, for injuries arising out of and in the course of employment, with remedies for temporary and permanent disability, medical care and employer discrimination.<sup>6</sup>

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<sup>2</sup> Statutes 1911, chapter 399.

<sup>3</sup> Statutes 1913, chapter 176.

<sup>4</sup> Statutes 1917, chapter 586.

<sup>5</sup> Labor Code sections 3200 et seq. and 6300 et seq., Statutes 1937, chapter 90.

<sup>6</sup> 65 California Jurisprudence Third (1998), Work Injury Compensation, section 7, pages 29-30.



Section 4850 was added to the Labor Code in 1939 to provide city police officers and fire fighters that were members of the State Employees' Retirement System (now the Public Employees' Retirement System [PERS]) a benefit that entitled them to leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in the course of employment. Over the years, Labor Code section 4850 has been amended several times to expand the groups of employees covered and to address other provisions of the benefit. Section 4850, as amended in 1977 and thereafter, is the subject of this test claim.

Prior to 1977, section 4850 read:

Whenever any city policeman, city fireman, county fireman, fireman of any fire district, sheriff or any officer or employee of a sheriff's office, or any inspector, investigator, detective or personnel with comparable title in any district attorney's office, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 ... is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with the city or county, to leave of absence while so disabled without loss of salary, in lieu of temporary disability payments, if any, which would be payable under this chapter, for the period of such disability but not exceeding one year, or until such earlier date as he is retired on permanent disability pension ... It shall also apply to deputy sheriffs subject to the County Employees Retirement law of 1937 ...

The section excluded persons such as telephone operator, clerk, stenographer, machinist, mechanic or otherwise, whose functions did not clearly fall within active law enforcement service or active firefighting and prevention service. It also provided that if the employer was insured through the workers' compensation system, then any payments the workers' compensation system would be obligated to make as disability indemnity could be paid to the employer. A later statute, not pled in this test claim, established a program for advanced disability pension payments.<sup>8</sup> Under that program, the local government agency may make advance pension payments to a local safety officer who has qualified for the continued salary benefit under section 4850; for PERS members, the local government is entitled to reimbursement from PERS for any such advance pension payments.

#### Test Claim Legislation

The test claim legislation consists of several amendments to section 4850. Following is a summary of the changes relevant for this analysis that were enacted in each of the test claim statutes.

#### *Statutes 1977, Chapter 981*

- Added lifeguards employed year round on a regular, full-time basis by Los Angeles County, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

<sup>7</sup> Statutes 1939, chapter 926.

<sup>8</sup> Statutes 1985, Chapter 1254; Labor Code section 4850.3.

*Statutes 1989, Chapter 1464*

- Reenacted section 4850, which would have sunset on January 1, 1990, without any changes that are relevant for this analysis.

*Statutes 1999, Chapter 270<sup>9</sup>*

- Added certain peace officers defined in Penal Code section 830.31<sup>10</sup> that are employed on a regular full time basis by Los Angeles County, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

*Statutes 1999, Chapter 970*

- Added county probation officers, group counselors, juvenile services officers, or officers or employees of a probation office, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.
- Provided that safety employees employed by the County of San Luis Obispo could be entitled to the one-year paid leave benefit upon the adoption of a resolution of the board of supervisors of the County of San Luis Obispo, even though the employee is not a member of PERS or subject to the County Employees Retirement Law of 1937.

*Statutes 2000, Chapters 920 & 927 (double-joined)*

- Added the Los Angeles City Retirement System as another retirement program to which the specified employees may belong in order to receive the one-year paid leave benefit.
- Added the one-year paid leave benefit for the following employees:
  - airport law enforcement officers under subdivision (d) of section 830.33 of the Penal Code;
  - harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of section 830.1 or subdivision (b) of section 830.33 of the Penal Code; and
  - police officers of the Los Angeles Unified School District.

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<sup>9</sup> Claimant incorrectly identified Statutes 1999, chapter 224 on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

<sup>10</sup> Penal Code section 830.31 designates the following persons as peace officers: (a) a police officer of the County of Los Angeles; (b) a person designated by a local agency as a park ranger; (c) a peace officer of the Department of General Services of the City of Los Angeles; and (d) a housing authority patrol officer.

### Claimant's Position

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

Claimant asserts that the County has incurred "new duties" and increased costs in complying with the new requirement that leave of absence with full salary must now be provided to specified employees instead of less costly temporary disability or maintenance payments required under prior law. The asserted increased costs in providing the new benefits are the difference between the 70% temporary disability salary that was previously required and the 100% salary required for specified employees under the test claim legislation.

### Co-Claimant's Position

Co-claimant, San Diego Unified School District, contends that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for the District's police officers, since the Fourth District Court of Appeal case of *San Diego Unified School District v. Workers' Compensation Appeals Board*<sup>11</sup> upheld a Workers' Compensation Appeals Board determination that a San Diego Unified School District peace officer was entitled to the paid leave benefit provided in Labor Code section 4850.

### Department of Finance Position

Department of Finance submitted comments recommending that "the test claim be denied since the chaptered legislation cited in the test claim does not appear to mandate a new program or higher level of service of an existing program pursuant to Article XIII B, Section 6 of the California Constitution."

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<sup>11</sup> *San Diego Unified School District v. Workers' Compensation Appeals Board*, July 19, 2001, D038032 (nonpub. opn., cert. denied).

## Discussion

The courts have found that article XIII B, section 6 of the California Constitution<sup>12</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>13</sup> "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."<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup> A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."<sup>19</sup>

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<sup>12</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

<sup>13</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>14</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>15</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>16</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

<sup>17</sup> *San Diego Unified School Dist.*, *supra*; 33 Cal.4th 859, 874 [reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835].

<sup>18</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>19</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>20</sup>

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.<sup>21</sup> 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."<sup>22</sup>

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 governments within the meaning of article XIII B, section 6 of the California Constitution?

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

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

Labor Code section 4850, as noted above, sets forth a paid leave benefit for certain public safety employees that are subject to PERS or the County Employees Retirement Law of 1937. When the specified employee is disabled by injury or illness arising out of his or her duties, he or she "shall become entitled ... to a leave of absence while so disabled without loss of salary..."<sup>23</sup> The test claim legislation added several groups of employees to those entitled to the paid leave benefit. The plain meaning of the provision *requires* the employees to receive the benefit, thus the test claim legislation mandates the local government agencies that employ the specified persons to provide the benefit.

The test claim legislation must also constitute a "program" in order to be subject to article XIII B, section 6 of the California Constitution. The relevant tests regarding whether the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 are set forth in case law. The California Supreme Court in *San Diego Unified School District*, reaffirming the test set out in the *County of Los Angeles* case, defined the word

<sup>20</sup> *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.

<sup>21</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>22</sup> *County of Sonoma v. Commission on State Mandates*, 84 Cal.App.4th 1264, 1280 (*County of Sonoma*), citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>23</sup> Labor Code section 4850, subdivision (a).

"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.<sup>24</sup> (Emphasis added.) Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.

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

Here, on the other hand, the requirements imposed by the test claim legislation are carried out by *local government agencies* that employ the specified local safety personnel who are entitled to the benefit, and do not apply "generally to all residents and entities in the state," as did the requirements for workers' compensation and unemployment insurance benefits that were the subject of the *County of Los Angeles* case. Therefore, staff finds that the test claim legislation does constitute a "program" that is 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 governments within the meaning of article XIII B, section 6 of the California Constitution?**

The courts have held that legislation imposes a "new program" or "higher level of service" when: a) the requirements are new in comparison with the preexisting scheme; and b) the requirements were intended to provide an enhanced service to the public.<sup>27</sup> To make this determination, the test claim legislation must be compared with the legal requirements in effect immediately prior to its enactment.<sup>28</sup>

Claimant is requesting reimbursement for "new duties" and increased costs of providing 100% of the employee's salary, rather than the previously-required 70% for temporary disability payments under workers' compensation, for the newly covered employees specified in the test claim legislation. Newly covered employees are members of PERS, the Los Angeles City Employees' Retirement System, or subject to the County Employees Retirement Law of 1937 who are also: 1) lifeguards; 2) peace officers of the County of Los Angeles; 3) park rangers;

<sup>24</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874; *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>25</sup> *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56-57.

<sup>26</sup> *County of Los Angeles*, *supra*, 43 Cal.3d 46, 57-58.

<sup>27</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>28</sup> *Ibid.*

4) peace officers of the Department of General Services of the City of Los Angeles; 5) housing authority patrol officers; 6) county probation officers; group counselors or juvenile services officers; 7) officers or employees of a probation office; 8) airport law enforcement officers; 9) harbor or port police officers, wardens or special officers of a harbor or port district or city or county harbor department; and 10) police officers of the Los Angeles Unified School District. Co-claimant San Diego Unified School District also contends that its employees are covered by the test claim legislation.

The immediately previous version of Labor Code section 4850 did not list the aforementioned ten groups of public safety personnel as employees entitled to the paid leave benefit, thus the entitlement is new in comparison with the preexisting scheme.

The question then is whether the new requirements were intended to provide an enhanced service to the public. Staff concludes that the new requirements were *not* intended to provide an enhanced service to the public as explained in the following analysis.

The Third District Court of Appeal in *City of Richmond v. Commission on State Mandates*<sup>29</sup> addressed a similar issue. The case involved legislation requiring local governments to provide death benefits to local safety officers under both PERS and the workers' compensation system. The court held that the legislation did not constitute a higher level of service even though such benefits might generate a higher quality of local safety officers and thereby, in a general and indirect sense, provide the public with a higher level of service by its employees.<sup>30</sup> The court stated the following:

Increasing the cost of providing services cannot be equated with requiring an increased level of service under a[n] [article XIII B,] section 6 analysis. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public.<sup>31</sup>

Two other cases have reached the same conclusion regarding employee benefits. The Second District Court of Appeal, in *City of Anaheim v. State of California* (1987) 189 Cal.App.3<sup>rd</sup> 1478, 1484, determined that a temporary increase in PERS benefits to retired employees, resulting in higher contribution rates for local government, did not constitute a higher level of service to the public. Also, in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67, the California Supreme Court determined that providing unemployment compensation protection to a city's own employees was not a service to the public.

The California Supreme Court reaffirmed and clarified what constitutes an "enhanced service to the public" in the *San Diego Unified School District* case. The court, in reviewing several cases on point including *City of Richmond*, stated that the cases "illustrate the circumstance that simply because a state law or order may *increase the costs* borne by local government in *providing services*, this does not necessarily establish that the law or order constitutes an

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<sup>29</sup> *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4<sup>th</sup> 1190 (*City of Richmond*).

<sup>30</sup> *Id.*, page 1195; *San Diego Unified School Dist., supra*, 33 Cal.4<sup>th</sup> 859, 876-877 (where the Supreme Court reviewed the *City of Richmond* decision).

<sup>31</sup> *City of Richmond, supra*, 64 Cal.App.4<sup>th</sup> 1190, 1196.

increased or higher level of the resulting 'service to the public' under article XIII B, section 6, and Government Code section 17514." (emphasis in original)<sup>32</sup>

The Supreme Court went on to describe what *would* constitute a higher level of service, as "not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided. In *Carmel Valley Fire Protection Dist. v. State of California* [citations omitted], for example, an executive order required that county firefighters be provided with protective clothing and safety equipment. Because this increased safety equipment apparently was designed to result in more effective fire protection, the mandate evidently was intended to produce a higher level of service to the public ..."<sup>33</sup>

Thus the cases have consistently held that additional costs for increased employee benefits, in the absence of some increase in the actual level or quality of governmental services provided to the public, do not constitute an "enhanced service to the public" and therefore do not impose a "higher level of service" on local governments within the meaning of article XIII B, section 6 of the California Constitution.

### Conclusion

Staff finds that because the test claim legislation does not impose a higher level of service, it does not create a reimbursable state-mandated program on local governments within the meaning of article XIII B, section 6 of the California Constitution.

### Recommendation

Staff recommends that the Commission adopt this analysis and deny this test claim.

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<sup>32</sup> *San Diego Unified School District*, *supra*, 33 Cal.4<sup>th</sup> 859, 877.

<sup>33</sup> *Ibid.*



Not Reported in Cal.Rptr.2d  
 Not Reported in Cal.Rptr.2d, 2001 WL 1335849 (Cal.App. 4 Dist.), 66 Cal. Comp. Cases 1141  
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 (Cal. Rules of Court, Rules 976, 977)  
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California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

Court of Appeals, Fourth District, California  
 SAN DIEGO UNIFIED SCHOOL DISTRICT,  
 PETITIONER,

v.

WORKERS' COMPENSATION APPEALS BOARD  
 AND JOSEPH W. ELMORE, RESPONDENTS.  
 D038032  
 (WCAB Nos. SDO-0200582, SDO-0200586, SDO-  
 0252347)

Filed July 19, 2001

HUFFMAN, Acting P. J.

THE COURT:

\*1 The petition for writ of review, answer and reply have been read and considered by Justices Huffman, McIntyre and O'Rourke.

The San Diego Unified School District (District) filed a petition for reconsideration on March 20, 2001, challenging a decision after remand by the Workers' Compensation Judge (WCJ), finding Joseph W. Elmore, Jr., entitled to benefits under Labor Code [FN1] section 4850, in that as a school district police officer he was a sworn officer engaged in active law enforcement. [FN2] Section 4850 allows full pay during a leave of absence for up to one year for city police officers, firemen, sheriffs and other enumerated peace officers who are disabled by injury or illness arising out of the course of their duties.

The WCJ issued a report recommending denial of the petition for reconsideration citing to the evidence and to cases in which police officers other than city police officers had been found to be covered by section 4850. The WCJ also noted section 3202 requires workers' compensation law be construed to extend protection to injured workers. The WCJ found

no basis for a distinction in coverage between officers defined in Penal Code section 830.31 and those in Penal Code section 830.32. The Workers' Compensation Board (WCAB) denied the petition for reconsideration, adopting the reasoning in the WCJ's report.

In the present petition District argues the WCAB improperly denied its petition in that section 4850 clearly indicates those who are included in its provisions and those who are not. It claims Elmore is clearly excluded. It argues because section 4850 is not ambiguous the rule of liberal construction is inapplicable, and the Legislature has drawn a clear distinction in coverage between peace officers defined in Penal Code section 830.31 and school officers defined in Penal Code section 830.32. It also points out the Legislature recently specifically extended section 4850's coverage to particular officers and most importantly to Los Angeles Unified School District police officers. The District reasons if school officers were already covered it would not be necessary to add specifically Los Angeles Unified School District school police.

Review of a decision of the WCAB is limited to whether the WCAB acted without or in excess of its powers, and whether the order, decision or award was unreasonable, not supported by substantial evidence, or procured by fraud. (§ 5952.)

We cannot say the WCAB acted unreasonably or in excess of its powers in denying the petition for reconsideration. Elmore, as a school police officer, is engaged in active law enforcement duties. His stipulated job duties indicate he is faced with the same life-threatening situations as city or county police officers. We are not persuaded by District's argument there is a distinction in coverage between those peace officers defined in Penal Code section 830.31 and those in Penal Code section 830.32. Further, cases cited by District do not support its position. For example, Biggers v. Workers' Comp. Appeals Bd. (1999) 69 Cal.App.4th 431, did not rest on a narrow interpretation of section 4830. There, the court found a court bailiff's duties within the area of active law enforcement.

\*2 The recent amendment to section 4850 to include

specifically school police officers employed by the Los Angeles Unified School District does not show that other school police officers are excluded. Before the amendment school police officers employed by the Los Angeles Unified School District were not covered by section 4850 because they are not members of the Public Employees' Retirement System. The amendment to section 4850 extends its benefits to members of that retirement system. Elmore, as a District school police officer and member of the Public Employees' Retirement System, was already covered by section 4850.

The petition is denied.

FN1. All statutory references are to the Labor Code unless otherwise indicated.

FN2. The matter was remanded to the WCJ because he had made no specific finding that Elmore was a member of the Public Employees' Retirement System, a threshold requirement for application of section 4850. The WCJ's second decision included this finding.

Not Reported in Cal.Rptr.2d, 2001 WL 1335849  
(Cal.App. 4 Dist.), 66 Cal. Comp. Cases 1141 Not  
Officially Published; (Cal. Rules of Court, Rules 976,  
977)

END OF DOCUMENT

Commission on State Mandates

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Last Updated: 3/1/2006  
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Claim Number: 00-TC-20  
Issue: Workers' Compensation Disability Benefits for Government Employees

Related

02-TC-02 Workers' Compensation Disability Benefits for Government Employees  
(Amendment)

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Ms. Pam Stone  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841  
Tel: (916) 485-8102  
Fax: (916) 485-0111

---

Ms. JoAnn Speers  
League of California Cities  
1400 K Street, #400  
Sacramento, CA 95814  
Tel: (916) 658-8200  
Fax: (916) 658-8240

---

Executive Director  
California Peace Officers' Association  
1455 Response Road, Suite 190  
Sacramento, CA 95815  
Tel: (916) 263-0541  
Fax: (916) 000-0000

---

Mr. Steve Keil  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814-3941  
Tel: (916) 327-7523  
Fax: (916) 441-5507

---

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Blvd, Suite 121  
Sacramento, CA 95826  
Tel: (916) 368-9244  
Fax: (916) 368-5723

---

Executive Director  
State Board of Education  
1430 N Street, Suite #5111  
Sacramento, CA 95814  
Tel:  
Fax:

Ms. Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Tel: (916) 445-3274  
Fax: (916) 324-4888

Ms. Jesse McGuinn  
Department of Finance (A-15)  
915 L Street, 8th Floor  
Sacramento, CA 95814

Tel: (916) 445-8913  
Fax: (916) 327-0225

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

Claimant  
Tel: (213) 974-8564  
Fax: (213) 617-8106

Executive Director  
California Probation, Parole & Correctional Association  
755 Riverpoint Drive, Suite 200  
Sacramento, CA 95860

Tel: (916) 927-4888  
Fax: (916) 000-0000

Executive Director  
California State Firefighters' Association  
2701 K Street, Suite 201  
Sacramento, CA 95816

Tel: (800) 451-2732  
Fax: (916) 446-9889

Mr. Gerald Shelton  
California Department of Education (E-08)  
Fiscal and Administrative Services Division  
1430 N Street, Suite 2213  
Sacramento, CA 95814

Tel: (916) 445-0541  
Fax: (916) 327-8306

Mr. Mark Sigman  
Riverside County Sheriff's Office  
4095 Lemon Street  
P.O. Box 512  
Riverside, CA 92502

Tel: (951) 955-2700  
Fax: (951) 955-2720

Mr. Steve Smith  
Steve Smith Enterprises, Inc.  
4633 Whitney Avenue, Suite A  
Sacramento, CA 95821

Tel: (916) 483-4231  
Fax: (916) 483-1403

Mr. Arthur Palkowitz  
San Diego Unified School District  
4100 Normal Street, Room 3159  
San Diego, CA 92103-8363

Tel: (619) 725-7565  
Fax: (619) 725-7569

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Mr. Keith B. Petersen  
SixTen & Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Tel: (858) 514-8605  
Fax: (858) 514-8645

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Mr. Robert Miyashiro  
Education Mandated Cost Network  
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Sacramento, CA 95814

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Fax: (916) 446-2011

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Roseville, CA 95661

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School Innovations & Advocacy  
11130 Sun Center Drive, Suite 100  
Rancho Cordova, CA 95670

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Fax: (888) 487-6441

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Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Tel: (916) 324-0256  
Fax: (916) 323-6527

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

Tel: (916) 485-8102  
Fax: (916) 485-0111

---

Mr. Jim Jagers

P.O. Box 1993  
Carmichael, CA 95609

Tel: (916) 848-8407  
Fax: (916) 848-8407

---

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621  
Fax: (866) 481-2682

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**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 625  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY  
AUDITOR-CONTROLLER

May 15, 2006

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Dear Ms. Higashi:

Los Angeles County's Review of Commission's Claim Analysis:  
Workers' Compensation Disability for Government Employees

We submit our review of the subject test claim analysis.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

J. Tyler McCauley  
Auditor-Controller

JTM:CY:LK

*"To Enrich Lives Through Effective and Caring Service"*

Los Angeles County's Review of Commission's Claim Analysis:  
Workers' Compensation Disability for Government Employees

Los Angeles County [County] disagrees with the Commission on State Mandates [Commission] staff finding that the test claim legislation<sup>1</sup>, as filed by the County on June 29, 2001 [CSM Case number 00-TC-20] and by the San Diego Unified School District, as co-claimant, on July 25, 2002 [CSM Case number 02-TC-02], "... does not create a reimbursable state-mandated program". In fact, it does.

