ITEM 13

TEST CLAIM
FINAL STAFF ANALYSIS

Labor Code sections 3212.6, 3212.8, and 3212.9

Statutes 1995, chapter 683
Statutes 1996, chapter 802
Statutes 2000, chapter 883
Statutes 2000, chapter 490
Statutes 2001, chapter 833

Presumption of Causation in Workers' Compensation Claims: Tuberculosis, Hepatitis and Other Blood-Borne Infectious Diseases, and Meningitis
(01-TC-20, 01-TC-23, 01-TC-24)

County of Tehama and California State Association of Counties-Excess Insurance Authority (CSAC-EIA), Claimants

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(01-TC-20, 01-TC-23, 01-TC-24)

County of Tehama and California State Association of Counties-Excess Insurance Authority (CSAC-EIA), Claimants

EXECUTIVE SUMMARY

Background

This consolidated test claim addresses evidentiary presumptions in workers' compensation cases given to certain members of police, sheriff's and fire departments and inspectors or investigators of a district attorney's office that develop tuberculosis, hepatitis and other blood-borne infectious diseases, or meningitis during employment.

The County of Tehama and the California State Association of Counties-Excess Insurance Authority (CSAC-EIA), a joint powers authority formed by and for California counties for insurance and risk management purposes, filed the consolidated test claims, *Hepatitis and Blood-Borne Illnesses Presumption* (01-TC-20), *Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers* (01-TC-23), and *Meningitis Presumption for Law Enforcement and Firefighters* (01-TC-24), seeking reimbursement for costs incurred by CSAC-EIA and its member counties.

Generally, before an employer is liable for payment of workers' compensation benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury was proximately caused by the employment. The burden of proof is normally on the employee to show proximate cause by a preponderance of the evidence.

The Legislature eased the burden of proving industrial causation for certain public employees that provide vital and hazardous services by establishing a series of evidentiary presumptions for certain "injuries.". Here, the test claim statutes, Labor Code sections 3212.6, 3212.8, and 3212.9, provide these evidentiary presumptions to certain employees of police, sheriff's and fire departments and inspectors or investigators of a district attorney's office that develop or manifest tuberculosis, hepatitis or other blood-borne infectious disease, or meningitis, during the period of

employment. In these situations, the tuberculosis, hepatitis or other blood-borne infectious disease, or meningitis, is presumed to have arisen out of and in the course of the employment. If the local agency employer decides to dispute the claim, the burden of proving that the "injury" did not arise out of and in the course of employment is shifted to the employer.

Staff Analysis

Staff finds that CSAC-EIA has standing to pursue the test claim on behalf of its member counties, but does not have standing to claim reimbursement for its own costs. Under the principles of collateral estoppel, staff finds that the Second District Court of Appeal's unpublished decision on this issue in *CSAC Excess Insurance Authority v. Commission on State Mandates* (Dec. 22, 2006, B188169) is binding and applies to this test claim.

Staff further finds that the test claim statutes are not subject to article XIII B, section 6 of the California Constitution because they do not mandate new programs or higher levels of service on local agencies within the meaning of article XIII B, section 6. The express language of Labor Code sections 3212.6, 3212.8, and 3212.9, do not impose any state-mandated requirements on local agencies. Rather, the decision to dispute these types of workers' compensation claims and prove that the injury did not arise out of and in the course of employment remains entirely with the local agency. Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required for a statute to constitute a new program or higher level of service.

Conclusion

Staff concludes California State Association of Counties-Excess Insurance Authority does not have standing to claim reimbursement under article XIII B, section 6 of the California Constitution, on its own behalf for the costs it incurred as the insurer of its member counties. However, California State Association of Counties-Excess Insurance Authority does have standing to pursue test claims for reimbursement on behalf of its member counties.

Staff further concludes that Labor Code section 3212.6, as amended by Statutes 1995, chapter 683, and Statutes 1996, chapter 802; Labor Code section 3212.8, as added and amended by Statutes 2000, chapter 490 and Statutes 2001, chapter 833; and Labor Code section 3212.9, as added by Statutes 2000, chapter 883, are not subject to article XIII B, section 6 of the California Constitution because they do not mandate a new program or higher level of service on local agencies.

