STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
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March 22, 2007

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

Arthur M. Palkowitz, Esq.
San Diego Unified School District
Eugene Brucker Education Center
4100 Normal Street, Room 3209
San Diego, CA 92103

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Reissuance of Final Staff Analysis and Proposed Statement of Decision, and Notice of Hearing Date
Workers' Compensation Disability Benefits for Government Employees
(00-TC-20, 02-TC-02)
Labor Code Section 4850
Statutes 2000, Chapter 920 & 929; Statutes 1999, Chapters 270 & 970;
Statutes 1989, Chapter 1464; Statutes 1977, Chapter 981
County of Los Angeles, Claimant
San Diego Unified School District, Co-Claimant

Dear Mr. Kaye and Mr. Palkowitz:

The final staff analysis and proposed statement of decision issued for the July 28, 2006 hearing for this test claim are being reissued, unchanged, for your review. The test claim was postponed from that hearing in light of the pending case *CSAC Excess Insurance Authority and the City of Newport Beach v. Commission on State Mandates and the State Department of Finance*. That case is now final, since the Supreme Court (Case No. S149772) denied the local agencies' petition for review of the Court of Appeal's unpublished decision in the case. Written comments on this item are due no later than **Monday, April 23, 2007.**

Hearing
The test claim is set for hearing on **Thursday, May 31, 2007** at 9:30 a.m. We will notify you of the location of the hearing when a hearing room has been confirmed. 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 have questions on the above, please contact Deborah Borzelleri at (916) 322-4230.

Sincerely,

PAULA HIGASHI
Executive Director

cc: Mailing list (enclosed)

Enc. Final Staff Analysis and Proposed Statement of Decision
Enc. *CSAC Excess Insurance Authority, et al. v. Commission on State Mandates*, Second District Court of Appeal, 2006, Case No. B188169

ITEM 12

TEST CLAIM
FINAL STAFF ANALYSIS

Labor Code Section 4850
Statutes 2000, Chapters 920 & 929
Statutes 1999, Chapters 270[1] & 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

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

[1] 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,[2] which was amended significantly in 1913[3] and 1917.[4] The current statutory scheme, enacted in 1937, consolidated workers' compensation and worker health and safety provisions into the Labor Code.[5] 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.[6]

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[2] Statutes 1911, chapter 399.

[3] Statutes 1913, chapter 176.

[4] Statutes 1917, chapter 586.

[5] Labor Code sections 3200 et seq. and 6300 et seq., Statutes 1937, chapter 90.

[6] 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.[7] 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.[8] 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.

[7] Statutes 1939, chapter 926.

[8] 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[9]

- Added certain peace officers defined in Penal Code section 830.31[10] 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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[9] 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.

[10] 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*[11] 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."

[11] *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[12] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[13] "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."[14] 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.[15] 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.[16]

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.[17] 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.[18] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[19]

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[12] 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."

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

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

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

[16] *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*).

[17] *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].

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

[19] *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.[20]

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.[21] 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."[22]

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. . ."[23] 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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[20] *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.

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

[22] *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.

[23] 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.[24] (Emphasis added.) Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.

The *County of Los Angeles* case also found that the term "program" as it is used in article XIII B, section 6, "was [intended] to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities." (Emphasis added.)[25] In 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.[26]

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.[27] 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.[28] 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

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[24] *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.

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

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

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

[28] *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* [29] 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.[30] 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.[31]

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.3rd 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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[29] *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190 (*City of Richmond*).

[30] *Id.*, page 1195; *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 876-877 (where the Supreme Court reviewed the *City of Richmond* decision).

[31] *City of Richmond, supra,* 64 Cal.App.4th 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)[32]

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 ..."[33]

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*[34] to make the argument. However, that case cannot be relied upon as valid authority since it is currently being appealed[35] in the Second District Court of Appeal.[36]

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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[32] *San Diego Unified School Dist*, *supra*, 33 Cal.4th 859, 877.

[33] *Ibid.*

[34] *CSAC Excess Insurance Authority v. Commission on State Mandates (CSAC)*, Superior Court, Los Angeles County, 2005, No. BS095456.

[35] 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."

[36] *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[1] & 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

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.[2]

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.

[1] 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.