The sole basis for Commission staff's erroneous denial is that the test claim legislation, which only requires increased benefits to certain governmental workers, does not result in "... some increase in the actual level or quality of governmental services provided to the public". [Staff Analysis, page 10]

The problem with staff's analysis is that for laws affecting only governmental workers, such an 'increase in the actual level or quality of governmental services provided to the public' is not required in order to find reimbursable costs under Section 6 of Article XIII B of the California Constitution.

Consequently, staff do not and can not cite any constitutional, statutory or regulatory provisions which serve as funding disclaimers --- which state that reimbursable costs will not be found in test claim legislation affecting only governmental workers if an 'increase in the actual level or quality of governmental services provided to the public' does not result.

Neither is staff's purported funding disclaimer found in case law.

As recently noted by Judge David P. Yaffe, in a similar government worker employee benefits case<sup>2</sup>, there are no increased public service requirements which have to be met in order to obtain reimbursement. He explained, on page 2 of his opinion, that:

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<sup>1</sup> The test claim legislation is Labor Code Section 4850 as amended by Statutes of 2000, Chapters 920 & 929; Statutes of 1999, Chapters 270 & 970; Statutes of 1989, Chapter 1464; Statutes of 1977, Chapter 981.

<sup>2</sup> See CSAC Excess Insurance v Commission on State Mandates, Superior Court of California, County of Los Angeles, Case No. BS092146, attached.



"Section 6 of Article XIII B of the California Constitution, added by the electorate in 1979, states in pertinent part:

"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 such local government for the costs of such program or increased level of service ..."

The constitutional language could have been interpreted restrictively to apply only to programs and services provided to benefit the public, and to not apply to increases in benefits that local public agencies are required by the legislature to give to their employees. It is a fact however that the Supreme Court has NEVER adopted that restrictive meaning. In 1987, and repeatedly since then, the Supreme Court has interpreted the constitutional language quoted above to apply to, "programs that carry out the governmental function of providing services 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." COUNTY OF LOS ANGELES v. STATE OF CALIFORNIA, 43 Cal.3d 46, 56 (1987) (Emphasis added). "

As stated by Judge Yaffe [above], a subvention of funds is required under two scenarios:

- (1) 'Programs' are found that carry out the governmental function of providing services to the public or
- (2) Laws which, to implement a State policy, impose unique requirements on local governments and do not apply generally to all resident and entities in the State.

Commission staff concur that the second scenario applies here. Specifically, they note that the subject legislation "... do[es] not apply to all residents and entities in the state". [Staff Analysis, page 8]

Accordingly, the test claim legislation implements a State policy which imposes unique requirements on local governments. This is sufficient to warrant reimbursement. No additional proof that "... some increase in the actual level or quality of providing services provided to the public" is required.

Finally, where the purpose of the legislature is to increase the benefits of specific government workers, such legislation qualifies for reimbursement under Section 6 of Article X III B of the California Constitution. As noted by Judge Yaffe, in his opinion, previously cited, on page 4:

"The purpose of the legislature in enacting the Labor Code provisions involved here was to increase the benefits available to certain workers who are required to put themselves in harm's way to protect the public. The cost of those benefits is mandated by the legislature to the local public agencies that employ such workers. The only question is how much those costs amount to."

And so here, the only remaining question is how much these costs amount to.

Therefore, the County respectfully requests that Commission staff rewrite their analysis and find reimbursable costs as claimed herein for the reasons stated.



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
600 WEST TEMPLE STREET, ROOM 526  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 674-8301 FAX: (213) 626-5427

**Los Angeles County's Review of Commission's Claim Analysis:  
Workers' Compensation Disability for Government Employees**

**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath.

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analyses, and for proposing, or commenting on, parameters and guidelines (Ps&Gs) and amendments thereto, and for filing incorrect reduction claims, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject review of Commission's claim analysis, captioned above.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the attached filing, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

"Costs mandated by the State" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, 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.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

5/13/06, Los Angeles, CA

Date and Place

*Leonard Kaye*

Signature

"To Enrich Lives Through Effective and Caring Service"

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 09/28/05

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE  
3.

JUDGE PRO TEM

H. KWON, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

LARYL CASE, CSR #8739

Reporter

9:30 am

BS092146

Plaintiff  
Counsel

STEPHEN UNDERWOOD (X)

CSAC EXCESS INSURANCE

VS

Defendant  
Counsel

JACK C. WOODSIDE (X)

COMMISSION ON STATE MANDATES

PAUL M. STARKEY (X)

C/W BS095456

LEAD CASE BS092146

**NATURE OF PROCEEDINGS:**

HEARING ON PETITION FOR WRIT OF MANDATE;

Matter comes on for trial and is argued.

The Administrative Record (consisting of three volumes) is admitted in evidence as petitioner's Exhibit 1.

The petition for Writ of Mandate is granted.

Petitioner CSAC-EIA is a joint powers authority that provides workers' compensation insurance coverage and administers claims made by injured workers for 54 California counties. Petitioner, the City of Newport Beach, provides workers' compensation coverage for its employees for work related injuries.

Petitioners challenge, by a petition for writ of mandate, a decision by the Commission on State Mandates that denies their claim for subvention for additional costs incurred as the result of the enactment by the legislature of three statutes, Labor Code sections 3212.1, 3212.11 and 3213.2. Those statutes create rebuttable presumptions that certain employees of local public agencies, firefighters, life guards and peace officers, who develop cancer or low back injuries, incurred those injuries in the course and scope of their employment and are therefore

MINUTES ENTERED  
09/28/05  
COUNTY CLERK

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 09/28/05

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

H. KWON, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Clerk

DARYL CASE, CSR #8739

9:30 AM

BS092146

Plaintiff

STEPHEN UNDERWOOD (X)

CSAC EXCESS INSURANCE

Defendant

JACK C. WOODSIDE (X)

VS

COMMISSION ON STATE MANDATES

Counsel

PAUL M. STARKEY (X)

C/W BS095456

LEAD CASE BS092146

**NATURE OF PROCEEDINGS:**

entitled to workers' compensation for such injuries unless their employer rebuts the presumption.

Section 6 of Article XIII B of the California Constitution, added by the electorate in 1979, states in pertinent part:

"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 such local government for the costs of such program or increased level of service."

The constitutional language could have been interpreted restrictively to apply only to programs and services provided to benefit the public, and to not apply to increases in benefits that local public agencies are required by the legislature to give to their employees. It is a fact however that the Supreme Court has NEVER adopted that restrictive meaning. In 1987, and repeatedly since then, the Supreme Court has interpreted the constitutional language quoted above to apply to, "programs that carry out the governmental function of providing services 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." COUNTY OF LOS ANGELES v. STATE OF CALIFORNIA, 43 Cal.3d 46, 56 (1987) (Emphasis added).

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09/28/05  
COUNTY CLERK

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 09/28/05

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

H. KWON, COURTROOM ASST.

HONORABLE  
3.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

DARYL CASE, CSR #8739

Recorder

9:30 am BS092146

Plaintiff

Comand

STEPHEN UNDERWOOD (X)

CSAC EXCESS INSURANCE

Vs

Defendant

Comand

JACK C. WOODSIDE (X)

COMMISSION ON STATE MANDATES

PAUL M. STARKEY (X)

C/W BS095456

LEAD CASE BS092146

### NATURE OF PROCEEDINGS:

The briefs filed in this matter by both the Commission on State Mandates and by the Department of Finance simply ignore the emphasized language quoted above and argue that: "The Labor Code sections at issue do not impose a new program or a higher level of service on local governments and are therefore not subject to subvention under Article XIII B, section 6, of the California Constitution." (Department of Finance, Brief 5:17-11:24; Commission on State Mandates Brief 15:6-20:14). Stated simply, the state entities that are the respondent and the real party in interest in this case advocate an interpretation of the constitutional provision that the courts of this state have never accepted.

The state apparently concedes that the presumptions mandated by the aforesaid sections of the Labor Code are imposed uniquely on local governments and that they do not apply generally to all employers in the state. The state does not argue otherwise. What it argues instead is that the presumptions impose no added costs upon local governments.

An employer has no discretion to refuse to pay workers' compensation to an employee injured in the course of employment. The whole idea of workers' compensation is to provide an employee injured on the job with the certainty of limited compensation for his injury, and to make him give up his right to sue his employer for a greater amount. Legislation that

MINUTES ENTERED
09/28/05
COUNTY CLERK

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 09/28/05

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

H. KWON, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

3

NONE

Deputy Sheriff

DARYL CASE, CSR #8739

Reporter

9:30 am BS092146

Plaintiff

Counsel

STEPHEN UNDERWOOD (X)

CSAC EXCESS INSURANCE

VS

Defendant

JACK C. WOODSIDE (X)

COMMISSION ON STATE MANDATES

Counsel

PAUL M. STARKEY (X)

C/W BS095456

LEAD CASE BS092146

**NATURE OF PROCEEDINGS:**

expands the ability of an injured employee to prove that his injury is job related, expands the cost to the employer to compensate its injured workers. The assertion by the state that the employer can somehow "opt out" of that cost increase is clearly without merit. By contending that the counties need not "dispute" the presumptions mandated by the legislature, that the injury is job related, misses the point. The counties are entitled to subvention, not for increased LITIGATION costs, but for the increased costs of COMPENSATING their injured workers which has been mandated by the legislature. The assertion that the counties have not "demonstrated" that they will incur such costs is disingenuous. The purpose of the legislature in enacting the Labor Code provisions involved here was to increase the benefits available to certain workers who are required to put themselves in harm's way to protect the public. The cost of those benefits is mandated by the legislature to the local public agencies that employ such workers. The only question is how much those costs amount to.

The state also argues that CSAC-EIA has no standing to sue because, as a joint powers authority, it is not a "local government" as that term is used in the constitutional provision. The City of Newport Beach is conceded to have standing to bring this proceeding.

Until 2004, however, the legislature conferred standing upon joint powers agencies under Government Code sections 17552 and 17520. In 2004, section 17520

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 09/28/05

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JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE  
3.

JUDGE PRO TEM

H. KWON, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

DARYL CASE, CSR #8739

Reporter

9:30 am

BS092146

Plaintiff

Control

STEPHEN UNDERWOOD (X)

CSAC EXCESS INSURANCE

VS

Defendant

JACK C. WOODSIDE (X)

COMMISSION ON STATE MANDATES

Control

PAUL M. STARKEY (X)

C/W BS095456

LEAD CASE BS092146

**NATURE OF PROCEEDINGS:**

was amended to exclude joint powers agencies. By that time, however, CSAC-EIA had already filed its claim in this matter. The positions of the parties upon the issue of standing can be accommodated here by holding that CSAC-EIA does have standing to pursue the claims of constituent counties before the court, but that the subvention that is ordered herein is to be paid to the constituent counties that make up CSAC-EIC.

A writ of mandate is to issue remanding this matter to the Commission on State Mandates with directions to it to vacate its administrative decision denying subvention to petitioners, and directing it to determine the amount, if any, that the cost of providing workers compensation benefits to the employees of the City of Newport Beach and each member county has been increased by the enactment of the presumptions created by Labor Code sections 3212.1, 3212.11, and 3213.2.

The Administrative Record lodged in this action is ordered forthwith returned to the party who lodged it, to be preserved without alteration until the Judgment herein is final, and to be forwarded to the court of Appeal in the event of an appeal.

Counsel for petitioners is to submit a proposed judgment and a proposed writ to this department within ten days together with a proof of service showing that copies of said documents have been served upon

MINUTES ENTERED  
09/28/05  
COUNTY CLERK



# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 09/28/05

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

H. KWON, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

3.

NONE

Deputy Sheriff

DARYL CASE, CSR #8739

Reporter

9:30 AM

BS092146

Plaintiff

STEPHEN UNDERWOOD (X)

CSAC EXCESS INSURANCE

Counsel

VS

Defendant

JACK C. WOODSIDE (X)

COMMISSION ON STATE MANDATES

Counsel

PAUL M. STARKEY (X)

C/W BS095456

LEAD CASE BS092146

### NATURE OF PROCEEDINGS:

opposing counsel by hand delivery or FAX. The court will hold said documents for ten days before signing and filing the judgment and causing the clerk to issue the writ.

MINUTES ENTERED  
09/28/05  
COUNTY CLERK

Mr. Keith B. Petersen  
SixTen & Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Tel: (858) 514-8606  
Fax: (858) 514-8645

Mr. Robert Miyashiro  
Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Tel: (916) 446-7517  
Fax: (916) 446-2011

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Public Resource Management Group  
1380 Lead Hill Boulevard, Suite #106  
Roseville, CA 95661

Tel: (916) 677-4233  
Fax: (916) 677-2283

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Rancho Cordova, CA 95870

Tel: (800) 487-9234  
Fax: (888) 487-6441

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 600  
Sacramento, CA 95816

Tel: (916) 324-0256  
Fax: (916) 323-6527

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

Tel: (916) 485-8102  
Fax: (916) 485-0111

Mr. Jim Jagers  
P.O. Box 1993  
Carmichael, CA 96609

Tel: (916) 848-8407  
Fax: (916) 848-8407

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621  
Fax: (866) 481-2682

✓ Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Tel: (916) 323-3562  
Fax: (916) 445-0278

Post-It* Fax Note		7671	Date	5/16/06	# of pages	15
To	Paula Higashi		From	Leonard Kaye		
Co./Dept.	CSM		Co.			
Phone #			Phone #	916-974-8564		
Fax #	916-445-0278		Fax #			



Ms. Susan Geanacou  
 Department of Finance (A-15)  
 915 L Street, Suite 1190  
 Sacramento, CA 95814

Tel: (916) 445-3274  
 Fax: (916) 324-4888

Ms. Jesse McGuinn  
 Department of Finance (A-15)  
 915 L Street, 8th Floor  
 Sacramento, CA 95814

Tel: (916) 445-8913  
 Fax: (916) 327-0225

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

Claimant  
 Tel: (213) 974-8564  
 Fax: (213) 617-8108

Executive Director  
 California Probation, Parole & Correctional Association  
 755 Riverpoint Drive, Suite 200  
 Sacramento, CA 95660

Tel: (916) 927-4888  
 Fax: (916) 000-0000

Executive Director  
 California State Firefighters' Association  
 2701 K Street, Suite 201  
 Sacramento, CA 95816

Tel: (800) 451-2732  
 Fax: (916) 446-9889

Mr. Gerald Shelton  
 California Department of Education (E-08)  
 Fiscal and Administrative Services Division  
 1430 N Street, Suite 2213  
 Sacramento, CA 95814

Tel: (916) 445-0541  
 Fax: (916) 327-8306

Mr. Mark Sigman  
 Riverside County Sheriff's Office  
 4095 Lemon Street  
 P O Box 512  
 Riverside, CA 92502

Tel: (951) 966-2700  
 Fax: (951) 966-2720

Mr. Steve Smith  
 Steve Smith Enterprises, Inc.  
 4633 Whitney Avenue, Suite A  
 Sacramento, CA 95821

Tel: (916) 483-4231  
 Fax: (916) 483-1403

Mr. Arthur Palkowitz  
 San Diego Unified School District  
 4100 Normal Street, Room 3169  
 San Diego, CA 92103-8363

Tel: (619) 725-7565  
 Fax: (619) 725-7569



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Olga Murra-Rodriguez states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 15th day of May, 2006, I served the attached:

Documents: County of Los Angeles Review of Commission Staff Draft Analysis of the Worker's Compensation Disability for Government Employees Test Claim [00-TC-20 and 02-TC-02], including a 1 page letter of J. Tyler McCauley dated 5/15/06, a 3 page narrative, a declaration of Leonard Kaye dated 5/13/06 and a 6 page attachment, now pending before the Commission on State Mandates.

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates FAX as well as mail of originals.
- by placing  true copies  original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of May, 2006, at Los Angeles, California.

  
Olga Murra-Rodriguez



**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

PHONE: (916) 323-3562

FAX: (916) 445-0278

E-mail: csminfo@csm.ca.gov



July 11, 2006

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

Mr. Arthur M. Palkowitz  
Legislative Mandates Specialist  
San Diego Unified School District  
4100 Normal Street, Room 3159  
San Diego, CA 92103

*And Interested Parties and Affected State Agencies (See Enclosed Mailing List)*

**RE: Final Staff Analysis, Proposed Statement of Decision and Notice of Hearing Date**  
*Workers' Compensation Disability Benefits for Government Employees*  
(00-TC-20, 02-TC-02)  
County of Los Angeles, Claimant  
San Diego Unified School District, Co-Claimant  
Labor Code Section 4850  
Statutes 2000, Chapter 920 & 929; Statutes 1999, Chapters 270 & 970;  
Statutes 1989, Chapter 1464; Statutes 1977, Chapter 981

Dear Mr. Kaye and Mr. Palkowitz:

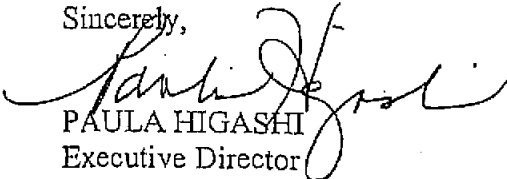
The final staff analysis and proposed statement of decision for this test claim are enclosed for your review.