Recommendation

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

STAFF ANALYSIS

Claimants

County of Tehama and California State Association of Counties-Excess Insurance Authority (CSAC-EIA)

Chronology

06/28/02	Co-claimants, County of Tehama and CSAC-EIA, file test claims *Hepatitis and Blood-Borne Illnesses Presumption* (01-TC-20), *Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers* (01-TC-23), and *Meningitis Presumption for Law Enforcement and Firefighters* (01-TC-24), with the Commission on State Mandates (Commission)[1]
07/05/02	Commission staff issues completeness letters on 01-TC-20, 01-TC-23, and 01-TC-24
07/31/02	The Department of Finance (Finance) files comments on 01-TC-24[2]
08/01/02	Finance files comments on 01-TC-20[3]
08/02/02	Finance files comments on 01-TC-23[4]
08/07/02	Department of Industrial Relations (DIR) files consolidated comments on 01-TC-20, 01-TC-23, and 01-TC-24[5]
08/30/02	Co-claimants file individual responses on 01-TC-20, 01-TC-23, and 01-TC-24 to comments by DIR and Finance[6]
07/15/04	Commission staff issues individual requests for additional information from CSAC-EIA on 01-TC-20, 01-TC-23, and 01-TC-24
08/05/04	CSAC-EIA files individual responses to Commission staff requests for additional information on 01-TC-20, 01-TC-23, and 01-TC-24
06/20/07	Commission's Executive Director consolidates the three test claims based on common issues, allegations and statutes
08/02/07	Commission staff issues draft staff analysis on consolidated test claim[7]
08/27/07	Finance submits comments on draft staff analysis[8] afrls

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[1] Exhibit A.

[2] Exhibit B.

[3] *Ibid.*

[4] *Ibid.*

[5] Exhibit C.

[6] Exhibit D.

[7] Exhibit E.

09/06/07 Commission issues final staff analysis and proposed Statement of Decision

Background

This consolidated test claim addresses evidentiary presumptions in workers' compensation cases given to certain members of police, sheriff's and fire departments and inspectors or investigators of a district attorney's office that develop tuberculosis, hepatitis and other blood-borne infectious diseases, or meningitis during employment.

The County of Tehama and CSAC-EIA, a joint powers authority formed by and for California counties for insurance and risk management purposes, filed the consolidated test claims, *Hepatitis and Blood-Borne Illnesses Presumption* (01-TC-20), *Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers* (01-TC-23), and *Meningitis Presumption for Law Enforcement and Firefighters* (01-TC-24), seeking reimbursement for costs incurred by CSAC-EIA and its member counties.

In the usual workers' compensation case, before an employer can be held liable for benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury is proximately caused by the employment.[9] Although the workers' compensation law must be "liberally construed" in favor of the injured employee, the burden is normally on the employee to show proximate cause by a preponderance of the evidence.[10] If liability is established, the employee is entitled to compensation for the full hospital, surgical, and medical treatment, disability indemnity, and death benefits, as defined and calculated by the Labor Code.[11]

As early as 1937, the Legislature began to ease the burden of proof for purposes of liability for certain public employees that provide "vital and hazardous services" by establishing a presumption of industrial causation; that the injury arose out of and in the course of employment.[12] The presumptions have the effect of shifting to the employer the burden of proof as to the nonexistence of the presumed fact. Thus, the employer has the burden to prove that the employee's injury did not arise out of or in the course of employment.[13]

Labor Code section 3208, which was last amended in 1971, defines "injury" for purposes of workers' compensation as "any injury or disease arising out of the employment." As described below, this definition of "injury" includes tuberculosis, hepatitis, and meningitis.

Test Claim Statutes

Labor Code section 3212.6 provides that "injury" includes tuberculosis for purposes of workers' compensation claims brought by certain members of police and sheriff's departments and

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[8] Exhibit F.

[9] Labor Code section 3600, subdivisions (a)(2) and (3).

[10] Labor Code sections 3202, 3202.5.

[11] Labor Code sections 4451, et seq.

[12] *Zipton v. Workers' Comp. Appeals* Bd. (1990) 218 Cal.App.3d 980, 987.