[2] 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[3] & 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:

[3] 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,[4] which was amended significantly in 1913[5] and 1917.[6] The current statutory scheme, enacted in 1937, consolidated workers' compensation and worker health and safety provisions into the Labor Code.[7] 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.[8]

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

[4] Statutes 1911, chapter 399.

[5] Statutes 1913, chapter 176.

[6] Statutes 1917, chapter 586.

[7] Labor Code sections 3200 et seq. and 6300 et seq., Statutes 1937, chapter 90.

[8] 65 California Jurisprudence Third (1998), Work Injury Compensation, section 7, pages 29-30.

the course of employment.[9] 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.[10] 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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[9] Statutes 1939, chapter 926.

[10] Statutes 1985, Chapter 1254; Labor Code section 4850.3.

Statutes 1999, Chapter 270[11]

- Added certain peace officers defined in Penal Code section 830.31[12] 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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[11] 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.

[12] 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*[13] 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."

[13] *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[14] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[15] "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."[16] 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.[17] 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.[18]

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.[19] 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.[20] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[21]

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[14] 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."

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

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

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

[18] *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*).

[19] *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].

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

[21] *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.[22]

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.[23] 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."[24]

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..."[25] 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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[22] *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.

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

[24] *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.

[25] 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.[26] (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.)[27] 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.[28]

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.[29] 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.[30] 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

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[26] *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.

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

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

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

[30] *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* [31] 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.[32] 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.[33]

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.3rd 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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[31] *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190 (*City of Richmond*).

[32] *Id.*, page 1195; *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 876-877 (where the Supreme Court reviewed the *City of Richmond* decision).

[33] *City of Richmond, supra,* 64 Cal.App.4th 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)[34]

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 ..."[35]

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*[36] to make the argument. However, that case cannot be relied upon as valid authority since it is currently being appealed[37] in the Second District Court of Appeal.[38]

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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[34] *San Diego Unified School Dist*, *supra*, 33 Cal.4th 859, 877.

[35] *Ibid.*

[36] *CSAC Excess Insurance Authority v. Commission on State Mandates (CSAC)*, Superior Court, Los Angeles County, 2005, No. BS095456.

[37] 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."

[38] *CSAC Excess Insurance Authority v. Commission on State Mandates, et. al.*, currently pending in the Second District Court of Appeal, Case Number B188169.

KEYCITE

CSAC Excess Ins. Authority v. Commission on State Mandates, 2006 WL 3735551 (Cal.App. 2 Dist., Dec 20, 2006) (NO. B188169)

History
Direct History

=> 1 **CSAC Excess Ins. Authority v. Commission on State Mandates,** 2006 WL 3735551 (Cal.App. 2 Dist. Dec 20, 2006) (NO. B188169), unpublished/noncitable (Dec 20, 2006), review denied (Mar 21, 2007)

Court Documents
Appellate Court Documents (U.S.A.)

Cal.App. 2 Dist. Appellate Briefs

2 CSAC EXCESS INSURANCE AUTHORITY, a public agency, Petitioner-Appellee, v. COMMISSION ON STATE MANDATES, Respondent-Appellant; California Department of Finance, Real Party in Interest-Appellant, v. Csac Excess Insurance Authority, Petitioner-Appellee., 2006 WL 3446786 (Appellate Brief) (Cal.App. 2 Dist. Sep. 8, 2006) **Appellant California Department of Finance's Reply Brief** (NO. B188169)

3 CSAC EXCESS INSURANCE AUTHORITY, a public agency, Petitioner-Appellee, v. COMMISSION ON STATE MANDATES, Respondent-Appellant, California Department of Finance, Real Party in Interest-Appellant, v. Csac Excess Insurance Authority, Petitioner-Appellee., 2006 WL 3446787 (Appellate Brief) (Cal.App. 2 Dist. Sep. 8, 2006) **Appellant California Department of Finance's Reply Brief** (NO. B188169)

Dockets (U.S.A.)

Cal.App. 2 Dist.

4 CALIFORNIA DEPARTMENT OF FINANCE ET AL. v. CSAC EXCESS INSURANCE AUTHORITY ET AL., NO. B188169 (Docket) (Cal.App. 2 Dist. Dec. 21, 2005)

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]henever 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)),[FN1] 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.

FN1. 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." [FN2]

> 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]henever 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)

END OF DOCUMENT

Commission on State Mandates

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Related Matter(s)

02-TC-02 Workers' Compensation Disability Benefits for Government Employees (Amendment)

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