**Hearing**

This test claim is set for hearing on **Friday, July 28, 2006** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

  
PAULA HIGASHI  
Executive Director

Enc. Final Staff Analysis and Proposed Statement of Decision

MAILED: \_\_\_\_\_  
FAXED: \_\_\_\_\_  
DATE: 7/17/08  
INITIAL: JD  
FILE: \_\_\_\_\_  
CHRON: \_\_\_\_\_  
WORKING BINDER: \_\_\_\_\_



**ITEM 12**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**

Labor Code Section 4850  
Statutes 2000, Chapters 920 & 929  
Statutes 1999, Chapters 270<sup>1</sup> & 970  
Statutes 1989, Chapter 1464  
Statutes 1977, Chapter 981

*Workers' Compensation Disability Benefits for Government Employees*  
(00-TC-20, 02-TC-02)

County of Los Angeles, Claimant  
San Diego Unified School District, Co-Claimant

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**EXECUTIVE SUMMARY**

**Background**

This test claim involves legislation that expanded applicability of an existing workers' compensation leave benefit to specified local safety officers. That benefit entitles employees to a leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in the course of employment.

The 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 governments within the meaning of article XIII B, section 6 of the California Constitution?

**Staff Analysis**

Staff finds that the test claim legislation does constitute a program within the meaning of article XIII B, section 6 of the California Constitution because: 1) the legislation mandates an activity; and 2) the requirements are carried out by local government agencies and do not apply generally to all residents and entities in the state.

However, staff finds that the test claim legislation does not constitute a new program or higher level of service. The test claim legislation requires local government employers to provide a new leave benefit to certain employees. The California Appellate and Supreme Court cases have consistently held that additional costs for increased employee benefits, in the absence of

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<sup>1</sup> Claimant incorrectly identified Statutes 1999, chapter 224 on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

some increase in the actual level or quality of governmental services *provided to the public*, do not constitute an "enhanced service to the public" and therefore do not impose a new program or higher level of service on local governments within the meaning of article XIII B, section 6 of the California Constitution.

**Conclusion**

Staff finds that because the test claim legislation does not impose a new program or higher level of service, it does not create a reimbursable state-mandated program on local governments within the meaning of article XIII B, section 6 of the California Constitution.

**Recommendation**

Staff recommends that the Commission adopt this analysis and deny this test claim.

## STAFF ANALYSIS

### Claimant

County of Los Angeles

### Co-Claimant

San Diego Unified School District

### Chronology

06/29/01	County of Los Angeles filed test claim with the Commission
08/13/01	The Department of Finance filed comments on test claim with the Commission
08/31/01	County of Los Angeles filed reply to Department of Finance comments
07/17/02	County of Los Angeles filed amendment to test claim requesting addition of San Diego Unified School District as co-claimant
07/25/02	Commission approved request to add co-claimant
08/23/02	The Department of Finance filed comments on test claim with the Commission
04/28/06	Commission staff issued draft staff analysis
05/15/06	County of Los Angeles filed comments on draft staff analysis
07/11/06	Commission staff issued final staff analysis

### Background

This test claim addresses workers' compensation leave benefits for local safety officers.

Article XIV, section 4 of the California Constitution vests the Legislature with plenary power to create and enforce a complete system of workers' compensation. The Legislature initially addressed the issue of workers' compensation in 1911 in the Workmen's Compensation Act,<sup>2</sup> which was amended significantly in 1913<sup>3</sup> and 1917.<sup>4</sup> The current statutory scheme, enacted in 1937, consolidated workers' compensation and worker health and safety provisions into the Labor Code.<sup>5</sup> The workers' compensation system provides for a compulsory and exclusive scheme of employer liability, without fault, for injuries arising out of and in the course of employment, with remedies for temporary and permanent disability, medical care and employer discrimination.<sup>6</sup>

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<sup>2</sup> Statutes 1911, chapter 399.

<sup>3</sup> Statutes 1913, chapter 176.

<sup>4</sup> Statutes 1917, chapter 586.

<sup>5</sup> Labor Code sections 3200 et seq. and 6300 et seq., Statutes 1937, chapter 90.

<sup>6</sup> 65 California Jurisprudence Third (1998), Work Injury Compensation, section 7, pages 29-30.

Section 4850 was added to the Labor Code in 1939 to provide city police officers and fire fighters that were members of the State Employees' Retirement System (now the Public Employees' Retirement System [PERS]) a benefit that entitled them to leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in the course of employment.<sup>7</sup> Over the years, Labor Code section 4850 has been amended several times to expand the groups of employees covered and to address other provisions of the benefit. Section 4850, as amended in 1977 and thereafter, is the subject of this test claim.

Prior to 1977, section 4850 read:

Whenever any city policeman, city fireman, county fireman, fireman of any fire district, sheriff or any officer or employee of a sheriff's office, or any inspector, investigator, detective or personnel with comparable title in any district attorney's office, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 ... is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with the city or county, to leave of absence while so disabled without loss of salary, in lieu of temporary disability payments, if any, which would be payable under this chapter, for the period of such disability but not exceeding one year, or until such earlier date as he is retired on permanent disability pension, ... It shall also apply to deputy sheriffs subject to the County Employees Retirement law of 1937 ....

The section excluded persons such as telephone operator, clerk, stenographer, machinist, mechanic or otherwise, whose functions did not clearly fall within active law enforcement service or active firefighting and prevention service. It also provided that if the employer was insured through the workers' compensation system, then any payments the workers' compensation system would be obligated to make as disability indemnity could be paid to the employer. A later statute, not pled in this test claim, established a program for advanced disability pension payments.<sup>8</sup> Under that program, the local government agency may make advance pension payments to a local safety officer who has qualified for the continued salary benefit under section 4850; for PERS members, the local government is entitled to reimbursement from PERS for any such advance pension payments.

#### Test Claim Legislation

The test claim legislation consists of several amendments to section 4850. Following is a summary of the changes relevant for this analysis that were enacted in each of the test claim statutes.

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pages 29-30.

<sup>7</sup> Statutes 1939, chapter 926.

<sup>8</sup> Statutes 1985, Chapter 1254; Labor Code section 4850.3.

*Statutes 1977, Chapter 981*

- Added lifeguards employed year round on a regular, full-time basis by Los Angeles County, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

*Statutes 1989, Chapter 1464*

- Reenacted section 4850, which would have sunset on January 1, 1990, without any changes that are relevant for this analysis.

*Statutes 1999, Chapter 270<sup>9</sup>*

- Added certain peace officers defined in Penal Code section 830.31<sup>10</sup> that are employed on a regular full time basis by Los Angeles County, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

*Statutes 1999, Chapter 970*

- Added county probation officers, group counselors, juvenile services officers, or officers or employees of a probation office, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.
- Provided that safety employees employed by the County of San Luis Obispo could be entitled to the one-year paid leave benefit upon the adoption of a resolution of the board of supervisors of the County of San Luis Obispo, even though the employee is not a member of PERS or subject to the County Employees Retirement Law of 1937.

*Statutes 2000, Chapters 920 & 927 (double-joined)*

- Added the Los Angeles City Retirement System as another retirement program to which the specified employees may belong in order to receive the one-year paid leave benefit.
- Added the one-year paid leave benefit for the following employees:
  - airport law enforcement officers under subdivision (d) of section 830.33 of the Penal Code;
  - harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of section 830.1 or subdivision (b) of section 830.33 of the Penal Code; and
  - police officers of the Los Angeles Unified School District.

<sup>9</sup> Claimant incorrectly identified Statutes 1999, chapter 224 on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

<sup>10</sup> Penal Code section 830.31 designates the following persons as peace officers: (a) a police officer of the County of Los Angeles; (b) a person designated by a local agency as a park ranger; (c) a peace officer of the Department of General Services of the City of Los Angeles; and (d) a housing authority patrol officer.

### **Claimant's Position**

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

Claimant asserts that the County has incurred "new duties" and increased costs in complying with the new requirement that leave of absence with full salary must now be provided to specified employees instead of less costly temporary disability or maintenance payments required under prior law. The asserted increased costs in providing the new benefits are the difference between the 70% temporary disability salary that was previously required and the 100% salary required for specified employees under the test claim legislation.

Claimant disagrees with the conclusion in the draft staff analysis that the test claim legislation does not create a reimbursable state-mandated program because it does not result in an increase in the actual level or quality of governmental service provided to the public. This argument is addressed in the staff analysis under Issue 2.

### **Co-Claimant's Position**

Co-claimant, San Diego Unified School District, contends that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for the District's police officers, since the Fourth District Court of Appeal case of *San Diego Unified School District v. Workers' Compensation Appeals Board*<sup>11</sup> upheld a Workers' Compensation Appeals Board determination that a San Diego Unified School District peace officer was entitled to the paid leave benefit provided in Labor Code section 4850.

### **Department of Finance Position**

Department of Finance submitted comments recommending that "the test claim be denied since the chaptered legislation cited in the test claim does not appear to mandate a new program or higher level of service of an existing program pursuant to Article XIII B, Section 6 of the California Constitution."

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<sup>11</sup> *San Diego Unified School District v. Workers' Compensation Appeals Board*, July 19, 2001, D038032 (nonpub. opn., cert. denied).

## Discussion

The courts have found that article XIII B, section 6 of the California Constitution<sup>12</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>13</sup> “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.”<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>19</sup>

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<sup>12</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

<sup>13</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>14</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>15</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>16</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

<sup>17</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874 [reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835].

<sup>18</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>19</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>20</sup>

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.<sup>21</sup> 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."<sup>22</sup>

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 governments within the meaning of article XIII B, section 6 of the California Constitution?

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

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

Labor Code section 4850, as noted above, sets forth a paid leave benefit for certain public safety employees that are subject to PERS or the County Employees Retirement Law of 1937. When the specified employee is disabled by injury or illness arising out of his or her duties, he or she "shall become entitled to a leave of absence while so disabled without loss of salary."<sup>23</sup> The test claim legislation added several groups of employees to those entitled to the paid leave benefit. The plain meaning of the provision requires the employees to receive the benefit, thus the test claim legislation mandates the local government agencies that employ the specified persons to provide the benefit.

The test claim legislation must also constitute a "program" in order to be subject to article XIII B, section 6 of the California Constitution. The relevant tests regarding whether the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 are set forth in case law. The California Supreme Court in *San Diego Unified School District*, reaffirming the test set out in the *County of Los Angeles* case, defined the word

<sup>20</sup> *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.

<sup>21</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>22</sup> *County of Sonoma v. Commission on State Mandates*, 84 Cal.App.4th 1264, 1280 (*County of Sonoma*), citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>23</sup> Labor Code section 4850, subdivision (a).



"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.<sup>24</sup> (Emphasis added.) Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.

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

Here, on the other hand, the requirements imposed by the test claim legislation are carried out by local government agencies that employ the specified local safety personnel who are entitled to the benefit, and do not apply "generally to all residents and entities in the state," as did the requirements for workers' compensation and unemployment insurance benefits that were the subject of the *County of Los Angeles* case. Therefore, staff finds that the test claim legislation does constitute a "program" that is 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 governments within the meaning of article XIII B, section 6 of the California Constitution?**

The courts have held that legislation imposes a "new program or higher level of service" when: a) the requirements are new in comparison with the preexisting scheme; and b) the requirements were intended to provide an enhanced service to the public.<sup>27</sup> Both of these conditions must be met in order to find that a "new program or higher level of service" was created by the test claim legislation.

To make this determination, the test claim legislation must first be compared with the legal requirements in effect immediately prior to its enactment.<sup>28</sup> Claimant is requesting reimbursement for "new duties" and increased costs of providing 100% of the employee's salary, rather than the previously-required 70% for temporary disability payments under workers' compensation, for the newly covered employees specified in the test claim legislation. Newly covered employees are members of PERS, the Los Angeles City

<sup>24</sup> *San Diego Unified School Dist.*, supra, 33 Cal.4th 859, 874; *County of Los Angeles*, supra, 43 Cal.3d 46, 56; *Lucia Mar*, supra, 44 Cal.3d 830, 835.

<sup>25</sup> *County of Los Angeles*, supra, 43 Cal.3d 46, 56-57.

<sup>26</sup> *County of Los Angeles*, supra, 43 Cal.3d 46, 57-58.

<sup>27</sup> *San Diego Unified School Dist.*, supra, 33 Cal.4th 859, 878; *Lucia Mar*, supra, 44 Cal.3d 830, 835.

<sup>28</sup> *Ibid.*

Employees' Retirement System, or subject to the County Employees Retirement Law of 1937 who are also: 1) lifeguards; 2) peace officers of the County of Los Angeles; 3) park rangers; 4) peace officers of the Department of General Services of the City of Los Angeles; 5) housing authority patrol officers; 6) county probation officers, group counselors or juvenile services officers; 7) officers or employees of a probation office; 8) airport law enforcement officers; 9) harbor or port police officers, wardens or special officers of a harbor or port district or city or county harbor department; and 10) police officers of the Los Angeles Unified School District. Co-claimant San Diego Unified School District also contends that its employees are covered by the test claim legislation.

The immediately previous version of Labor Code section 4850 did not list the aforementioned groups of public safety personnel as employees entitled to the paid-leave benefit, thus entitlement to the benefit is new for these employees, in comparison with the preexisting scheme.

The next question is whether the new requirements were intended to provide an enhanced service to the public. Staff concludes that the new requirements were *not* intended to provide an enhanced service to the public as explained in the following analysis.

The Third District Court of Appeal in *City of Richmond v. Commission on State Mandates*<sup>29</sup> addressed a similar issue. The case involved legislation requiring local governments to provide death benefits to local safety officers under both PERS and the workers' compensation system. The court held that the legislation did not constitute a higher level of service even though such benefits might generate a higher quality of local safety officers and thereby, in a general and indirect sense, provide the public with a higher level of service by its employees.<sup>30</sup> The court stated the following:

Increasing the cost of providing services cannot be equated with requiring an increased level of service under a[n] [article XIII B,] section 6 analysis. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public.<sup>31</sup>

Two other cases have reached the same conclusion regarding employee benefits. The Second District Court of Appeal, in *City of Anaheim v. State of California* (1987) 189 Cal.App.3<sup>rd</sup> 1478, 1484, determined that a temporary increase in PERS benefits to retired employees, resulting in higher contribution rates for local government, did not constitute a higher level of service to the public. Also, in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67, the California Supreme Court determined that providing unemployment compensation protection to a city's own employees was not a service to the public.

The California Supreme Court reaffirmed and clarified what constitutes an "enhanced service to the public" in the *San Diego Unified School Dist.* case. The court, in reviewing several cases on point including *City of Richmond*, stated that the cases "illustrate the circumstance

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<sup>29</sup> *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4<sup>th</sup> 1190 (*City of Richmond*).

<sup>30</sup> *Id.*, page 1195; *San Diego Unified School Dist.*, *supra*, 33 Cal.4<sup>th</sup> 859, 876-877 (where the Supreme Court reviewed the *City of Richmond* decision).

<sup>31</sup> *City of Richmond*, *supra*, 64 Cal.App.4<sup>th</sup> 1190, 1196.

that simply because a state law or order may *increase the costs* borne by local government in *providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting 'service to the public' under article XIII B, section 6, and Government Code section 17514." (emphasis in original)<sup>32</sup>

The Supreme Court went on to describe what *would* constitute a higher level of service; as "not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided. In *Carmel Valley Fire Protection Dist. v. State of California* [citations omitted]; for example, an executive order required that county firefighters be provided with protective clothing and safety equipment. Because this increased safety equipment apparently was designed to result in more effective fire protection, the mandate evidently was intended to produce a higher level of service to the public ..."<sup>33</sup>

Claimant argues that the foregoing analysis is not consistent with case law, and cites a recent Los Angeles Superior Court case, *CSAC Excess Insurance Authority v. Commission on State Mandates*<sup>34</sup> to make the argument. However, that case cannot be relied upon as valid authority since it is currently being appealed<sup>35</sup> in the Second District Court of Appeal.<sup>36</sup>

Thus the Appellate and Supreme Court cases have consistently held that additional costs for increased employee benefits, in the absence of some increase in the actual level or quality of governmental services *provided to the public*, do not constitute an "enhanced service to the public" and therefore do not impose a "new program or higher level of service" on local governments within the meaning of article XIII B, section 6 of the California Constitution.

#### **Conclusion**

Staff finds that because the test claim legislation does not impose a new program or higher level of service, it does not create a reimbursable state-mandated program on local governments within the meaning of article XIII B, section 6 of the California Constitution.

#### **Recommendation**

Staff recommends that the Commission adopt this analysis and deny this test claim.

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<sup>32</sup> *San Diego Unified School Dist*, *supra*, 33 Cal.4<sup>th</sup> 859, 877.

<sup>33</sup> *Ibid.*

<sup>34</sup> *CSAC Excess Insurance Authority v. Commission on State Mandates (CSAC)*, Superior Court, Los Angeles County, 2005, No. BS095456.

<sup>35</sup> Code of Civil Procedure, section 1049; *Caminetti v. Guaranty Union Life Ins. Co.* (1943) 22 Cal.2d 759, 766; the Supreme Court stated that "finality is not accorded a judgment until affirmance in the event of an appeal."

<sup>36</sup> *CSAC Excess Insurance Authority v. Commission on State Mandates, et. al.*, currently pending in the Second District Court of Appeal, Case Number B188169.



**ITEM 13**  
**TEST CLAIM**  
**PROPOSED STATEMENT OF DECISION**

Labor Code Section 4850  
Statutes 2000, Chapters 920 & 929  
Statutes 1999, Chapters 270<sup>1</sup> & 970  
Statutes 1989, Chapter 1464  
Statutes 1977, Chapter 981

*Workers' Compensation Disability Benefits for Government Employees*  
(00-TC-20, 02-TC-02)

County of Los Angeles, Claimant  
San Diego Unified School District, Co-Claimant

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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 *Workers' Compensation Disability Benefits for Government Employees* test claim.<sup>2</sup>

**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 12 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 September 2006 Commission hearing.

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<sup>1</sup> Claimant incorrectly identified Statutes 1999, chapter 224 on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

<sup>2</sup> California Code of Regulations, title 2, section 1188.1, subdivision (a).



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Labor Code Section 4850;

Statutes 2000, Chapters 920 & 929

Statutes 1999, Chapters 270<sup>3</sup> & 970

Statutes 1989, Chapter 1464

Statutes 1977, Chapter 981

Filed on June 29, 2001 by the County of  
Los Angeles, Claimant.

Amended on July 25, 2002 to add San Diego  
Unified School District, Co-claimant.

Case No.: 00-TC-20/02-TC-02

*Workers' Compensation Disability  
Benefits for Government  
Employees*

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 July 28, 2006)*

**PROPOSED STATEMENT OF DECISION**

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 28, 2006. [Witness list will be included in the final Statement of Decision.]

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

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

**Summary of Findings**

This test claim involves legislation that expanded the applicability of an existing workers' compensation leave benefit to specified local safety officers. That benefit entitles employees to a leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in the course of employment.