[13] *Id.* at page 988, footnote 4.

inspectors or investigators of a district attorney's office, when the tuberculosis develops or manifests itself during a period that the member is in service with his/her department or office. In addition, the tuberculosis shall be presumed to arise out of and in the course of employment, if the tuberculosis develops or manifests itself during a period while these employees are in service of that department or office.[14] This presumption may be rebutted.[15] In 1995, Labor Code section 3212.6 was amended to extend this rebuttable presumption of industrial causation to certain members of fire departments.[16] In 1996, Labor Code section 3212.6, was amended again to extend the rebuttable presumption of industrial causation of tuberculosis to prison and jail guards, and correctional officers employed by a public agency.[17]

Labor Code section 3212.8 was added in 2000, and provides that, for the purposes of workers' compensation, "injury" includes hepatitis for certain members of police, sheriff's, and fire departments when any part of the hepatitis develops or manifests itself during the period of employment. In such cases the hepatitis shall be presumed to arise out of and in the course of employment.[18] This presumption may be rebutted, however, the employer cannot attribute the hepatitis to any disease existing prior to its development or manifestation.[19] In 2001, Labor Code section 3212.8 was amended by replacing "hepatitis" with "blood-borne infectious disease," and thus, providing a rebuttable presumption for more blood related "injuries."[20]

Labor Code section 3212.9 was added in 2000, and provides that, for the purposes of workers' compensation, "injury" includes meningitis for certain members of police, sheriff's and fire departments and inspectors or investigators of a district attorney's office, when the meningitis develops or manifests itself during the period of employment.[21] In such cases, the meningitis shall be presumed to arise out of and in the course of employment.[22] As with Labor Code sections 3212.6 and 3212.8, the presumption created by Labor Code section 3212.9 is rebuttable.

All test claim statutes provide that the compensation which is awarded for tuberculosis/hepatitis and blood-borne infectious disease/meningitis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by California workers' compensation laws.

Related Test Claims and Litigation

In 2006, the Second District Court of Appeal, in an unpublished decision for *CSAC Excess Insurance Authority v. Commission on State Mandates*, Case No. B188169, upheld the

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[14] Statutes 1976, chapter 466, section 6.

[15] *Ibid.*

[16] Statutes 1995, chapter 683.

[17] Statutes 1996, chapter 802.

[18] Statutes 2000, chapter 490.

[19] *Ibid.*

[20] Statutes 2001, chapter 833.

[21] Statutes 2000, chapter 883.

[22] *Ibid.*

Commission's decisions to deny related test claims entitled *Cancer Presumption for Law Enforcement and Firefighters* (01-TC-19), *Lower Back Injury Presumption for Law Enforcement* (01-TC-25), and *Skin Cancer Presumption for Lifeguards* (01-TC-27), which addressed issues identical to those raised in the current consolidated test claim.

In the test claim entitled *Cancer Presumption for Law Enforcement and Firefighters*, CSAC-EIA and the County of Tehama alleged that Labor Code section 3212.1, as amended by Statutes 1999, chapter 595, and Statutes 2000, chapter 887, imposed state-mandated costs for which reimbursement is required under article XIII B, section 6. Labor Code section 3212.1 provides a rebuttable presumption of industrial causation to certain law enforcement officers and firefighters that develop cancer, including leukemia, during the course of employment. Under the 1999 amendment to section 3212.1, the employee need only show that he or she was exposed to a known carcinogen while in the service of the employer. The employer still has the right to dispute the employee's claim as it did under prior law. But when disputing the claim, the burden of proving that the carcinogen is not reasonably linked to the cancer is shifted to the employer. The 2000 amendment to Labor Code section 3212.1 extended the cancer presumption to peace officers defined in Penal Code section 830.37, subdivisions (a) and (b); peace officers that are members of an arson-investigating unit or are otherwise employed to enforce the laws relating to fire prevention or fire suppression.

In the test claim entitled *Lower Back Injury Presumption for Law Enforcement*, CSAC-EIA and the County of Tehama alleged that Labor Code section 3213.2, as added by Statutes 2001, chapter 834, imposes a reimbursable state-mandated program. Labor Code section 3213.2 provides a rebuttable presumption of industrial causation to certain publicly employed peace officers who wear a duty belt as a condition of employment and, either during or within a specified period after termination of service, suffer a lower back injury.

In the test claim entitled *Skin Cancer Presumption for Lifeguards*, the City of Newport Beach alleged that Labor Code section 3212.11, as added by Statutes 2001, chapter 846, imposes a reimbursable state-mandated program. Labor Code section 3212.11 provides a rebuttable presumption of industrial causation to certain publicly employed lifeguards who develop skin cancer during or immediately following their employment.