The test claim presents the following issues:

<sup>3</sup> Claimant incorrectly identified Statutes 1999, chapter 224 on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

- 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 governments within the meaning of article XIII B, section 6 of the California Constitution?

The Commission finds that the test claim legislation does constitute a program within the meaning of article XIII B, section 6 of the California Constitution because: 1) the legislation mandates an activity; and 2) the requirements are carried out by local government agencies and do not apply generally to all residents and entities in the state.

The Commission further finds, however, that the test claim legislation *does not* constitute a new program or higher level of service. The test claim legislation requires local government employers to provide a new leave benefit to certain employees. The California Appellate and Supreme Court cases have consistently held that additional costs for increased employee benefits, in the absence of some increase in the actual level or quality of governmental services *provided to the public*, do not constitute an "enhanced service to the public" and therefore do not impose a new program or higher level of service on local governments within the meaning of article XIII B, section 6 of the California Constitution.

## BACKGROUND

This test claim addresses workers' compensation leave benefits for local safety officers.

Article XIV, section 4 of the California Constitution vests the Legislature with plenary power to create and enforce a complete system of workers' compensation. The Legislature initially addressed the issue of workers' compensation in 1911 in the Workmen's Compensation Act,<sup>4</sup> which was amended significantly in 1913<sup>5</sup> and 1917.<sup>6</sup> The current statutory scheme, enacted in 1937, consolidated workers' compensation and worker health and safety provisions into the Labor Code.<sup>7</sup> The workers' compensation system provides for a compulsory and exclusive scheme of employer liability, without fault, for injuries arising out of and in the course of employment, with remedies for temporary and permanent disability, medical care and employer discrimination.<sup>8</sup>

Section 4850 was added to the Labor Code in 1939 to provide city police officers and fire fighters that were members of the State Employees' Retirement System (now the Public Employees' Retirement System [PERS]) a benefit that entitled them to leave of absence without loss of salary for up to one year when disabled by injury or illness arising out of and in

<sup>4</sup> Statutes 1911, chapter 399.

<sup>5</sup> Statutes 1913, chapter 176.

<sup>6</sup> Statutes 1917, chapter 586.

<sup>7</sup> Labor Code sections 3200 et seq. and 6300 et seq., Statutes 1937, chapter 90.

<sup>8</sup> 65 California Jurisprudence Third (1998), Work Injury Compensation, section 7, pages 29-30.



the course of employment.<sup>9</sup> Over the years, Labor Code section 4850 has been amended several times to expand the groups of employees covered and to address other provisions of the benefit. Section 4850, as amended in 1977 and thereafter, is the subject of this test claim.

Prior to 1977, section 4850 read:

Whenever any city policeman, city fireman, county fireman, fireman of any fire district, sheriff or any officer or employee of a sheriff's office, or any inspector, investigator, detective or personnel with comparable title in any district attorney's office, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 ... is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with the city or county, to leave of absence while so disabled without loss of salary, in lieu of temporary disability payments, if any, which would be payable under this chapter, for the period of such disability but not exceeding one year, or until such earlier date as he is retired on permanent disability pension ... It shall also apply to deputy sheriffs subject to the County Employees Retirement law of 1937 ....

The section excluded persons such as telephone operator, clerk, stenographer, machinist, mechanic or otherwise, whose functions did not clearly fall within active law enforcement service or active firefighting and prevention service. It also provided that if the employer was insured through the workers' compensation system, then any payments the workers' compensation system would be obligated to make as disability indemnity could be paid to the employer. A later statute, not pled in this test claim, established a program for advanced disability pension payments.<sup>10</sup> Under that program, the local government agency may make advance pension payments to a local safety officer who has qualified for the continued salary benefit under section 4850; for PERS members, the local government is entitled to reimbursement from PERS for any such advance pension payments.

#### Test Claim Legislation

The test claim legislation consists of several amendments to section 4850. Following is a summary of the changes relevant for this analysis that were enacted in each of the test claim statutes.

#### *Statutes 1977, Chapter 981*

- Added lifeguards employed year round on a regular, full-time basis by Los Angeles County, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

#### *Statutes 1989, Chapter 1464*

- Reenacted section 4850, which would have sunset on January 1, 1990, without any changes that are relevant for this analysis.

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<sup>9</sup> Statutes 1939, chapter 926.

<sup>10</sup> Statutes 1985, Chapter 1254; Labor Code section 4850.3.

*Statutes 1999, Chapter 270*<sup>11</sup>

- Added certain peace officers defined in Penal Code section 830.31<sup>12</sup> that are employed on a regular full time basis by Los Angeles County, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.

*Statutes 1999, Chapter 970*

- Added county probation officers, group counselors, juvenile services officers, or officers or employees of a probation office, who are members of PERS or subject to the County Employees Retirement Law of 1937, to the group of employees covered by the one-year paid leave benefit.
- Provided that safety employees employed by the County of San Luis Obispo could be entitled to the one-year paid leave benefit upon the adoption of a resolution of the board of supervisors of the County of San Luis Obispo, even though the employee is not a member of PERS or subject to the County Employees Retirement Law of 1937.

*Statutes 2000, Chapters 920 & 927 (double-joined)*

- Added the Los Angeles City Retirement System as another retirement program to which the specified employees may belong in order to receive the one-year paid leave benefit.
- Added the one-year paid leave benefit for the following employees:
  - airport law enforcement officers under subdivision (d) of section 830.33 of the Penal Code;
  - harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of section 830.1 or subdivision (b) of section 830.33 of the Penal Code; and
  - police officers of the Los Angeles Unified School District.

**Claimant's Position**

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

Claimant asserts that the County has incurred "new duties" and increased costs in complying with the new requirement that leave of absence with full salary must now be provided to

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<sup>11</sup> Claimant incorrectly identified Statutes 1999, chapter 224 on the test claim form, but correctly identified the 1999 statute as chapter 270 on page 5 of the test claim text.

<sup>12</sup> Penal Code section 830.31 designates the following persons as peace officers: (a) a police officer of the County of Los Angeles; (b) a person designated by a local agency as a park ranger; (c) a peace officer of the Department of General Services of the City of Los Angeles; and (d) a housing authority patrol officer.

specified employees instead of less costly temporary disability or maintenance payments required under prior law. The asserted increased costs in providing the new benefits are the difference between the 70% temporary disability salary that was previously required and the 100% salary required for specified employees under the test claim legislation.

Claimant disagrees with the conclusion in the draft staff analysis that the test claim legislation does not create a reimbursable state-mandated program because it does not result in an increase in the actual level or quality of governmental service provided to the public. This argument is addressed in the analysis under Issue 2.

#### **Co-Claimant's Position**

Co-claimant, San Diego Unified School District, contends that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for the District's police officers, since the Fourth District Court of Appeal case of *San Diego Unified School District v. Workers' Compensation Appeals Board*<sup>13</sup> upheld a Workers' Compensation Appeals Board determination that a San Diego Unified School District peace officer was entitled to the paid leave benefit provided in Labor Code section 4850.

#### **Department of Finance Position**

Department of Finance submitted comments recommending that "the test claim be denied since the chaptered legislation cited in the test claim does not appear to mandate a new program or higher level of service of an existing program pursuant to Article XIII B, Section 6 of the California Constitution."

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<sup>13</sup> *San Diego Unified School District v. Workers' Compensation Appeals Board*, July 19, 2001, D038032 (nonpub. opn., cert. denied).

## COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution<sup>14</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>15</sup> "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."<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup> A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."<sup>21</sup>

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<sup>14</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

<sup>15</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>16</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>17</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>18</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

<sup>19</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874 [reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*); *Lucia Mar, supra*, 44 Cal.3d 830, 835].

<sup>20</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

<sup>21</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>22</sup>

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.<sup>23</sup> 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."<sup>24</sup>

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 governments within the meaning of article XIII B, section 6 of the California Constitution?

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

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

Labor Code section 4850, as noted above, sets forth a paid leave benefit for certain public safety employees that are subject to PERS or the County Employees Retirement Law of 1937. When the specified employee is disabled by injury or illness arising out of his or her duties, he or she "shall become entitled . . . to a leave of absence while so disabled without loss of salary."<sup>25</sup> The test claim legislation added several groups of employees to those entitled to the paid leave benefit. The plain meaning of the provision *requires* the employees to receive the benefit, thus the test claim legislation mandates the local government agencies that employ the specified persons to provide the benefit.

The test claim legislation must also constitute a "program" in order to be subject to article XIII B, section 6 of the California Constitution. The relevant tests regarding whether the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 are set forth in case law. The California Supreme Court in *San Diego Unified School District*, reaffirming the test set out in the *County of Los Angeles* case, defined the word

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<sup>22</sup> *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.

<sup>23</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>24</sup> *County of Sonoma v. Commission on State Mandates*, 84 Cal.App.4th 1264, 1280 (*County of Sonoma*), citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>25</sup> Labor Code section 4850, subdivision (a).

"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.<sup>26</sup> (Emphasis added.) Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.

The *County of Los Angeles* case also found that the term "program" as it is used in article XIII B, section 6, "was [intended] to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities." (Emphasis added.)<sup>27</sup> In the *County of Los Angeles* case, the court found that no reimbursement was required for the increase in workers' compensation and unemployment insurance benefits since the provisions applied to all employees of both private and public businesses.<sup>28</sup>

Here, on the other hand, the requirements imposed by the test claim legislation are carried out by local government agencies that employ the specified local safety personnel who are entitled to the benefit, and do not apply "generally to all residents and entities in the state," as did the requirements for workers' compensation and unemployment insurance benefits that were the subject of the *County of Los Angeles* case. Therefore, the Commission finds that the test claim legislation does constitute a "program" that is 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 governments within the meaning of article XIII B, section 6 of the California Constitution?**

The courts have held that legislation imposes a "new program or higher level of service" when: a) the requirements are new in comparison with the preexisting scheme; and b) the requirements were intended to provide an enhanced service to the public.<sup>29</sup> Both of these conditions must be met in order to find that a "new program or higher level of service" was created by the test claim legislation.

To make this determination, the test claim legislation must first be compared with the legal requirements in effect immediately prior to its enactment.<sup>30</sup> Claimant is requesting reimbursement for "new duties" and increased costs of providing 100% of the employee's salary, rather than the previously-required 70% for temporary disability payments under workers' compensation, for the newly covered employees specified in the test claim legislation. Newly covered employees are members of PERS, the Los Angeles City

<sup>26</sup> *San Diego Unified School Dist.*, supra, 33 Cal.4th 859, 874; *County of Los Angeles*, supra, 43 Cal.3d 46, 56; *Lucia Mar*, supra, 44 Cal.3d 830, 835.

<sup>27</sup> *County of Los Angeles*, supra, 43 Cal.3d 46, 56-57.

<sup>28</sup> *County of Los Angeles*, supra, 43 Cal.3d 46, 57-58.

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

<sup>30</sup> *Ibid.*

Employees' Retirement System, or subject to the County Employees Retirement Law of 1937 who are also: 1) lifeguards; 2) peace officers of the County of Los Angeles; 3) park rangers; 4) peace officers of the Department of General Services of the City of Los Angeles; 5) housing authority patrol officers; 6) county probation officers, group counselors or juvenile services officers; 7) officers or employees of a probation office; 8) airport law enforcement officers; 9) harbor or port police officers, wardens or special officers of a harbor or port district or city or county harbor department; and 10) police officers of the Los Angeles Unified School District. Co-claimant San Diego Unified School District also contends that its employees are covered by the test claim legislation.

The immediately previous version of Labor Code section 4850 did not list the aforementioned groups of public safety personnel as employees entitled to the paid leave benefit, thus entitlement to the benefit is new for these employees, in comparison with the preexisting scheme.

The next question is whether the new requirements were intended to provide an enhanced service to the public. The Commission concludes that the new requirements were *not* intended to provide an enhanced service to the public as explained in the following analysis.

The Third District Court of Appeal in *City of Richmond v. Commission on State Mandates*<sup>31</sup> addressed a similar issue. The case involved legislation requiring local governments to provide death benefits to local safety officers under both PERS and the workers' compensation system. The court held that the legislation did not constitute a higher level of service even though such benefits might generate a higher quality of local safety officers and thereby, in a general and indirect sense, provide the public with a higher level of service by its employees.<sup>32</sup> The court stated the following:

Increasing the cost of providing services cannot be equated with requiring an increased level of service under a[n] [article XIII B,] section 6 analysis. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public.<sup>33</sup>

Two other cases have reached the same conclusion regarding employee benefits. The Second District Court of Appeal, in *City of Anaheim v. State of California* (1987) 189 Cal.App.3<sup>rd</sup> 1478, 1484, determined that a temporary increase in PERS benefits to retired employees, resulting in higher contribution rates for local government, did not constitute a higher level of service to the public. Also, in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67, the California Supreme Court determined that providing unemployment compensation protection to a city's own employees was not a service to the public.

The California Supreme Court reaffirmed and clarified what constitutes an "enhanced service to the public" in the *San Diego Unified School Dist.* case. The court, in reviewing several cases on point including *City of Richmond*, stated that the cases "illustrate the circumstance

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<sup>31</sup> *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4<sup>th</sup> 1190 (*City of Richmond*).

<sup>32</sup> *Id.*, page 1195; *San Diego Unified School Dist.*, *supra*, 33 Cal.4<sup>th</sup> 859, 876-877 (where the Supreme Court reviewed the *City of Richmond* decision).

<sup>33</sup> *City of Richmond*, *supra*, 64 Cal.App.4<sup>th</sup> 1190, 1196.

that simply because a state law or order may *increase the costs* borne by local government in *providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting 'service to the public' under article XIII B, section 6, and Government Code section 17514." (emphasis in original)<sup>34</sup>.

The Supreme Court went on to describe what *would* constitute a higher level of service, as "not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided. In *Carmel Valley Fire Protection Dist. v. State of California* [citations omitted], for example, an executive order required that county firefighters be provided with protective clothing and safety equipment. Because this increased safety equipment apparently was designed to result in more effective fire protection, the mandate evidently was intended to produce a higher level of service to the public ..."<sup>35</sup>

Claimant argues that the foregoing analysis is not consistent with case law, and cites a recent Los Angeles Superior Court case, *CSAC Excess Insurance Authority v. Commission on State Mandates*<sup>36</sup> to make the argument. However, that case cannot be relied upon as valid authority since it is currently being appealed<sup>37</sup> in the Second District Court of Appeal.<sup>38</sup>

Thus the Appellate and Supreme Court cases have consistently held that additional costs for increased employee benefits, in the absence of some increase in the actual level or quality of governmental services *provided to the public*, do not constitute an "enhanced service to the public" and therefore do not impose a "new program or higher level of service" on local governments within the meaning of article XIII B, section 6 of the California Constitution.

### CONCLUSION

The Commission finds that because the test claim legislation does not impose a new program or higher level of service, it does not create a reimbursable state-mandated program on local governments within the meaning of article XIII B, section 6 of the California Constitution.

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<sup>34</sup> *San Diego Unified School Dist*, *supra*, 33 Cal.4<sup>th</sup> 859, 877.

<sup>35</sup> *Ibid*.

<sup>36</sup> *CSAC Excess Insurance Authority v. Commission on State Mandates (CSAC)*, Superior Court, Los Angeles County, 2005, No. BS095456.

<sup>37</sup> Code of Civil Procedure, section 1049; *Caminetti v. Guaranty Union Life Ins. Co.* (1943) 22 Cal.2d 759, 766; the Supreme Court stated that "finality is not accorded a judgment until affirmance in the event of an appeal."

<sup>38</sup> *CSAC Excess Insurance Authority v. Commission on State Mandates, et. al.*, currently pending in the Second District Court of Appeal, Case Number B188169.



**Commission on State Mandates**

Original List Date: 7/6/2001  
Last Updated: 5/24/2006  
List Print Date: 06/27/2006  
Claim Number: 00-TC-20  
Issue: Workers' Compensation Disability Benefits for Government Employees

Mailing Information: Proposed SOD

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**Related**

02-TC-02 Workers' Compensation Disability Benefits for Government Employees  
(Amendment)

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Ms. Pam Stone  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841  
Tel: (916) 485-8102  
Fax: (916) 485-0111

---

Executive Director  
California Peace Officers' Association  
1455 Response Road, Suite 190  
Sacramento, CA 95815  
Tel: (916) 263-0541  
Fax: (916) 000-0000

---

Mr. Steve Kell  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814-3941  
Tel: (916) 327-7523  
Fax: (916) 441-5507

---

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Blvd, Suite 121  
Sacramento, CA 95826  
Tel: (916) 368-9244  
Fax: (916) 368-5723

---

Executive Director  
State Board of Education  
1430 N Street, Suite #5111  
Sacramento, CA 95814  
Tel:  
Fax:

---

Ms. Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814  
Tel: (916) 445-3274  
Fax: (916) 324-4888

---

Ms. Jesse McGuinn  
Department of Finance (A-15)  
915 L Street, 8th Floor  
Sacramento, CA 95814

Tel: (916) 445-8913

Fax: (916) 327-0225

---

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

Claimant

Tel: (213) 974-8564

Fax: (213) 617-8106

---

Executive Director  
California Probation, Parole & Correctional Association  
755 Riverpoint Drive, Suite 200  
Sacramento, CA 95660

Tel: (916) 927-4888

Fax: (916) 000-0000

---

Executive Director  
California State Firefighters' Association  
2701 K Street, Suite 201  
Sacramento, CA 95816

Tel: (800) 451-2732

Fax: (916) 446-9889

---

Mr. Gerald Shelton  
California Department of Education (E-08)  
Fiscal and Administrative Services Division  
1430 N Street, Suite 2213  
Sacramento, CA 95814

Tel: (916) 445-0541

Fax: (916) 327-8306

---

Mr. Mark Sigman  
Riverside County Sheriff's Office  
4095 Lemon Street  
P O Box 512  
Riverside, CA 92502

Tel: (951) 955-2700

Fax: (951) 955-2720

---

Mr. Steve Smith  
Steve Smith Enterprises, Inc.  
4633 Whitney Avenue, Suite A  
Sacramento, CA 95821

Tel: (916) 483-4231

Fax: (916) 483-1403

---

Mr. Arthur Palkowitz  
San Diego Unified School District  
Office of Resource Development  
4100 Normal Street, Room 3209  
San Diego, CA 92103-8363

Tel: (619) 725-7785

Fax: (619) 725-7564

---

Mr. Keith B. Petersen  
SixTen & Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Tel: (858) 514-8605

Fax: (858) 514-8645

---

Mr. Robert Miyashiro  
Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Tel: (916) 446-7517

Fax: (916) 446-2011

---

Mr. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite #106  
Roseville, CA 95661

Tel: (916) 677-4233

Fax: (916) 677-2283

---

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

---

Mr. Alex Rossi  
County of Los Angeles  
3333 Wilshire Blvd., Suite 820  
Los Angeles, CA 90010

Tel: (213) 738-2154

Fax: (213) 252-0404

---

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

Tel: (916) 485-8102

Fax: (916) 485-0111

---

Mr. Jim Jagers

P. O. Box 1993  
Carmichael, CA 95609

Tel: (916) 848-8407

Fax: (916) 848-8407

---

Ms. Beth Hunter  
Centratlon, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621

Fax: (866) 481-2682

---





COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY  
AUDITOR-CONTROLLER

April 19, 2007

RECEIVED  
APR 20 2007  
COMMISSION ON  
STATE MANDATES

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Dear Ms. Higashi:

County of Los Angeles Review  
Commission Staff Test Claim Analysis [CSM: 00-TC-20, 02-TC-02]  
Workers' Compensation Disability Benefits for Government Employees

We submit our review of the subject test claim analysis.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

J. Tyler McCauley  
Auditor-Controller

JTM:CY:LK  
Enclosures

*"To Enrich Lives Through Effective and Caring Service"*

County of Los Angeles Review  
 Commission Staff Test Claim Analysis<sup>1</sup>  
Workers' Compensation Disability Benefits for Government Employees

We have reviewed staff's analysis of the test claim [on Section 4850 of the Labor Code<sup>2</sup>] to be heard at the Commission's May 31, 2007 hearing.