The Commission denied each test claim finding that pursuant to existing case law interpreting article XIII B, section 6, the statutes do not mandate new programs or higher levels of service on local agencies.[23]

On December 22, 2006, the Second District Court of Appeal issued its unpublished decision in *CSAC Excess Insurance Authority v. Commission on State Mandates*, affirming the Commission's decision that the 1999, 2000, 2001 additions and amendments to Labor Code section 3212.1, 3212.11, and 3213.2, do not constitute reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[24] Final judgment

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[23] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (*Kern High School Dist.*); *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

[24] Exhibit E, Supporting Documentation, *CSAC Excess Insurance Authority v. Commission on State Mandates*, Second District Court of Appeal, Case No. B188169 (Unpubl. Opn.).

in the case was entered on May 22, 2007.[25] In its decision affirming the Commission's finding that the test claim statutes did not constitute reimbursable state-mandated programs, the Second District Court of Appeal found:

- CSAC EIA does not have standing as a claimant under article XIII B, section 6, in its own right, but does have standing to seek reimbursement on behalf of its member counties.
- Workers' compensation is not a program administered by local governments, as a result, the test claim 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 claim statutes' presumptions will impose increased workers' compensation costs solely on local entities.
- Costs alone do not 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. The service provided by the counties represented by CSAC-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.

Claimant's Position

Co-claimants, County of Tehama and CSAC-EIA, contend 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.

Co-claimants assert that Labor Code sections 3212.6, 3212.8, and 3212.9, create and/or expand compensable injuries under workers' compensation, provide presumptions of industrial causation, and restrict arguments to rebut those presumptions.

Co-claimants conclude in each test claim:

> The net effect of this legislation is to cause an increase in workers' compensation claims for [tuberculosis/hepatitis and blood-borne infectious diseases/meningitis], and decrease the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the total costs of these claims, from initial presentation to ultimate resolution are reimbursable.[26]

Department of Finance's (Finance) Position

The Department of Finance filed comments on July 31, 2002, August 1, 2002, and August 2, 2002, concluding that the test claim statutes may create a reimbursable state-mandated program.[27] Finance filed comments on August 27, 2007, concurring with the draft staff analysis.

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[25] Exhibit E, Supporting Documentation, Judgment.

[26] Exhibit A, p. 105, 126, 142.

[27] Exhibit B.

Department of Industrial Relations (DIR) Position

The DIR contends that the test claim statutes are not reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution. The DIR asserts that the presumption of industrial causation available for certain members of police, sheriff's and fire departments and inspectors or investigators of a district attorney's office does not result in a new program or higher level of service for the following reasons:

1. Local governments are not required to accept all workers' compensation claims. They have the option to rebut any claim before the Workers' Compensation Appeals Board by presenting a preponderance of evidence showing the non-existence of industrial causation.
2. Statutes mandating a higher level of compensation to local government employees, such as workers' compensation benefits, are not "new programs" whose costs would be subject to reimbursement under article XIII B, section 6.
3. There is no shift of a financial burden from the State to local governments because local governments, by statute, have always been solely liable for providing workers' compensation benefits to their employees.[28]

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[29] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[30] "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."[31] 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

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[28] Exhibit C.

[29] California Constitution, 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."

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

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

task.[32] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[33]

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.[34] 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.[35] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[36]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[37]

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.[38] 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."[39]

Issue 1: Does CSAC-EIA have standing as a claimant in its own right and/or as a representative seeking reimbursement on behalf of its member counties for this consolidated test claim?

In the *CSAC Excess Insurance Authority* case, the Second District Court of Appeal held that CSAC-EIA does not have standing as a claimant in its own right under article XIII B, section 6. The court reasoned that CSAC-EIA, as a joint powers authority, does not constitute a "local

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

[33] *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*).

[34] *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 (*Los Angeles I*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

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

[37] *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.

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

[39] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

agency" or "special district" as defined by Government Code sections 17518 and 17520, and therefore, is not eligible to claim reimbursement of costs under article XIII B, section 6. The court also held that CSAC-EIA does have standing to seek reimbursement on behalf of its member counties. The court noted that the joint powers agreement expressly authorized CSAC-EIA to exercise all of the powers common to counties in California, to do all acts necessary for the exercise of those powers, and to sue and be sued in its own name. As a result, the court reasoned that the joint powers agreement authorized CSAC-EIA to bring 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.