We concur with staff's conclusion, on page 9 of their analysis, that the test claim legislation constitutes a uniquely governmental "program", a threshold requirement for finding a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution. Specifically, staff state:

"... the requirements imposed by the test claim legislation are carried out by local government agencies that employ the specified local safety personnel who are entitled to the benefit, and do not apply "generally to all residents and entities in the state," as did the requirements for workers' compensation and unemployment insurance benefits that were the subject of the County of Los Angeles case. Therefore, staff finds that the test claim legislation does constitute a "program" that is subject to article XIIB, section 6 of the California Constitution."

Nevertheless, staff do not find a reimbursable program simply because, in their view, "... the new requirements were not intended to provide an enhanced service to the public". [Staff Analysis, page 10] In this regard, staff claim that:

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<sup>1</sup> The Commission staff analysis is based on the County of Los Angeles test claim filing [00-TC-20] on June 29, 2001 as joined by the San Diego Unified School District as co-claimant on July 25, 2002 [00-TC-02]. The analysis is a re-issuance of the staff analysis prepared for the July 28, 2006 hearing which was postponed pending the final adjudication of the CSAC *Excess Insurance Authority and the City of Newport Beach v. Commission on State Mandates* case. On March 22, 2007, claimants were notified by Paula Higashi, Commission's Executive Director, that the case was now final and that the July 28, 2006 staff analysis was being re-issued without change. A copy of the case decision, which was provided by Ms. Higashi, indicated that the case was "unpublished/noncitable".

<sup>2</sup> The test claim legislation includes only the amendments to Labor Code Section 4850 in Statutes of 2000, Chapter 920 and 929; Statutes of 1999, Chapters 270 and 970; Statutes of 1989, Chapter 1464; Statutes of 1977, Chapter 981 which added specified classes of public safety government employees, including specified public safety school employees, to those public safety classes which were covered under prior law.

"... additional costs for increased [Section 4850] employee benefits in the absence of some increase in the actual level or quality of governmental services *provided to the public*, do not constitute an "enhanced service to the public". [Staff Analysis, page 11].

Here, we disagree because the test claim legislation, in our view, clearly provides an "enhanced service to the public" and also because our view is shared by the Attorney General.

The Attorney General finds that Labor Code section 4850 results in an enhanced service to the public. In Opinion No. 68-1, pages 32-35 of Volume 51, attached hereto as Exhibit 1, the Attorney General [on page 3 of Exhibit 1] states:

"The reason for such exceptional treatment for police and firemen [in Section 4850] is obvious: not only are their occupations particularly hazardous, but they undertake these hazards on behalf of the public. The Legislature undoubtedly sought to ensure that police and firemen would not be deterred from zealous performance of their mission of protecting the public by fear of loss of livelihood." [Emphasis added.]

We agree with the Attorney General's characterization of the specific provisions of Labor Code Section 4850. Plainly stated, an enhanced service to the public results from the "zealous performance" of public safety duties. The public is better protected than under prior law.

Moreover, according to the definition of 'zealous'<sup>3</sup>, zealously performed services are those found to be "ardently active, devoted, or diligent" --- clearly some increase in the level and quality of services over those not zealously performed.

Therefore, the test claim legislation is a uniquely governmental program which constitutes an enhanced service to the public, and accordingly, reimbursement is required as claimed herein.

---

<sup>3</sup> See Exhibit 2, page 3, for the definition of 'zealous' in Webster's New Universal Unabridged Dictionary, Barnes and Noble Books, New York [1992].



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2788  
PHONE: (213) 974-8301 FAX: (213) 626-5427

**County of Los Angeles Review  
Commission Staff Test Claim Analysis [CSM: 00-TC-20, 02-TC-02]  
Workers' Compensation Disability Benefits for Government Employees**

**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analyses, requests for extension of time, postponement of hearings and for proposing, or commenting on, parameters and guidelines (Ps&Gs) and amendments thereto, and for filing incorrect reduction claims, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject review, captioned above.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the attached filing, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" 'Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, 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."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

4/19/07, Los Angeles, CA  
Date and Place

*Leonard Kaye*  
Signature

*"To Enrich Lives Through Effective and Caring Service"*



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## ATTORNEY GENERAL'S OPINIONS

[VOLUME 51]

Opinion No. 68-1—April 4, 1968

**SUBJECT: LEAVE OF ABSENCE**—Labor Code section 4850 provides temporary disability compensation for certain policemen and firemen and is independent of the provisions of sections 4650 and 4652.

**Requested by: DISTRICT ATTORNEY, CONTRA COSTA COUNTY**

**Opinion by: THOMAS C. LYNCH, Attorney General**  
Ronald V. Thunen, Jr., Deputy

The Honorable John A. Nejedly, District Attorney of Contra Costa County, has requested an opinion on the following question:

Does the leave of absence without loss of salary provided by Labor Code section 4850 commence immediately with disability, or do sections 4650 and 4652, which provide that payments are to commence on the eighth day of absence, apply to occupations covered by section 4850?

The conclusion is as follows:

Section 4850 sets up a scheme of temporary disability compensation for certain policemen and firemen which is independent of the general limitations imposed by sections 4650 and 4652. The leave of absence with pay for these employees, therefore, begins immediately upon disability.

## ANALYSIS

Labor Code<sup>1</sup> section 4850 provides:

"Whenever any city policeman, city fireman, county fireman, fireman of any fire district, sheriff or any officer or employee of a sheriff's office, or any inspector, investigator, detective or personnel with comparable title in any district attorney's office, who is a member of the State Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Ch. 3 (commencing with Section 31450), Pt. 3, Div. 4, Title 3, Gov. C.) is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with

member, officer, or employee shall not participate in any action by the Local Authority relating to such contract, subcontract, or arrangement.

(B) The Local Authority shall insert in all contracts entered into in connection with any Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provision:

"No member, officer, or employee of the Local Authority during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

(C) The provisions of the foregoing subsections (A) and (B) of this Sec. 515 shall not be applicable to the purchase or sale of Temporary Notes or the Bonds, or to the General Depository Agreement, fiscal agency agreements, the trusteeships authorized under this Contract, or utility services the rates for which are fixed or controlled by a governmental agency.

<sup>1</sup> All section references in this opinion are to the Labor Code unless otherwise noted.

APRIL 1968]

ATTORNEY GENERAL'S OPINIONS

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the city or county, to leave of absence while so disabled without loss of salary, in lieu of temporary disability payments, if any, which would be payable under this chapter, for the period of such disability but not exceeding one year, or until such earlier date as he is retired on permanent disability pension. This section shall apply only to city policemen, sheriffs or any officer or employee of a sheriff's office, and any inspector, investigator, detective or personnel with comparable title in any district attorney's office, who are members of the State Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Ch. 3 (commencing with Section 31450), Pt. 3, Div. 4, Title 3, Gov. C.) and excludes such employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active law enforcement service, and excludes such employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. It shall also apply to city firemen, county firemen, and firemen of any fire district who are members of the State Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Ch. 3 (commencing with Section 31450), Pt. 3, Div. 4, Title 3, Gov. C.) and excludes such employees of the city fire department, county fire department and of any fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting and prevention service. It shall also apply to deputy sheriffs subject to the County Employees Retirement Law of 1937 (Ch. 3 (commencing with Section 31450), Pt. 3, Div. 4, Title 3). If the employer is insured, the payments which, except for the provisions of this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured."

"4650. If an injury causes temporary disability, a disability payment shall be made for one week in advance as wages on the eighth day after the injured employee leaves work as a result of the injury; provided, that in case the injury causes disability of more than 49 days or necessitates hospitalization the disability payment shall be made from the first day the injured employee leaves work or is hospitalized as result of the injury. If the injury causes permanent disability, a disability payment shall be made for one week in advance as wages on the eighth day after the injury becomes permanent or the date of last payment for temporary disability, whichever date first occurs."

"4652. No disability payment is recoverable for the disability suffered during the first seven days after the employee leaves work as a result of the injury, except as otherwise provided in Section 4650 of the code."

For the purposes of this opinion, it is important to note that sections 4650 and 4652 apply to disability payments generally, but section 4850 speaks of leave of absence "in lieu of temporary disability payments, if any, which would be payable under this chapter."

Although section 4850 has caused the courts semantic problems resulting in apparently conflicting language in the cases, a synthesis of *Hawthorn v. Industrial Accident Commission*, 101 Cal. App. 2d 568 (1951), and *Hawthorn v. City of Beverly Hills*, 111 Cal. App. 2d 723 (1952), reveals that although the leave of absence with salary provided by section 4850 is "compensation" as that word is defined by sections 3207 and 5001, the leave of absence is not temporary disability payment per se.<sup>2</sup> The question in this opinion becomes, therefore, whether sections 4650 and 4652, which by their terms apply to disability payments, are in fact applicable also to benefits provided instead of temporary disability payments.

An important preliminary consideration in questions involving workmen's compensation benefits is the legislative mandate embodied in section 3203, which provides:

"The [Workmen's Compensation Laws] . . . shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." The California Supreme Court has responded to this charge thus:

"[Workmen's compensation provisions] . . . are to be liberally construed to the end that the beneficent features thereof shall not be lost to employees, and where provisions are susceptible of an interpretation either beneficial or detrimental to an injured employee, they must be construed favorable to the employee." *Colonial Insurance Co. v. Industrial Accident Comm'n*, 27 Cal.2d 437, 439-440 (1945).

Applying this liberal rule of construction to the problem at hand, and noting that sections 4650 and 4652 speak of temporary and permanent disability payments while section 4850 speaks of leave of absence *in lieu of* temporary disability payments, we conclude that the specific statutory plan set up in sections 4850 through 4854 is not controlled by the general limitations imposed on disability payments by sections 4650 and 4652. See Civ. Code § 3534.

The reason for such exceptional treatment for policemen and firemen is obvious: not only are their occupations particularly hazardous, but they undertake these hazards on behalf of the public. The Legislature undoubtedly sought to ensure that policemen and firemen would not be deterred from zealous performance of their mission of protecting the public by fear of loss of livelihood.

<sup>2</sup> A contrary stand may be indicated by dicta in the case of *Earon v. City of Riverside*, 233 Cal. App. 2d 190, 193 (1965), to the effect that section 4850 benefits may be styled as disability payments for the purpose of applying section 4656. Section 4656 provides that payments for a single injury shall not extend for more than 240 compensable weeks within five years from the date of the injury.

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ATTORNEY GENERAL'S OPINIONS

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It is, of course, true that these policemen and firemen also earn sick leave like other public employees. Indeed, sick leave is a part of the compensation of public employees. *Austin v. City of Santa Monica*, 234 Cal. App. 2d 841 (1965). But while other civil servants can usually save their sick leave for ordinary illnesses and injuries, these policemen or firemen might find themselves stripped of this benefit by having to expend it during recovery from an unexpected line of duty injury.

Section 4850 permits policemen and firemen to use sick leave in a manner comparable to other civil servants. Since these occupations require personnel to risk injury regularly, the net effect in the absence of section 4850 would be to reduce the fringe benefits of police and fire personnel compared to other less risky government positions. Without section 4850, for instance, a fireman injured in the course of firefighting could find himself charged sick leave while being treated in a doctor's office. Because such temporary disabilities are common in these occupations, and because section 4652 denies temporary disability payments for injuries resulting in disabilities of less than eight days' duration, policemen and firemen could well be forced to expend all their sick leave on the burns and bruises that are their frequent lot.

When section 4850 was adopted in 1939 (Stats. 1939, ch. 926, p. 2604), it was patterned after section 4800, which provided similar benefits for members of the California Highway Patrol.<sup>3</sup> Two rules of statutory interpretation—that similar statutes should be construed similarly, (*In re Phyle*, 30 Cal.2d 838, 843-4 (1947); *Frediani v. Ota*, 215 Cal. App. 2d 127, 133 (1963)), and that the interpretation given a statute by the agency charged with its administration is entitled to great weight (*Union Oil Co. v. State Board of Equalization*, 60 Cal.2d 441, 456 (1963))—prompt an inquiry into the procedures of the California Highway Patrol when one of its members becomes temporarily disabled as a result of a line of duty injury or illness. We have been advised by the California Highway Patrol that, in such circumstances, section 4650 is not applied, and the leave of absence with full salary commences immediately.

The same procedure should be followed in respect to personnel covered by section 4850.

Opinion No. 68-36—April 4, 1968

**SUBJECT: SCHOOLS**—"Schools" as used in Business and Professions Code section 23789 does not include a school of cosmetology; the Department of Alcoholic Beverage Control, however, may refuse a license in proximity thereto.

**Requested by: SENATOR, 30th DISTRICT**

**Opinion by: THOMAS C. LYNCH, Attorney General**  
Ronald V. Thunen, Jr., Deputy

<sup>3</sup> Section 4800 has since been expanded to include harbor policemen employed by the San Francisco Port Authority.

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**Exhibit 2,  
Page 2****ACKNOWLEDGMENTS AND PERMISSIONS:**

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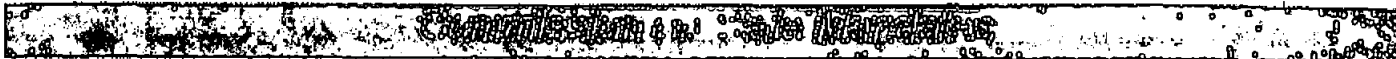
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 List Print Date: 03/22/2007 **Mailing List**  
 Claim Number: 00-TC-20  
 Issue: Workers' Compensation Disability Benefits for Government Employees

**Related Matter(s)**

02-TC-02 Workers' Compensation Disability Benefits for Government Employees  
 (Amendment)

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Ms. Pam Stone  
 MAXIMUS  
 4320 Auburn Blvd., Suite 2000  
 Sacramento, CA 95841

Tel: (916) 485-8102  
 Fax: (916) 485-0111

Executive Director  
 California Peace Officers' Association  
 1455 Response Road, Suite 190  
 Sacramento, CA 95815

Tel: (916) 263-0541  
 Fax: (916) 000-0000

Mr. Steve Keil  
 California State Association of Counties  
 1100 K Street, Suite 101  
 Sacramento, CA 95814-3941

Tel: (916) 327-7523  
 Fax: (916) 441-5507

Mr. David Wellhouse  
 David Wellhouse & Associates, Inc.  
 9175 Kiefer Blvd, Suite 121  
 Sacramento, CA 95826

Tel: (916) 368-9244  
 Fax: (916) 368-5723

Executive Director  
 State Board of Education  
 1430 N Street, Suite #5111  
 Sacramento, CA 95814

Tel:  
 Fax:

Ms. Susan Geanacou  
 Department of Finance (A-15)  
 915 L Street, Suite 1190

Tel: (916) 445-3274  
 Fax: (916) 324-4888

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Sacramento, CA 95814

Ms. Paula Higashi  
 Executive Director  
 Commission on State Mandates  
 980 Ninth Street, Suite 300  
 Sacramento, California 95814

Tel: (916) 323-3562  
 Fax: (916) 445-0278

Executive Director  
 California State Firefighters' Association  
 2701 K Street, Suite 201  
 Sacramento, CA 95816

Tel: (800) 451-2732  
 Fax: (916) 446-9889

Ms. Carol Bingham  
 California Department of Education (E-08)  
 Fiscal Policy Division  
 1430 N Street, Suite 5802  
 Sacramento, CA 95814

Tel: (916) 324-4728  
 Fax: (916) 319-0116

Mr. Mark Sigman  
 Riverside County Sheriff's Office  
 4095 Lemon Street  
 P O Box 512  
 Riverside, CA 92502

Tel: (951) 955-2700  
 Fax: (951) 955-2720

Mr. Steve Smith  
 Steve Smith Enterprises, Inc.  
 3323 Watt Avenue #291  
 Sacramento, CA 95821

Tel: (916) 216-4435  
 Fax: (916) 972-0873

Mr. Arthur Palkowitz  
 San Diego Unified School District  
 Office of Resource Development  
 4100 Normal Street, Room 3209  
 San Diego, CA 92103-8363

Tel: (619) 725-7785  
 Fax: (619) 725-7564

Mr. Keith B. Petersen  
 SixTen & Associates  
 5252 Balboa Avenue, Suite 900  
 San Diego, CA 92117

Tel: (858) 514-8605  
 Fax: (858) 514-8645

Mr. Robert Miyashiro  
 Education Mandated Cost Network  
 1121 L Street, Suite 1060  
 Sacramento, CA 95814

Tel: (916) 446-7517  
 Fax: (916) 446-2011

Mr. Jim Spano  
 State Controller's Office (B-08)  
 Division of Audits

Tel: (916) 323-5849  
 Fax: (916) 327-0832

---

300 Capitol Mall, Suite 518  
Sacramento, CA 95814

---

Ms. Donna Ferebee  
Department of Finance (A-15)  
915 L Street, 11th Floor  
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 323-9584

---

Mr. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite #108  
Roseville, CA 95661

Tel: (916) 677-4233

Fax: (916) 677-2283

---

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

---

Mr. Alex Rossi  
County of Los Angeles  
3333 Wilshire Blvd., Suite 820  
Los Angeles, CA 90010

Tel: (213) 738-2154

Fax: (213) 252-0404

---

Ms. Caria Castaneda  
Department of Finance (A-16)  
915 L Street, 11th Floor  
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 323-9584

---

Ms. Annette Chinn  
Cost Recovery Systems, Inc.  
705-2 East Bidwell Street, #294  
Folsom, CA 95630

Tel: (916) 939-7901

Fax: (916) 939-7801

---

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

Tel: (916) 485-8102

Fax: (916) 485-0111

---

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621

Fax: (866) 481-2682

**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 20th day of April 2007, I served the attached:

Documents: County of Los Angeles Review, Commission Staff Test Claim Analysis, Worker's Compensation Disability Benefits for Government Employees [00-TC-20 and 02-TC-02], including a 1 page letter of J. Tyler McCauley dated 4/19/07, a 2 page narrative, a 1 page declaration of Leonard Kaye dated 4/19/07, a 4 page Exhibit 1, and a 3 page Exhibit 2, now pending before the Commission on State Mandates.