As an unpublished opinion, the *CSAC Excess Insurance Authority* decision of the Second District Court of Appeal may not be cited as a binding precedential decision in this staff analysis unless it is relevant under the doctrine of collateral estoppel.[40] Collateral estoppel precludes a party from re-litigating the matters previously litigated and determined in a prior proceeding and makes the decision on the matter in the prior proceeding binding in the subsequent matter. In order for collateral estoppel to apply, the following elements must be satisfied: (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.[41] For the reasons below, staff finds that the elements of collateral estoppel are satisfied in this case.

For purposes of collateral estoppel, issues are identical when the factual allegations at issue in the previous and current proceeding are the same.[42] The issue presented here is the same issue in the *CSAC-Excess Insurance Authority* case; whether CSAC-EIA has standing to pursue the claims on its own behalf for the costs it incurred as the insurer of its member counties and/or pursue test claims on behalf of its member counties. On May 22, 2007, the *CSAC Excess Insurance Authority* case terminated with a final judgment on the merits. Furthermore, CSAC-EIA is a party involved in both the *CSAC Excess Insurance Authority* case and the consolidated test claim at issue here. Moreover, the parties in the *CSAC Excess Insurance Authority* case, specifically CSAC-EIA, had a full and fair opportunity to litigate the standing issue before the court. Thus, the court's holding in *CSAC Excess Insurance Authority*, that CSAC-EIA *does not* have standing to pursue the claims on its own behalf for the costs it incurred as the insurer of the member counties *and* that CSAC-EIA *does* have standing to pursue the claims on behalf of its member counties, is binding and applies to this test claim.

Staff concludes CSAC-EIA does not have standing as a claimant in its own right, however, CSAC-EIA does have standing as a representative seeking reimbursement on behalf of its member counties for this consolidated test claim.

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[40] California Rules of Court, Rule 8.1115.

[41] *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

[42] *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342.

Issue 2: Do Labor Code sections 3212.6, 3212.8, and 3212.9, as added and amended in 1995, 1996, 2000, and 2001, constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution?

The case law is clear that even though a statute is addressed only to local government and imposes new costs on them, the statute may not constitute a reimbursable state-mandated program under article XIII B, section 6.[43] It is well-established that local agencies are not entitled to reimbursement for all increased costs, but only those resulting from a new program or higher level of service mandated by the state.[44] The costs identified by claimant for the test claim statutes are the total costs of tuberculosis, hepatitis and blood-borne infectious diseases, and meningitis claims, from initial presentation to ultimate resolution.

However, Labor Code sections 3212.6, 3212.8, and 3212.9, as added and amended in 1995, 1996, 2000, and 2001,[45] do not mandate local agencies to incur these costs. The statute simply *creates* the presumptions of industrial causation for the employee, but does not require a local agency to provide a new or additional service to the public. The relevant language in Labor Code sections 3212.6, 3212.8, and 3212.9, as they existed following 1996, 2001, and 2000, respectively, state that:

> The [tuberculosis/blood-borne infectious disease/meningitis] so developing or manifesting itself [in those cases] shall be presumed to arise out of and in the course of the employment [or service]. This presumption is disputable and *may* be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a [person] following termination of service for a period of three calendar months for each full year of [the requisite] service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity. (Emphasis added.)

These statutes authorize, but do not require, local agencies to dispute the claims of injured employees. Thus, it is the decision made by the local agency to dispute the claim that triggers any litigation costs incurred. Litigation costs are not mandated by the state.[46]

In addition, the Labor Code sections 3212.6, 3212.8, and 3212.9, on their face, do not mandate local agencies to pay workers' compensation benefits to injured employees. Even if the statute

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[43] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1190; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197.

[44] *Kern High School Dist., supra,* 30 Cal.4th 727, 735-736.

[45] Labor Code section 3212.6, amended by Statutes 1995, chapter 638, and Statutes 1996, chapter 802, Labor Code section 3212.8, added and amended by Statutes 2000, chapter 490, and Statutes 2001, chapter 833, and Labor code section 3212.9, added by Statutes 2000, chapter 883.

[46] *Kern High School Dist., supra*, 30 Cal.4th 727, 742-743. Furthermore, there is no evidence that counties and cities are practically compelled to dispute the claims. The statutes do not impose a substantial penalty for not disputing the claim. (*Kern High School Dist., supra*, 30 Cal.4th at p. 751.)

required the payment of increased benefits, the payment of benefits to employees would still have to constitute a new program or higher level of service. Local agencies, however, have had the responsibility to pay workers' compensation benefits for "any injury or disease arising out of employment" since 1971.[47] Labor Code section 4850 has further provided special compensation benefits to injured peace officers and firefighters since 1983, well before the enactment of the test claim statutes. Thus, the payment of employee benefits is not new and has not been shifted to local agencies from the state.

Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required for a statute to constitute a new program or higher level of service.[48] Rather, the California Supreme Court and other courts of appeal have determined that the following programs required under law are not administered by local agencies to provide a service to the public and, thus, reimbursement under article XIII B, section 6 of the California Constitution is not required: providing workers' compensation benefits to public employees; providing unemployment compensation protection to public employees; increasing Public Employment Retirement System (PERS) benefits to retired public employees; and paying death benefits to local safety officers under the PERS and workers' compensation systems.[49]

More specifically within the context of workers' compensation, the Supreme Court decided *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, and, for the first time, defined a "new program or higher level of service" pursuant to article XIII B, section 6. Counties were seeking the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits to their employees as private individuals or organizations. The Supreme Court recognized that workers' compensation is not a new program and, thus, determined whether the legislation imposed a higher level of service on local agencies.[50] Although the Court defined a "program" to include "laws which, to implement a state policy, impose unique requirements on local governments," the Court emphasized that a new program or higher level of service requires "state mandated increases in the services provided by local agencies in existing programs."

> Looking at the language of article XIII B, 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."*[51]

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[47] Labor Code section 3208, as last amended in 1971.

[48] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 877.

[49] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57; *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67; and *City of Richmond v. Commission on State Mandates, supra,* 64 Cal.App.4th 1190, 1195.

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

[51] *Ibid,* emphasis added.

The Court continued:

> The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility *for providing services which the state believed should be extended to the public.*[52]

Applying these principles, the Court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required by the California Constitution. The Court stated the following:

> 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 ... 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.[53]

In 2004, the California Supreme Court, in *San Diego Unified School Dist.*, reaffirmed the conclusion that simply because a statute, which establishes a public employee benefit program, may increase the costs to the employer, the statute does not "in any tangible manner increase the level of service provided by those employers to the public" within the meaning of article XIII B, section 6.[54]

These principles apply even though the presumption is granted uniquely to public safety employees. In the Second District Court of Appeal case of *City of Anaheim*, the city sought reimbursement for costs incurred as a result of a statute that temporarily increased retirement benefits to public employees. The city argued 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 and entities."[55] The court held that reimbursement was not required because the statute did not impose any state-mandated activities on the city and the PERS program is not a program administered by local agencies as a service to the public.[56] The court reasoned as follows:

> Moreover, the goals of article XIII B of the California Constitution "were to protect residents from excessive taxation and government spending ... and preclude a shift of financial responsibility for carrying out governmental functions

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[52] *Id.* at pages 56-57, emphasis added.

[53] *Id.* at pages 57-58, fn. omitted.

[54] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 875.

[55] *City of Anaheim, supra*, 189 Cal.App.3d at pp. 1483-1484.

[56] *Id.* at page 1484.

> 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.[57]

The reasoning in *City of Anaheim* applies here. Simply because a statute applies uniquely to local government does not mean that reimbursement is required under article XIII B, section 6.[58]

Accordingly, staff finds that Labor Code section 3212.6, as amended in 1995 and 1996; Labor Code section 3212.8, as added and amended in 2000 and 2001; and Labor Code section 3212.9, as added in 2000, do not mandate new programs or higher levels of service and, thus, do not constitute reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.

Conclusion

Staff concludes California State Association of Counties-Excess Insurance Authority does not have standing to claim reimbursement under article XIII B, section 6 of the California Constitution, on its own behalf for the costs it incurred as the insurer of its member counties. However, California State Association of Counties-Excess Insurance Authority does have standing to pursue test claims for reimbursement on behalf of its member counties.

Staff further concludes that Labor Code section 3212.6, as amended by Statutes 1995, chapter 683, and Statutes 1996, chapter 802; Labor Code section 3212.8, as added and amended by Statutes 2000, chapter 490 and Statutes 2001, chapter 833; and Labor Code section 3212.9, as added by Statutes 2000, chapter 883, are not subject to article XIII B, section 6 of the California Constitution because they do not mandate a new program or higher level of service on local agencies.

Recommendation

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

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[57] *Ibid.*

[58] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 877, fn. 12; *County of Los Angeles, supra,* 110 Cal.App.4th at page 1190; *City of Richmond, supra,* 64 Cal.App.4th at page 1197.