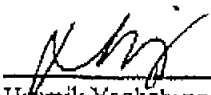
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**PLEASE SEE ATTACHED MAILING LIST**

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of April 2007, at Los Angeles, California.

  
 \_\_\_\_\_  
 Hasmik Yaghobyan





DEPARTMENT OF  
**FINANCE**

EXHIBIT K

ARNOLD SCHWARZ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DDF.CA.GOV

April 23, 2007

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

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Dear Ms. Higashi:

As requested in your letter of March 22, 2007, the Department of Finance has reviewed the Final Staff Analysis and Proposed Statement of Decision for Claim No. 00-TC-20, 02-TC-02 "Workers' Compensation Disability Benefits for Government Employees."

As the result of our review, we concur with the staff recommendation to deny the test claim. We agree that the test claim legislation does not constitute a new program or higher level of service to the public since local government employers are only required to provide a new leave benefit to certain employees.

As noted in the Final Staff Analysis, the Appellate and Supreme Court have consistently held that additional costs for increased employee benefits, in the absence of some increase in the actual level or quality of governmental services provided to the public, do not constitute an "enhanced service to the public."

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list, which accompanied your March 22, 2007 letter, have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Thomas E. Dithridge  
Program Budget Manager

Attachments

Attachment A

DECLARATION OF CARLA CASTAÑEDA  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-00-TC-20

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

April 20, 2007  
at Sacramento, CA

Carla Castañeda  
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Workers' Compensation Disability Benefits for Government Employees.

Test Claim Number: CSM-00-TC-20, 02-TC-02

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On April 23, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16  
Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

A-15  
Carla Castañeda  
Department of Finance  
915 L Street, Suite 12th Floor  
Sacramento, CA 95814

Carol Bingham  
Fiscal Policy Division  
1430 N Street, Suite 5602  
Sacramento, CA 95814

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

B-08  
Ginny Brummels  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

A-15  
Donna Ferebee  
Department of Finance  
915 L Street, Suite 12th Floor  
Sacramento, CA 95814

Allan Burdick  
MAXIMUS  
4320 Auburn Blvd, Suite 2000  
Sacramento, CA 95841

A-15  
Susan Geanacou  
Department of Finance  
915 L Street, Suite 1190  
Sacramento, CA 95814

J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite #106  
Roseville, CA 95661

Beth Hunter  
Centration, Inc.  
8316 Red Oak Street, Suite 101  
Rancho Cucamonga, CA 91730

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

Steve Keil  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 0

Robert Miyashiro  
Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Arthur Palkowitz  
San Diego Unified School District  
Office of Resource Development  
4100 Normal Street, Room 3159  
San Diego, CA 0

Keith Petersen  
SixTen & Associates  
5252 Balboa Avenue, Suite 900  
San Diego, CA 92117

Alex Rossi  
Conty of Los Angeles  
3333 Wilshire Blvd., Suite 820  
Los Angeles, CA 90010

Mark Sigman  
Riverside County Sheriff's Office  
4095 Lemon Street  
P.O. Box 512  
Riverside, CA 92502

Steve Smith  
Steve Smith Enterprises, Inc.  
One Capitol Mall, Suite 200  
Sacramento, CA 95814

B-08  
Jim Spano  
State Controller's Office  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

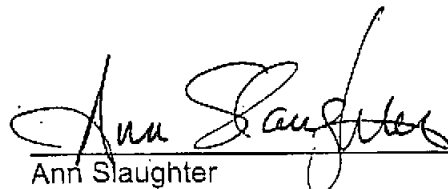
David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Blvd, Suite 121  
Sacramento, CA 95826

Executive Director  
California Peace Officers' Association  
1455 Response Road Suite 190  
Sacramento, CA 95814

Executive Director  
State Board of Education  
1430 N Street, Suite 5111  
Sacramento, CA 95814

Executive Director  
California State Firefighters' Association  
2701 K Street, Suite 201  
Sacramento, CA 95816

On 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 April 23, 2007 at Sacramento, California.

  
Ann Slaughter



Not Reported in Cal.Rptr.2d  
Not Reported in Cal.Rptr.2d, 2001 WL 1335849 (Cal.App. 4 Dist.), 66 Cal. Comp. Cases 1141  
Not Officially Published  
(Cal. Rules of Court, Rules 976, 977)  
(Cite as: 2001 WL 1335849 (Cal.App. 4 Dist.))

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

Court of Appeals, Fourth District, California  
SAN DIEGO UNIFIED SCHOOL DISTRICT,  
PETITIONER,  
v.  
WORKERS' COMPENSATION APPEALS BOARD  
AND JOSEPH W. ELMORE, RESPONDENTS.  
D038032  
(WCAB Nos. SDO-0200582, SDO-0200586, SDO-0252347)

Filed July 19, 2001

HUFFMAN, Acting P. J.

THE COURT:

\*1 The petition for writ of review, answer and reply have been read and considered by Justices Huffman, McIntyre and O'Rourke.

The San Diego Unified School District (District) filed a petition for reconsideration on March 20, 2001, challenging a decision after remand by the Workers' Compensation Judge (WCJ), finding Joseph W. Elmore, Jr., entitled to benefits under Labor Code [FN1] section 4850, in that as a school district police officer he was a sworn officer engaged in active law enforcement. [FN2] Section 4850 allows full pay during a leave of absence for up to one year for city police officers, firemen, sheriffs and other enumerated peace officers who are disabled by injury or illness arising out of the course of their duties.

The WCJ issued a report recommending denial of the petition for reconsideration citing to the evidence and to cases in which police officers other than city police officers had been found to be covered by section 4850. The WCJ also noted section 3202 requires workers' compensation law be construed to extend protection to injured workers. The WCJ found

no basis for a distinction in coverage between officers defined in Penal Code section 830.31 and those in Penal Code section 830.32. The Workers' Compensation Board (WCAB) denied the petition for reconsideration, adopting the reasoning in the WCJ's report.

In the present petition District argues the WCAB improperly denied its petition in that section 4850 clearly indicates those who are included in its provisions and those who are not. It claims Elmore is clearly excluded. It argues because section 4850 is not ambiguous the rule of liberal construction is inapplicable, and the Legislature has drawn a clear distinction in coverage between peace officers defined in Penal Code section 830.31 and school officers defined in Penal Code section 830.32. It also points out the Legislature recently specifically extended section 4850's coverage to particular officers and most importantly to Los Angeles Unified School District police officers. The District reasons if school officers were already covered it would not be necessary to add specifically Los Angeles Unified School District school police.

Review of a decision of the WCAB is limited to whether the WCAB acted without or in excess of its powers, and whether the order, decision or award was unreasonable, not supported by substantial evidence, or procured by fraud. (§ 5952.)

We cannot say the WCAB acted unreasonably or in excess of its powers in denying the petition for reconsideration. Elmore, as a school police officer, is engaged in active law enforcement duties. His stipulated job duties indicate he is faced with the same life-threatening situations as city or county police officers. We are not persuaded by District's argument there is a distinction in coverage between those peace officers defined in Penal Code section 830.31 and those in Penal Code section 830.32. Further, cases cited by District do not support its position. For example, Biggers v. Workers' Comp. Appeals Bd. (1999) 69 Cal.App.4th 431, did not rest on a narrow interpretation of section 4830. There, the court found a court bailiff's duties within the area of active law enforcement.

\*2 The recent amendment to section 4850 to include

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specifically school police officers employed by the Los Angeles Unified School District does not show that other school police officers are excluded. Before the amendment school police officers employed by the Los Angeles Unified School District were not covered by section 4850 because they are not members of the Public Employees' Retirement System. The amendment to section 4850 extends its benefits to members of that retirement system. Elmore, as a District school police officer and member of the Public Employees' Retirement System, was already covered by section 4850.

The petition is denied.

FN1. All statutory references are to the Labor Code unless otherwise indicated.

FN2. The matter was remanded to the WCJ because he had made no specific finding that Elmore was a member of the Public Employees' Retirement System, a threshold requirement for application of section 4850. The WCJ's second decision included this finding.

Not Reported in Cal.Rptr.2d, 2001 WL 1335849 (Cal.App. 4 Dist.), 66 Cal. Comp. Cases 1141 Not Officially Published, (Cal. Rules of Court, Rules 976, 977)

END OF DOCUMENT

Briefs and Other Related Documents

CSAC Excess Ins. Authority v. Commission on State Mandates Cal.App. 2 Dist., 2006. Only the Westlaw citation is currently available.

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

Court of Appeal, Second District, Division 4,  
California.

CSAC Excess Insurance Authority et al., Plaintiffs  
and Respondents,  
v.

COMMISSION ON STATE MANDATES,  
Defendant and Appellant;

California Department of Finance, Intervener and  
Appellant.

No. B188169.

(Los Angeles County Super. Ct. Nos. BS092146 &  
BS095456).

Dec. 20, 2006.

APPEAL from a judgment of the Superior Court of Los Angeles County, David P. Yaffe, Judge. Affirmed in part; reversed in part with directions.

Camille Shelton and Katherine A. Tokarski for Defendant and Appellant Commission on State Mandates.

Bill Lockyer, Attorney General, Louis R. Maura, Assistant Attorney General, Christopher E. Krueger and Jack C. Woodside, Deputy Attorneys General, for Intervener and Appellant California Department of Finance.

Stephen D. Underwood; Robin Lynn Clauson, Newport Beach City Attorney, and Aaron C. Harp, Assistant City Attorney, for Plaintiffs and Respondents.

SUZUKAWA, J.

\*1 In this appeal from a judgment granting consolidated writ of mandate petitions, we affirm in part, reverse in part, and reinstate in part the administrative rulings of appellant Commission on State Mandates (commission).

INTRODUCTION

Article XIII B, section 6 of the California Constitution provides in relevant part that "[w]henver 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 such local government for the costs of such program or increased level of service" (article XIII B, section 6). In this appeal, we must decide whether three workers' compensation statutes (Lab.Code, §§ 3212.1, 3212.11, 3213.2 (the test statutes)),<sup>FNI</sup> which provide certain publicly employed peace officers, firefighters, and lifeguards with a rebuttable presumption that their injuries arose out of and in the course of employment, mandated a new program or higher level of service of an existing program for which reimbursement is required under article XIII B, section 6.

<sup>FNI</sup>. All further undesignated statutory references are to the Labor Code.

Respondents CSAC (California State Association of Counties) Excess Insurance Authority (hereafter EIA), a joint powers authority that provides insurance to its 54 member counties, and City of Newport Beach (city) petitioned for writs of mandate to vacate the commission's denials of their claims for reimbursement of state-mandated costs created by the test statutes. The commission and the California Department of Finance (department), which filed a complaint in intervention, opposed the consolidated writ petitions and demurred on the ground that the EIA lacked standing. The superior court overruled the demurrer and entered judgment for the EIA and the city. The superior court issued a peremptory writ of mandate that vacated the commission's rulings and directed it to determine the amount of increased workers' compensation benefits paid, if any, by the city and the EIA's member counties as a result of the presumptions created by the test statutes.

In this appeal from the judgment by the commission and the department, we conclude that the EIA has standing as a joint powers authority to sue for reimbursement of state-mandated costs on behalf of its member counties. We also conclude that because workers' compensation is not a program administered

by local governments, the test statutes did not mandate a new program or higher level of service of an existing program for which reimbursement is required under article XIII B, section 6, notwithstanding any increased costs imposed on local governments by the statutory presumptions.

## BACKGROUND

### A. The Administrative Proceedings

The EIA is a joint powers authority. The EIA states that it "was formed in 1979 to provide insurance coverage, risk management and related services to its members in accordance with Government Code [section] 998.4. Specifically, with respect to the issues presented here, the EIA provides both primary and excess workers' compensation coverage for member counties, including the payment of claims and losses arising out of work related injuries." The EIA's members include 54 of the 58 California counties. According to the EIA, "[e]very California county except Los Angeles, San Francisco, Orange and San Mateo [is a member] of the EIA."

\*2 In 2002, the County of Tehama, which is not a party to this appeal, the EIA, and the city filed test claims with the commission concerning the three test statutes. A "test claim" is "the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." (§ 17521.) The test claims alleged that each test statute, by creating a presumption of industrial causation in favor of certain public employees seeking workers' compensation benefits for work-related injuries, imposed state-mandated costs for which reimbursement is required under article XIII B, section 6.

In the first test claim, the County of Tehama and the EIA challenged section 3212.1, which grants a rebuttable presumption of industrial causation to certain publicly employed peace officers and firefighters who, either during or within a specified period following termination of service, develop cancer, including leukemia, after being exposed to a known carcinogen. Section 3212.1, subdivision (d) allows employers to rebut this presumption with "evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer." If the presumption is not rebutted, "the appeals board is bound to find in

accordance with the presumption." (§ 3212.1, subd. (d).)

In the second test claim, the County of Tehama and the EIA challenged section 3213.2, which grants a rebuttable presumption of industrial causation to certain publicly employed peace officers who wear a duty belt (a belt used to hold a gun, handcuffs, baton, and other law enforcement items) as a condition of employment and, either during or within a specified period after termination of service, suffer a lower back injury. Section 3213.2, subdivision (b) allows employers to rebut this presumption with "other evidence, but unless so controverted, the appeals board is bound to find in accordance with it."

In the third test claim, the city challenged section 3212.11, which grants a rebuttable presumption of industrial causation to certain publicly employed lifeguards who develop skin cancer during or immediately following their employment. Section 3212.11 allows employers to rebut this presumption with "other evidence, but unless so controverted, the appeals board shall find in accordance with it."

The commission denied each test claim after determining that each test statute's respective presumption of industrial causation did not mandate increased costs for which local entities must be reimbursed under article XIII B, section 6. The commission also concluded that the EIA lacked standing to pursue the test claims because the EIA does not employ the peace officers, firefighters, or lifeguards affected by the test statutes and is a separate entity from its member counties.

### B. The Judicial Proceeding

The EIA and the city petitioned for writs of mandate to vacate the commission's denials of their respective test claims. (Code Civ. Proc., § 1094.5.) The commission and the department, which filed a complaint in intervention, opposed the consolidated petitions. (Gov. Code, § 13070; see Redevelopment Agency v. Commission on State Mandates (1996) 43 Cal.App.4th 1188, 1198.)

\*3 The commission and the department challenged on demurrer the EIA's standing to prosecute the test claims. When the test claims were filed, Government Code section 17520 defined "special district" to include joint powers authorities and Government Code section 17552 defined "local agency" to include special districts. The superior court determined that

because the EIA, as a joint powers authority, was a special district under Government Code section 17520 when the test claims were filed, the EIA was a local agency under Government Code section 17552 and, therefore, had standing to file the test claims. The superior court noted that although in 2004, the Legislature deleted joint powers agencies or authorities from the definition of special district (Gov.Code, § 17520, as amended by Stats.2004, ch. 890), because the EIA's test claims were filed before the amendment took effect, the amendment did not apply to the EIA's pending test claims.

Regarding the issue of state-mandated costs, the superior court concluded that the test statutes mandated a new program or increased services under article XIII B, section 6. The superior court reasoned that "[l]egislation that expands the ability of an injured employee to prove that his injury is job related, expands the cost to the employer to compensate its injured workers. The assertion by the state that the employer can somehow 'opt out' of that cost increase is clearly without merit. By contending that the counties need not 'dispute' the presumptions mandated by the legislature, that the injury is job related, misses the point. The counties are entitled to subvention, not for increased LITIGATION costs, but for the increased costs of COMPENSATING their injured workers which has been mandated by the legislature."

The superior court granted judgment to the EIA and the city, and issued a peremptory writ of mandate directing the commission to vacate its administrative rulings and "to determine the amount, if any, that the cost of providing workers' compensation benefits to the employees of the City of Newport Beach and each member county [of the EIA] has been increased by the enactment of the presumptions created by" the test statutes. On appeal, the commission and the department challenge the EIA's standing to prosecute the test claims and argue that the test statutes do not mandate a new program or increased services within an existing program for which reimbursement is required under article XIII B, section 6.

## DISCUSSION

### I

#### Standing

The commission and the department contend that the EIA lacks standing to prosecute the test claims on behalf of its member counties. We disagree.

In 1984, the Legislature established the administrative procedure by which local agencies and school districts may file claims with the commission for reimbursement of costs mandated by the state. (Gov.Code, §§ 17500, 17551, subd. (a).) In this context, "costs mandated by the state" means "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." (Gov.Code, § 17514.)

\*4 Given that Government Code section 17551, subdivision (a) allows local agencies and school districts to seek reimbursement of state-mandated costs and Government Code section 17518 includes counties within the definition of local agency, it must follow that the EIA's 54 member counties have standing to bring test claims for reimbursement of state-mandated costs. We must decide whether the EIA has standing to bring the test claims on behalf of its member counties.

When the EIA filed its test claims in 2002, Government Code section 17520 included joint powers authorities within the definition of special districts. As of January 1, 2005, however, joint powers agencies were eliminated from the definition of special districts. (Stats.2004, ch. 890 (AB 2856).) Because the amended definition of special districts applies to pending cases such as this one, we conclude that the EIA is not a special district under section 17520 and has no standing to pursue its test claims on that basis. (See Californians for Disability Rights v. Mervyn's, LLC (2006) 39 Cal.4th 223 [Proposition 64, which limited standing to bring actions under the unfair competition law to governmental parties and injured private parties, eliminated the appellant's standing to pursue an appeal that was pending when the proposition was passed].)

Nevertheless, we agree with the EIA that it may pursue the test claims on behalf of its member counties because "[r]ather than having 54 counties bring individual test claims, the EIA, in its representative capacity is statutorily authorized to proceed on its members' behalf." <sup>FN2</sup>

FN2. Under *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, the companion case to *Californians for Disability Rights v. Mervyn's LLC*, supra, 39 Cal.4th 223, even if we were to conclude that the EIA lacked standing to bring a test claim on behalf of its member counties, it is possible that the EIA would be granted leave to amend to identify the county or counties that might be named as a plaintiff. Given our determination that the EIA has standing as a representative of its member counties to pursue the test claims, we need not address this unbriefed issue.

According to the joint powers agreement, the EIA's purpose is "to jointly develop and fund insurance programs as determined. Such programs may include, but are not limited to, the creation of joint insurance funds, including excess insurance funds, the pooling of self-insured claims and losses, purchased insurance, including reinsurance, and the provision of necessary administrative services. Such administrative services may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal defense services."