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EXHIBIT A

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2 91)

TEST CLAIM FORM

For Official Use Only
1:40pm
Claim No. CSM 01-TC-20

Local Agency or School District Submitting Claim

CSAC-EIA and County of Tehama

Contact Person	Telephone No.
Allan P. Burdick/Juliana F. Gmur (MAXIMUS, INC.)	**(916) 485-8102** **Fax (916) 485-0111**

Address

4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB 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.

Chapter 490, Statutes of 2000 and Chapter 833, Statutes of 2001

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

Name and Title of Authorized Representative	Telephone No.
GINA C. DEAN, Management Analyst	**(916) 631-7363**

Signature of Authorized Representative	Date
Gina Dean	6-25-02

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2 91)

TEST CLAIM FORM

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Chapter 490, Statutes of 2000 and Chapter 833, Statutes of 2001

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

Name and Title of Authorized Representative | Telephone No.

RICHARD ROBINSON, County Administrative Officer

Signature of Authorized Representative | Date 6/25/02

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of:
CSAC-EIA
and
The County of Tehama

Hepatitis and Blood-Borne Illnesses Presumption
For Law Enforcement and Firefighters

Chapter 490, Statutes of 2000
and
Chapter 833, Statutes of 2001

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

To expand upon the term "injury" as it pertains to workers' compensation, Chapter 490, Statutes of 2000, includes hepatitis as a compensable injury for police, sheriff and fire personnel. This Chapter also creates a presumption that hepatitis occurring during the service period arose out of and in the course of employment or service. Finally, this Chapter bars the employer from raising the issue of hepatitis as a pre-existing condition.

The Chapter added Section 3212.8 of the Labor Code, which states:

> (a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or active firefighting services, such as

> stenographers, telephone operators, and other office workers, the term "injury" as used in this division, includes hepatitis when any part of the hepatitis develops or manifests itself during a period while that person is in the service of that office, staff, division, department or unit. The compensation that is awarded for hepatitis shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.
>
> (b) The hepatitis so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.
>
> (c) The hepatitis so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

This Chapter creates a new injury heretofore not compensable, provides a presumption that shifts the burden of proof to the employer to disprove that the illness was work related, and places substantial restrictions upon the employer as to the proof necessary to defeat the claim.

Chapter 833, Statutes of 2001, expanded the term "injury" further to include all blood-borne infectious diseases. Thus the presumption would apply to all blood-borne illnesses and the limitation on the use of the pre-existing illness defense.

This Chapter amended Section 3212.8 of the Labor Code through the addition of a subdivision, which states:

> (d) For purposes of this section, "blood-borne infectious disease" means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic organisms defined as blood-borne pathogens by the Department of Industrial Relations.

The effect of a presumption is that the employee does not have to demonstrate that the illness arose out of or in the course of his or her employment. The first effect of a presumption is to encourage the filing of workers' compensation claims because of the

fact that otherwise it would be often difficult, if not impossible, to demonstrate that a particular illness arose out of or in the course of one's employment. The presumption not only works in the favor of the employee, but works to the detriment of the employer who must now prove that the illness did not arise out of or in the course of the employee's employment, which is difficult. This creates a burden on the employer to disprove the illness occurring as a result of the employment, and further limits another defense often used by employers – preexisting condition. With this legislation, however, the defense that the employee had hepatitis or a blood borne disease prior to employment has been eliminated. Thus, an employee who unbeknownst to him or her had hepatitis or a blood borne disease, now has guaranteed workers' compensation coverage.

The net effect of this legislation is to cause an increase in workers' compensation claims for hepatitis and blood borne diseases, and decrease the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the total costs of these claims, from initial presentation to ultimate resolution are reimbursable.

The California State Association of Counties - Excess Insurance Authority (CSAC-EIA) is a special district, being a joint powers authority which processes workers' compensation claims for member counties. CSAC-EIA does not have full estimates on the costs of this program, but same are substantially in excess of $200 per year. Similarly, the County of Tehama does not have complete estimates on the cost of discharging this program, but estimates that the costs for just one case will exceed $200.00 per year.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no requirement prior to 1975, nor in any of the intervening years, until the passage of Chapter 490, Statutes of 2000, filed on September 19, 2000, which mandated the inclusion of hepatitis as a compensable injury for law enforcement and firefighters, the creation of a presumption in favor of hepatitis infection on the job and the exclusion of the pre-existing condition defense. Then, the passage of Chapter 833, Statutes of 2001, filed on October 13, 2001, mandated the inclusion of all blood-borne infectious disease as a compensable injury.