By law, the EIA as a joint powers authority possesses the common powers enumerated in the joint powers agreement and may exercise those powers in the manner provided therein. (Gov. Code, § 6508.) California law provides that a joint powers agency may sue and be sued in its own name if it is authorized in its own name to do any or all of the following: to make and enter contracts; to employ agents and employees; to acquire, construct, manage, maintain, or operate any building, works, or improvements; to acquire, hold, or dispose of property; or to incur debts, liabilities, or obligations. (Id., § 6508.) In this case, the joint powers agreement gave the EIA "all of the powers common to counties in California and all additional powers set forth in the joint powers law, and ... authorized [it] to do all acts necessary for the exercise of said powers. Such powers include, but are not limited to, the following: [¶] (a) To make and enter into contracts. [¶] (b) To incur debts, liabilities, and obligations. [¶] (c) To acquire, hold, or dispose of property, contributions and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities. [¶] (d) To sue and be sued in its own name, and to settle any claim against it..."

\*5 Given that the joint powers agreement expressly authorized the EIA to exercise all of the powers common to counties in California, to do all acts necessary for the exercise of said powers, and to sue and be sued in its own name, we conclude that the joint powers agreement authorized the EIA to bring the test claims on behalf of its member counties, each of which qualifies as a local agency to bring a test claim under Government Code section 17518. Although as appellants point out, the EIA is a separate entity from the contracting counties and is not directly affected by the test statutes because it does not employ the peace officers, firefighters, and lifeguards specified in the test statutes, we conclude that those factors do not preclude the EIA from exercising its power under the agreement to sue on behalf of its member counties.

Appellants' reliance on *Kinlaw v. State of California* (1991) 54 Cal.3d 326 is misplaced. In *Kinlaw*, the plaintiffs filed suit as individual taxpayers and medically indigent adult residents of Alameda County to compel the state either to restore their Medi-Cal eligibility or to reimburse the county for their medical costs under article XIII B, section 6. The Supreme Court held that the plaintiffs in *Kinlaw* lacked standing because the right to reimbursement under article XIII B, section 6 "is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services." (54 Cal.3d at p. 334.) The Supreme Court noted that the interest of the plaintiffs, "although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government." (*Id.* at p. 335.)

In this case, however, the EIA has standing to sue as a joint powers authority on behalf of its 54 member counties that have standing as local agencies to bring test claims. Unlike the plaintiffs in *Kinlaw*, the EIA claims standing not as an individual or as a taxpayer, but as a joint powers authority with the right to exercise "all of the powers common to counties in California," and "to do all acts necessary for the exercise of said powers," including the right to sue in its own name. We therefore distinguish *Kinlaw* and conclude that it does not deprive the EIA of standing in this case.

## II

### Article XIII B, Section 6

Article XIII B, section 6 provides in relevant part that “[w]henver 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 such local government for the costs of such program or increased level of service...” We conclude that because the test statutes did not mandate a new program or higher level of service of an existing program, reimbursement under article XIII B, section 6 is not required.

*A. The Purpose of Article XIII B, Section 6*

Article XIII A, which was added to the California Constitution by Proposition 13 in 1978, imposed a limit on the power of state and local governments to adopt and levy taxes. Article XIII B, which was added to the Constitution by Proposition 4 in 1979, imposed a complementary limit on government spending. The two provisions “work in tandem, together restricting California governments’ power both to levy and to spend for public purposes.” (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1.)

\*6 Article XIII B, section 6 prevents the state from shifting financial responsibility for governmental functions to local agencies by requiring the state to reimburse local agencies for the costs of providing a new program or higher level of service mandated by the state. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) “Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.” (*Ibid.*)

*B. State Mandates*

We will assume for the sake of argument that the test statutes’ presumptions of industrial causation will impose some increased costs on local governments in the form of increased workers’ compensation benefit payments to injured local peace officers, firefighters, or lifeguards. The mere imposition of increased costs, however, is not determinative of whether the presumptions mandated a new program or higher level of service within an existing program as stated in article XIII B, section 6. “Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate.” (*City of Richmond v. Commission on*

*State Mandates* (1998) 64 Cal.App.4th 1190, 1197.) Whether the increased costs resulted from a state-mandated program or higher level of service presents solely a question of law as there are no disputed facts. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.)

As previously noted, “costs mandated by the state” means “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.” (Gov. Code, § 17514.) As the Supreme Court explained in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, “Looking at the language of section 6 then, it seems clear that by itself the term ‘higher level of service’ is meaningless. It must be read in conjunction with the predecessor phrase ‘new program’ to give it meaning. Thus read, 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.’ But the term ‘program’ itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term—programs that carry out the governmental function of providing services 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.” (*Id.* at p. 56; see *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1191.)

\*7 In this case, the test statutes affect the administration of the workers’ compensation program. The Supreme Court has held that statutes increasing workers’ compensation benefits to reflect cost-of-living increases did not mandate either a new program or higher level of service in an existing program. “Workers’ compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers’ compensation or to be providing services incidental to administration of the program. Workers’ compensation is administered by the state through the Division of Industrial Accidents and the Workers’

Compensation Appeals Board. (See Lab.Code, § 3201 et seq.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6." (County of Los Angeles v. State of California, supra, 43 Cal.3d at pp. 57-58.)

We similarly conclude that because workers' compensation is not a program administered by local governments, the test statutes' presumptions of industrial causation do not mandate a new program or higher level of service within an existing program, even assuming that the test statutes' presumptions will impose increased workers' compensation costs solely on local entities. Because the test statutes do not involve a program administered by local governments, the increased costs resulting from the presumptions imposed to implement a public policy do not qualify for reimbursement under article XIII B, section 6. (See City of Sacramento v. State of California, supra, 50 Cal.3d 51 [state law extending mandatory coverage under state's unemployment insurance law to include state and local governments did not mandate a new program or higher level of service]; City of Richmond v. Commission on State Mandates, supra, 64 Cal.App.4th 1190 [state law requiring local governments to provide death benefits to local safety officers under both the Public Employees Retirement System and the workers' compensation system did not mandate a new program or higher level of service].)

Respondents' reliance on Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d 521 is misplaced. In Carmel Valley, the appellate court concluded that executive orders requiring local agencies to purchase updated firefighting equipment mandated both a new program and a higher level of service within an existing program because firefighting is "a peculiarly governmental function" (*id.* at p. 537) and the executive orders, to implement a state policy, imposed unique requirements on local governments that did not apply generally to all residents and entities in the state (*ibid.*). In this case, on the other hand, providing workers' compensation benefits is not a peculiarly governmental function and, even assuming the test statutes implemented a state policy of paying increased workers' compensation benefits to local peace officers, firefighters, and lifeguards, the costs are not reimbursable because they do not arise within an existing program administered by

local governments.

\*8 Respondents contend that the effect of the test statutes, increased costs, is borne only by local governments. As peace officers, firefighters, and lifeguards are uniquely governmental employees, respondents argue the test statutes do not apply generally to all entities in the state. The question which remains, however, is whether increased costs alone equate to a higher level of service within the meaning of article XIII B, section 6, even if paid only by local entities and not the private sector. We conclude they do not.

In a similar case, the City of Anaheim sought reimbursement for costs it incurred as a result of a statute that temporarily increased retirement benefits to public employees. The City of Anaheim argued, as do respondents, that since the statute "dealt with pensions for *public* employees, it imposed unique requirements on local governments that did not apply to all state residents or entities." (City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478, 1483-1484.) The court held that subvention was not required because the program involved, the Public Employees' Retirement System, is not a program administered by local agencies. Such is the case here with the workers' compensation program. As noted, the program is administered by the state, not the local authorities.

The court also noted: "Moreover, the goals of article XIII B of the California Constitution 'were to protect residents from excessive taxation and government spending ... [and] preclud[e] a shift of financial responsibility for carrying out governmental functions from the state to local agencies.... Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear-neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.' (County of Los Angeles v. State of California, supra, 43 Cal.3d at p. 61.) Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public." (City of Anaheim v. State of California, supra, 189 Cal.App.3d at p. 1484.)

The reasoning applies here. The service provided by the counties represented by the EIA and the city, workers' compensation benefits to its employees, is unchanged. The fact that some employees are more likely to receive those benefits does not equate to an



increased level of service within the meaning of article XIII B, section 6. (County of Los Angeles v. State of California, supra, 43 Cal.3d at pp. 57-58.)

#### DISPOSITION

The judgment granting the petitions for writ of mandate is affirmed in part on the issue of standing and reversed in part on the issue of reimbursement of state-mandated costs under article XIII B, section 6. The superior court is directed to enter a new and different judgment denying the petitions for writ of mandate and to reinstate that portion of the administrative rulings denying the test claims. The parties are to bear their own costs.

We concur: WILLHITE, Acting P.J., and MANELLA, J.

Cal.App. 2 Dist., 2006.

CSAC Excess Ins. Authority v. Commission on State Mandates

Not Reported in Cal.Rptr.3d, 2006 WL 3735551  
(Cal.App. 2 Dist.)

Briefs and Other Related Documents ([Back to top](#))

- [2006 WL 3446786](#) (Appellate Brief) Appellant California Department of Finance's Reply Brief (Sep. 8, 2006)
- [2006 WL 3446787](#) (Appellate Brief) Appellant California Department of Finance's Reply Brief (Sep. 8, 2006)
- [B188169](#) (Docket) (Dec. 21, 2005)

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▷  
 People v. Triggs  
 Cal.

THE PEOPLE, Plaintiff and Respondent,  
 v.  
 LEROY TRIGGS, Defendant and Appellant  
 Crim. No. 16486.

Supreme Court of California  
 February 22, 1973.

## SUMMARY

Following the denial of defendant's motion to dismiss and his motion to strike a police officer's testimony given at the preliminary hearing on a charge of oral copulation in violation of Pen. Code, § 288a, defendant was convicted in a submission on the preliminary hearing record and placed on probation. Superior Court of Los Angeles County, No. A 267658, E. Talbot Callister, Judge.

On appeal, the Supreme Court reversed, noting that the testimony on which the conviction was based resulted from a clandestine observation of defendant and another man in a public restroom. Pointing out that prior to the observation, defendant had not given the police any probable cause to suspect him of criminal conduct, the court concluded that the observation was purely exploratory in nature and violated defendant's right of privacy, with the result that evidence arising out of the observation was constitutionally inadmissible.

In addition to resolving the specific issues raised by defendant, the court, in considering the prosecutor's contentions and citations of authority, emphasized that its refusal to grant a hearing in a particular case does not constitute a sub silentio overruling of its prior decisions, and declared that the refusal signifies no more than that the court does not consider that the interests of justice or the purposes behind the power to grant a hearing require its exercise in the particular case.

In Bank. (Opinion by Wright, C. J., expressing the unanimous view of the court.) \*885

## HEADNOTES

Classified to California Digest of Official Reports

(1) Courts § 110--Effect of Supreme Court's Refusal to Grant Hearing.

The Supreme Court's refusal to grant a hearing in a particular case is to be given no weight insofar as it might be deemed an acquiescence in the law as enunciated in a published Court of Appeal opinion which is in conflict with the law as stated by the Supreme Court.

(2) Courts § 106(1)--Effect of Supreme Court Decisions.

The Supreme Court's statements of law are binding on the trial and appellate courts of the state and must be applied wherever the facts of a case are not fairly distinguishable from the facts of the case in which the Supreme Court has declared the applicable principle of law.

(3) Courts § 110--Effect of Supreme Court's Refusal to Grant Hearing.

The Supreme Court's refusal to grant a hearing in any given case does not constitute a sub silentio overruling of its prior decisions. The refusal signifies no more than that the court does not consider that the interests of justice or the purposes for which the power to grant a hearing was given require its exercise in the particular case.

(4) Privacy § 2--Right of Privacy--Definition, Nature and Extent of Privilege--Restrooms.

The expectation of privacy a person has when he enters a restroom is reasonable and is not diminished or destroyed by the fact that the toilet stall being used lacks a door.

(5) Searches and Seizures § 20--Without Warrant--What Constitutes Unreasonable Search.

The standard for determining what is an illegal search is whether the involved person's reasonable expectation of privacy was violated by unreasonable governmental intrusion.

(6) Privacy § 1--Right of Privacy as Related to Law Enforcement Efficiency.

Important as efficient law enforcement may be, it is more important that the right of privacy guaranteed by the California and United States Constitutions be

respected.

[See Cal.Jur.2d, Rev., Searches and Seizures, § 32.]  
(7) Privacy § 2--Right of Privacy--Definition, Nature and Extent of Privilege--Restrooms.

Pen. Code, § 653n, restricting the installation of two-way mirrors in restrooms, enunciates a public policy \*886 against clandestine observation of public restrooms, and renders it reasonable for users thereof to expect that their privacy will not be surreptitiously violated.

(8) Criminal Law § 413.5(1)--Evidence Obtained by Unlawful Seizure.

Unless he has probable cause to search, a police officer has no right to retreat to a clandestine position to peer into a restroom. Knowledge gained by, or attributable to, such clandestine observations suffers from constitutional infirmities which require its exclusion as evidence in a case. (Disapproving, to the extent that they are inconsistent with this statement of the law, *People v. Crafts* (1970) 13 Cal.App.3d 457 [91 Cal.Rptr. 563]; *People v. Heath* (1968) 266 Cal.App.2d 754 [72 Cal.Rptr. 457]; *People v. Roberts* (1967) 256 Cal.App.2d 488 [64 Cal.Rptr. 70]; *People v. Maldonado* (1966) 240 Cal.App.2d 812 [50 Cal.Rptr. 45]; *People v. Hensel* (1965) 233 Cal.App.2d 834 [43 Cal.Rptr. 865]; *People v. Young* (1963) 214 Cal.App.2d 131 [29 Cal.Rptr. 492]; *People v. Norton* (1962) 209 Cal.App.2d 173 [25 Cal.Rptr. 676].)

(9) Searches and Seizures § 21--Without Warrant--Reasonable or Probable Cause for Search--Observation of Restroom.

A search in the form of a clandestine restroom observation of defendant and another man was illegal, as made without probable cause, where, prior to the search, defendant had given the authorities no cause to suspect him of criminal conduct aside from his prolonged stay in the rest room, where this behavior was susceptible to an innocent explanation, and where the observation was prompted by a general curiosity to ascertain what, if anything, was going on within the restroom and was manifestly exploratory in nature.

(10) Sodomy § 8--Evidence Obtained Through Illegal Observation of Restroom.

It was reversible error to convict defendant of oral copulation, in violation of Pen. Code, § 288a, where the testimony on which the conviction was based was given by the arresting officer and was secured as a result of an illegal search in the form of a clandestine observation of a toilet stall. \*887

#### COUNSEL

Herbert M. Porter and Barry T. Simons for Defendant and Appellant.

A. L. Wirin, Fred Okrand and Laurence R. Sperber as Amici Curiae on behalf of Defendant and Appellant.

Evelle J. Younger, Attorney General, Herbert L. Ashby and Edward A. Hinz, Jr., Chief Assistant Attorneys General, William E. James, Assistant Attorney General, James H. Kline and Douglas B. Noble, Deputy Attorneys General, for Plaintiff and Respondent.

WRIGHT, C. J.

Defendant appeals from a judgment (order granting probation) of conviction of oral copulation. (Pen. Code, § 288a.)<sup>FN1</sup> The sole witness at the preliminary hearing was the arresting officer, who testified as to his observations of defendant from a clandestine vantage point. Defendant made timely objection to the admissibility of the officer's testimony. Following denial of his motion to dismiss the information (§ 995) defendant waived jury trial and agreed to the submission of the case on the evidence appearing in the transcript of the preliminary hearing.<sup>FN2</sup> Defendant \*888 was found guilty and was placed on probation. Among the conditions prescribed in the order granting probation were that defendant serve 30 days in the county jail and pay a fine of \$300. He was released on his own recognizance (§ 1318) pending disposition of his appeal.

FN1 Unless otherwise indicated, all section references are to the Penal Code.

FN2 Defendant failed to make a section 1538.5 motion to suppress prior to trial but did seek to make a motion to suppress at trial (§ 1538.5, subd. (h)) in order to make certain that the objection to the testimony made at the preliminary hearing was preserved on appeal despite the submission of the case on the transcript of the preliminary hearing. As the trial court specifically addressed itself to defendant's argument for suppression when the court delivered its judgment, it appears that the court did entertain the section 1538.5 motion made at trial. Although the People objected at trial to the court's consideration of the motion, they do not maintain that we are precluded from considering defendant's claim of illegal search and seizure on appeal.

The 1970 amendment to section 1538.5 (subd. (h))

removed the trial court's prior discretion to consider a section 1538.5 motion first made at the time of trial. (Stats. 1970, ch. 1441, p. 2800, § 1.5.) A section 1538.5 motion may now be made at trial only upon a showing of good cause why the opportunity to make the motion did not exist prior to trial. The restriction imposed by the 1970 amendment, however, is a limitation only on preconviction challenges of the admissibility of the evidence. (See *People v. Medina* (1972) 6 Cal.3d 484 [99 Cal.Rptr. 630, 492 P.2d 686]; see also *Thompson v. Superior Court* (1968) 262 Cal.App.2d 98, 106-107 [68 Cal.Rptr. 530].) "A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case ... providing that at some stage of the proceedings prior to conviction he has moved for the return of property or the suppression of the evidence." (§ 1538.5, subd. (m).)

We deem defendant's motion to strike Officers Aldahl's testimony at the preliminary hearing as equivalent to a motion to suppress evidence within the meaning of section 1538.5 (subd. (m)). In any case, defendant is entitled to review of the denial of his section 995 motion on appeal from a judgment of conviction. (*Pen. Code*, § 1235, 1237; *People v. Taylor* (1967) 250 Cal.App.2d 367, 370 [58 Cal.Rptr. 269].)

Defendant's sole allegation of error on appeal is the failure to suppress the arresting officer's testimony, which he contends was the intangible fruit of an illegal search and hence was admitted into evidence in violation of his rights under the United States Constitution (4th and 14th Amends.) and the *California Constitution* (art. I, § 19). We conclude that the evidence used to convict defendant must be suppressed.

On the afternoon of December 19, 1970, Los Angeles Police Officer Richard Aldahl was on plainclothes patrol in Arroyo Seco Park in the City of Los Angeles. Accompanying Officer Aldahl were two fellow plainclothed officers. Officer Aldahl observed defendant enter the men's room in the park. About 10 minutes later, David Crockett was observed entering the same men's room. Defendant had not yet reappeared. About five minutes after Crockett's entrance into the men's room, the three officers entered the "plumbing access area" of the park's restroom building.<sup>FN3</sup> From a vantage point connected with this area Officer Aldahl was able to observe defendant orally copulating Crockett, while both Crockett and defendant were within a doorless toilet stall.<sup>FN4</sup>

FN3 The plumbing access area of the Arroyo Seco Park restrooms lies between the men's room and the women's room, which are located back to back with the commodes linked to a common plumbing "tree." The said area thus affords accessibility to the plumbing running from each individual commode through the wall of the men's and women's restrooms respectively and observation from a vantage point in the area may be made of activities within both the men's and women's restrooms.

FN4 Defendant was sitting on the commode in the stall furthest from the door entering into the men's room. Over the row of doorless stalls in the restroom were two vents set flush in the ceiling approximately eight feet above the floor. These apertures were covered by light wire screening and opened into the attic area between the ceiling of the men's room and the roof of the restroom building. From the plumbing access area Officer Aldahl was able to thrust his head into this attic area and so look down through the vents into the toilet stalls of the men's room. As Officer Aldahl peered down he could see defendant committing the crime of which he was convicted approximately five feet below him and to his left. Although other persons had used the restroom during the 15 minutes following defendant's entrance, no one but defendant and Crockett were present when Officer Aldahl made his observation.

Officer Aldahl testified at the preliminary hearing that he had entered \*889 the plumbing access area at the park about 50 times for the purpose of ascertaining if any criminal conduct was occurring in the adjacent men's room. Other than entering the restroom at a 10-minute interval, a circumstance the officer had seen many times before in an innocent context, neither defendant nor Crockett had committed any suspicious acts. Officer Aldahl agreed with defense counsel that he had entered the plumbing access area on this occasion "to make an observation in case there was a crime committed."

This court last considered the legality of clandestine restroom observations by policemen in *Bielicki v. Superior Court* (1962) 57 Cal.2d 602 [21 Cal.Rptr. 552, 371 P.2d 288] and *Britt v. Superior Court*

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(1962) 58 Cal.2d 469 [24 Cal.Rptr. 849, 374 P.2d 817]. In *Bielicki*, a policeman used a pipe running through the ceiling to the roof to observe homosexual conduct inside the fully-enclosed stall of a pay toilet in an amusement park restroom. The pipe had been installed purely for observational purposes in response to the park owner's complaint to the vice squad. The policeman's observation in *Bielicki* was held by a unanimous court to be a search. We held that such constituted a search because only by means of the clandestine vantage point had the policeman "secretly observed activities of petitioners which no member of the public could have seen, as they were carried on within the confines of toilet booths each enclosed by three walls and a door." It was "undisputed that the activities of petitioners witnessed by [the arresting officer] were not 'in plain sight' or 'readily visible and accessible' ...." (57 Cal.2d at p. 607.) We further held that the search was unreasonable because the officer had begun his observations on the night in question with "no reasonable cause to arrest these petitioners. ... [H]e spied on innocent and guilty alike. Such a practice amounts to a general exploratory search conducted solely to find evidence of guilt, a practice condemned both by federal law [citations omitted] and by the law of this state [citations omitted]." (57 Cal.2d at pp. 605-606.)

Lest *Bielicki* receive too restrictive a reading this court, again acting unanimously, decided *Britt* five months after *Bielicki*. The facts in *Britt* were substantially identical to those presented in the case at bench. The arresting officer had been stationed in the space between the ceiling of a department store restroom and the floor above. He was able to look down through two vents in the ceiling upon the toilet stalls in the men's room below. Each stall was enclosed by partitions and a door, but the enclosures stopped 8 to 12 inches from the floor. The arresting officer observed from his position an act of oral copulation by Britt and his codefendant who \*890 occupied adjacent stalls and committed the crime from kneeling positions through the gap between the partitions and the floor.

The People attempted to distinguish *Britt* from *Bielicki* on three points: first, the vents in *Britt* through which the officer peered had originally been installed for a legitimate purpose; second, the toilets in *Britt* were free rather than pay toilets; and third, the activities observed in *Britt* were in "plain view" because of the gap between the partitions and the floor. These arguments were rejected: "The crucial fact in *Bielicki* was neither the manner of observation

alone nor the place of commission alone, but rather the manner in which the police observed a place - and persons in that place - which is ordinarily understood to afford personal privacy to individual occupants." (58 Cal.2d at p. 472.)

Because the decisions in *Bielicki* and *Britt* were justified in part as protecting "expectations of privacy," several subsequent appellate decisions have treated the presence or absence of a door to a toilet stall in which criminal conduct occurs as determinative of the legality of clandestine observation of that stall. Under such a concept of the law, it was reasoned that there is a presumption that conduct which *could* have been viewed by an officer from a place where the public had a right to be *could not* reasonably have been expected to be private. Language to the contrary in *Britt* which placed as much emphasis on the *means of observation* as on the place observed has been disregarded and *Bielicki* has been limited to its facts in this line of cases. (*People v. Crafts* (1970) 13 Cal.App.3d 457 [91 Cal.Rptr. 563]; *People v. Heath* (1968) 266 Cal.App.2d 754 [72 Cal.Rptr. 457]; *People v. Roberts* (1967) 256 Cal.App.2d 488 [64 Cal.Rptr. 70]; *People v. Maldonado* (1966) 240 Cal.App.2d 812 [50 Cal.Rptr. 45]; *People v. Hensel* (1965) 233 Cal.App.2d 834 [43 Cal.Rptr. 865]; *People v. Young* (1963) 214 Cal.App.2d 131 [29 Cal.Rptr. 492]; *People v. Norton* (1962) 209 Cal.App.2d 173 [25 Cal.Rptr. 676].)

In *Crafts*, the last of these "doorless stall" cases, the court concluded that denials of petitions for hearings by this court of such cases indicated our acquiescence in their results and our consequent retreat from *Britt*. *Crafts* was the principal authority relied upon by the court below in denying defendant's motion to suppress.

(1) Preliminarily we declare that our refusal to grant a hearing in a particular case is to be given *no* weight insofar as it might be deemed that we have acquiesced in the law as enunciated in a published opinion of a Court of Appeal when such opinion is in conflict with the law as stated by this court. (2) Our statements of law remain binding on the trial and \*891 appellate courts of this state (*People v. McGuire* (1872) 45 Cal. 56, 57-58; *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [20 Cal.Rptr. 321, 369 P.2d 937]) and must be applied wherever the facts of a case are not fairly distinguishable from the facts of the case in which we have declared the applicable principle of law. Our refusal to grant a hearing in any given case must not be deemed a sub silentio overruling of our prior

decisions. "The significance of such refusal is no greater than this - that this court does not consider that the interests of justice, or the purposes for which the power [to grant a hearing] was given, require its exercise in the particular case." (*People v. Davis* (1905) 147 Cal. 346, 350 [81 P. 718]; see also *Cole v. Rush* (1955) 45 Cal.2d 345, 351, fn. 3 [289 P.2d 450, 54 A.L.R.2d 1137].)

The People here urge us to hold that clandestine observation of doorless stalls in public restrooms is not a "search," and hence is not subject to the Fourth Amendment's prohibition of unreasonable searches. This would permit the police to make it a routine practice to observe from hidden vantage points the restroom conduct of the public whenever such activities do not occur within fully enclosed toilet stalls and would permit spying on the "innocent and guilty alike." Most persons using public restrooms have no reason to suspect that a hidden agent of the state will observe them. (4) The expectation of privacy a person has when he enters a restroom is reasonable and is not diminished or destroyed because the toilet stall being used lacks a door.

Reference to expectations of privacy as a Fourth Amendment touchstone received the endorsement of the United States Supreme Court in *Katz v. United States* (1968) 389 U.S. 347 [19 L.Ed.2d 576, 88 S.Ct. 507]. (5) Viewed in the light of *Katz*, the standard for determining what is an illegal search is whether defendant's "reasonable expectation of privacy was violated by unreasonable governmental intrusion." (*People v. Edwards* (1969) 71 Cal.2d 1096, 1104 [80 Cal.Rptr. 633, 458 P.2d 713]; see also *Mancusi v. DeForte* (1968) 392 U.S. 364, 368 [20 L.Ed.2d 1154, 1160, 88 S.Ct. 2120].)

We do not retreat from our decisions in *Bielicki* and *Britt* and under the rationale of those opinions the suppression of the evidence used to convict defendant in the case at bench is required. As previously noted, *Bielicki* holds not only that general exploratory searches for evidence of guilt are violative of basic constitutional guarantees<sup>FN5</sup> but also that clandestine \*892 observations of the interior of toilet stalls are searches subject to Fourth Amendment strictures because occupants of toilet stalls can reasonably expect their activities within them to be private. We added in *Britt* that such observation remained a search and hence subject to the Fourth Amendment's ban against exploratory searches, even if the interior of the stall might have been open to view from areas accessible to the public.

FN5 Most search and seizure cases decided by California courts refer both to federal law and to state law. Since many of the cases cited as setting forth "state law" make express reference only to the Fourth Amendment, and neglect mention of the parallel provisions of the California Constitution (art. I, § 19), it is often difficult to determine whether a case was disposed of on the basis of state or federal constitutional law. The issue is, of course, crucial to federal review of our decisions. (*California v. Krivda* (1972) 409 U.S. 33 [34 L.Ed.2d 45, 93 S.Ct. 32]; *Mental Hygiene Dept. v. Kirchner* (1965) 380 U.S. 194, 198 [13 L.Ed.2d 753, 756, 85 S.Ct. 871].)

In *People v. Cahan* (1955) 44 Cal.2d 434, 438 [282 P.2d 905, 50 A.L.R.2d 513], we stated that the "guarantee of personal privacy" set forth in article I, section 19, of the California Constitution is "essentially identical" to the rights secured by the Fourth Amendment. At least since the advent of *Wolf v. Colorado* (1949) 338 U.S. 25 [93 L.Ed. 1782, 69 S.Ct. 1359], we have treated the law under article I, section 19, of our state Constitution as "substantially equivalent" to the Supreme Court's construction of the Fourth Amendment. (See *Blair v. Pitchess* (1971) 5 Cal.3d 258, 270-271, fn. 6 [96 Cal.Rptr. 42, 486 P.2d 1242, 47 A.L.R.3d 1206].) On at least one occasion, however, we have expressly departed from the federal rule to afford defendants a broader security against unreasonable searches and seizures than that required by the Supreme Court. (See *People v. Martin* (1955) 45 Cal.2d 755, 759-761 [290 P.2d 855] [vicarious exclusionary rule].) In interpreting our state Constitution, we of course retain the "power to impose higher standards on searches and seizures than required by the Federal Constitution." (*Cooper v. California* (1967) 386 U.S. 58, 62 [17 L.Ed.2d 730, 734, 87 S.Ct. 788].)

Although for the sake of convenience we often refer to constitutional guarantees, both state and federal, against unreasonable searches and seizures under the rubric of "Fourth Amendment" rights, our decision today is based both upon our reading of applicable federal Fourth Amendment law and our own determination of the proper construction of article I, section 19, of the California Constitution. (*People v. Krivda* (1973) 8 Cal.3d 623 [105 Cal.Rptr. 521, 504 P.2d 457].)

The clandestine observations of restrooms does not fall from the purview of the Fourth Amendment merely through the removal of toilet stall doors. (6)

We must remember in this regard that "both the United States Constitution and the California Constitution make it emphatically clear that important as efficient law enforcement may be, it is more important that the right of privacy guaranteed by these constitutional provisions be respected. [T]he contention that unreasonable searches and seizures are justified by the necessity of bringing criminals to justice cannot be accepted. It was rejected when the constitutional provisions were adopted and the choice was made that all the people, guilty and innocent alike, should be secure from unreasonable police intrusions, even though some criminals should escape." ( *People v. Cahan* (1955) 44 Cal.2d 434, 438, 439 [282 P.2d 905, 52 A.L.R.2d 513].) \*893

In seeking to honor reasonable expectations of privacy through our application of search and seizure law, we must consider the expectations of the innocent as well as the guilty. When innocent people are subjected to illegal searches - including when, as here, they do not even know their private parts and bodily functions are being exposed to the gaze of the law - their rights are violated even though such searches turn up no evidence of guilt. Save through the deterrent effect of the exclusionary rule there is little courts can do to protect the constitutional right of persons innocent of any crime to be free of unreasonable searches.

In addition to the constitutional issue previously discussed, the Legislature has recently made a declaration of its own regarding the reasonability of expectations of privacy in restrooms. Section 653n provides in pertinent part: "Any person who installs or who maintains after April 1, 1970, any two-way mirror permitting observation of any restroom, toilet, bathroom, washroom, shower, locker room, fitting room, motel room, or hotel room, is guilty of a misdemeanor.

"

"Two-way mirror" as used in this section means a mirror or other surface which permits any person on one side thereof to see through it under certain conditions of lighting, while any person on the other side thereof or other surface at that time can see only the usual mirror or other surface reflection."

*People v. Metcalf* (1971) 22 Cal.App.3d 20 [98 Cal.Rptr. 925], concerned a section 288a violation

witnessed by the arresting officer while secreted in a service closet adjacent to a department store restroom. The defendant occupied a doorless toilet stall; his codefendant occupied the corridor running outside the stall. The crime was observed through louvers in the door of the closet in which the arresting officer was hidden. (7) The *Metcalf* court noted and rejected the line of cases departing from the *Bielicki-Britt* rule and reversed *Metcalf's* conviction, relying on section 653n: "We believe that the enactment of section 653n enunciates a public policy against clandestine observation of public restrooms and renders it reasonable for users thereof to expect that their privacy will not be surreptitiously violated. The method of surveillance employed in this case, in our opinion, violates the spirit and policy considerations which led to the enactment of section 653n and therefore should not be given this court's sanction." (22 Cal.App.3d at p. 23, citing *Katz v. United States*, *supra*, 389 U.S. 347, and *People v. Edwards*, *supra*, 71 Cal.2d 1096.) \*894

We approve of the decision in *Metcalf*. (8) (See fn. 7.) The public policy declared in section 653n<sup>FN6</sup> is incompatible with the carte blanche which the People claim for clandestine surveillance of all areas of restrooms not fully enclosed by three walls and a door.<sup>FN7</sup>

FN6 Although the legislative history of section 653n is fragmentary, it is clear that the measure did seek to declare and to protect reasonable expectations of privacy. As originally introduced in the Assembly, the bill which resulted in section 653n included a final paragraph (later deleted): "Hotel and motel lobbies or registration rooms and retail salesrooms are specifically declared not to be areas in which persons could reasonably expect to be free from being observed." The phraseology of this disclaimer persuasively suggests that the bill was intended to have the effect we give it today - a declaration of areas within which the public *can* "reasonably expect to be free from being observed." (See Assem. Bill No. 1222 (1969 Reg. Sess., Mar. 25, 1969).)

FN7 The Attorney General claims that criminal acts are often committed inside restrooms within plain view of any member of the public who should happen to enter. Under such circumstances, the police need not resort to clandestine observation to



apprehend individuals involved in such activities. When law enforcement officers suspect that crimes are being perpetrated, they are as free to enter restrooms as is any member of the public. Should they discover from a location open to the public, the commission of criminal acts, their observation of what is in plain view involves no search, and is not subject to the strictures of the Fourth Amendment. (United States v. Lefkowitz (1932) 285 U.S. 452, 465 [76 L.Ed. 877, 882, 52 S.Ct. 420, 82 A.L.R. 775]; Ker v. California (1963) 374 U.S. 23, 43 [10 L.Ed.2d 726, 744, 83 S.Ct. 1623].) But for such observation to be a plain view rather than constituting a search, the officer must have had "a right to be in the position to have that view. ..." (Harris v. United States (1968) 390 U.S. 234, 236 [19 L.Ed.2d 1067, 1069, 88 S.Ct. 992].) Unless he has probable cause to search, an officer has no right to retreat to a clandestine position to peer into a restroom, and knowledge gained by or attributable to such clandestine observations suffers from constitutional infirmities which require its exclusion as evidence in a case. To the extent that they are inconsistent with this statement of the law, the post Bielicki-Britt cases cited, ante, at page 890 are disapproved.

Having concluded the clandestine observation challenged in the case at bench was a search, we reach the issue of the legality of that search. We may assume, without deciding, that the search fell within one of the limited class of searches for which a warrant is not required. (Cf. Warden v. Hayden (1967) 387 U.S. 294 [18 L.Ed.2d 782, 87 S.Ct. 1642]; Katz v. United States, supra.) Nevertheless, "[i]n enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the [Supreme] Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution." (Chambers v. Maroney (1970) 399 U.S. 42, 51 [26 L.Ed.2d 419, 428, 90 S.Ct. 1975].) Probable cause exists when at the moment officers make an arrest or conduct a search "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [defendant] had committed or was committing an \*895 offense." (Beck v. Ohio (1964) 379 U.S. 89, 91 [13 L.Ed.2d 142, 145, 85 S.Ct. 223].) <sup>FN8</sup>

FN8 While Beck defined probable cause in the context of probable cause to arrest, the same standard applies to probable cause to search. (See Spinelli v. United States (1969) 393 U.S. 410, 417, fn. 5 [21 L.Ed.2d 637, 644, 89 S.Ct. 584].)

(9) In the instant case it was conceded by the arresting officer that prior to embarking upon the search defendant had given authorities no cause to suspect him of criminal conduct aside from his prolonged stay in the restroom. It was also conceded that even this arguably suspicious behavior was susceptible to an innocent explanation. Since we have held that "events ... as consistent with innocent activity as with criminal activity" are insufficient to support the legality of an investigative detention (Irwin v. Superior Court (1969) 1 Cal.3d 423, 427 [82 Cal.Rptr. 484, 462 P.2d 12]), a fortiori such events cannot afford the police probable cause to search. (See Terry v. Ohio (1968) 392 U.S. 1, 20-22 [20 L.Ed.2d 889, 905-907, 88 S.Ct. 1868]; Beck v. Ohio, supra.) "[C]ommon rumor or report, suspicion, or even 'strong reason to suspect'" have historically been inadequate to establish probable cause, and "that principle has survived to this day" in the law of the Fourth Amendment and the law of this state. (Henry v. United States (1959) 361 U.S. 98, 101 [4 L.Ed.2d 134, 138, 80 S.Ct. 168]; see also People v. Superior Court (Kiefer) (1971) 3 Cal.3d 807, 813-828 [91 Cal.Rptr. 729, 478 P.2d 449].) Officer Aldahl therefore lacked probable cause to search the toilet stall occupied by defendant. His clandestine observation of defendant, "prompted by a general curiosity to ascertain what, if anything," was going on within the restroom, was "manifestly exploratory in nature, and violates both the letter and spirit of the Fourth Amendment." (People v. Superior Court (Kiefer), supra, 3 Cal.3d at p. 831.)

(10) Officer Aldahl's testimony as to what he observed was secured as a result of an illegal search (Badillo v. Superior Court (1956) 46 Cal.2d 269, 271 [294 P.2d 23]), and should have been excluded at trial. (Mapp v. Ohio (1961) 367 U.S. 643 [6 L.Ed.2d 1081, 81 S.Ct. 1684, 84 A.L.R.2d 933]; People v. Cahan, supra, 44 Cal.2d 434.)

The judgment is reversed.

McComb, J., Tobriner, J., Mosk, J., Burke, J., Sullivan, J., and Wood, J., <sup>FN\*</sup> concurred. \*896

FN\* Assigned by the Chairman of the

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