The Commission on State Mandates has recognized that the institution of presumptions for workers' compensation for law enforcement and firefighters is a reimbursable state mandated program. *See* Firefighter's Cancer Presumption, SB 90-4081; and Cancer Presumption, Peace Officers, CSM-4416.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, the mandated activities are contained in Labor Code §3212.8. These sections directly relate to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The CSAC-EIA is a special district, being a joint powers authority which processes workers' compensation claims for member counties. CSAC-EIA does not have full estimates on the costs of this program, but same are substantially in excess of $200 per year. Similarly, the County of Tehama does not have complete estimates on the cost of discharging this program, but estimates that the costs for just one case will exceed $200.00 per year.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by CSAC-EIA and the County of Tehama as a result of the statute on which this test claim is based are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Government Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."

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 XIIIB of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

F. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles* v. *State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

Only local government employs law enforcement and firefighters. Thus, this requirement is unique to government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the Legislature wishes to expand compensability for injury for those who, through employment as law enforcement officers or firefighters, place themselves at higher risk of such injury for the protection of the public. Additionally, this legislation is to encourage individuals to pursue careers with law enforcement and firefighting, which pose hazards to those so employed not found in other career paths.

In summary, the statute mandates that CSAC-EIA and the County of Tehama bear the burden of proof to show that injury due to exposure of a blood-borne pathogen was not arising out of and in the course of employment and further mandates the barring of the defense of showing a pre-existing condition. CSAC-EIA and the County of Tehama believe that the creation of a presumption for exposure to blood-borne infectious diseases satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

3. 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.

4. 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.

5. 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.

6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.

7. 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.

None of the above disclaimers have any application to the test claim herein stated by CSAC-EIA and the County of Tehama.

CONCLUSION

The enactment of Chapter 490, Statutes of 2000 imposed a new state mandated program and cost on CSAC-EIA and the County of Tehama by establishing a presumption that illnesses arising out of hepatitis or blood borne diseases arose out of or in the course of employment, and precludes CSAC-EIA and the County of Tehama from proving that the employee in question had such illness prior to employment. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit 1: Chapter 490, Statutes of 2000
Exhibit 2: Chapter 833, Statutes of 2001

CLAIM CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 25th day of June, 2002, at Sacramento, California, by:

Gina C. Dean
Management Analyst
CSAC Excess Insurance Authority

CLAIM CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 25 day of June, 2002, at Red Bluff, California, by:

Richard Robinson
County Administrative Officer
County of Tehama

DECLARATION OF GINA C. DEAN

I, Gina C. Dean, make the following declaration under oath:

I am a management Analyst for CSAC-Excess Insurance Authority. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

I declare that I have examined the CSAC-EIA's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "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 stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 25th day of June, 2002 at Sacramento, California.

Gina Dean

Gina C. Dean
Management Analyst
CSAC Excess Insurance Authority

DECLARATION OF RICHARD ROBINSON

I, Richard Robinson, make the following declaration under oath:

I am the County Administrative Officer for the County of Tehama. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

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 are, in my opinion, "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 stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 25 day of June, 2002 at Red Bluff, California.

Richard Robinson
County Administrative Officer
County of Tehama

Senate Bill No. 32

CHAPTER 490

An act to add Section 3212.8 to the Labor Code, relating to workers' compensation.

[Approved by Governor September 16, 2000. Filed with Secretary of State September 19, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 32, Peace. Workers' compensation: law enforcement.

Under existing law, a person injured in the course of employment is generally entitled to receive workers' compensation on account of that injury. Existing law provides that, in the case of certain state and local firefighting and law enforcement personnel, the term "injury" includes various medical conditions that are developed or manifested during a period while the member is in the service of the office, staff, department, or unit, and establishes a disputable presumption in this regard.

This bill would provide that in the case of certain state and local firefighting and law enforcement personnel, the term "injury" also includes hepatitis that develops or manifests itself during a period while the person is in the service of that office, division, department, or unit.

This bill, with respect to these persons, would also establish a disputable presumption that hepatitis developing or manifesting itself during the service period arose out of and in the course of employment or service. The presumption would also extend to a person covered by the bill following termination of service for a period of time based on years of service, but not to exceed 60 months beginning with the last day worked.

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

SECTION 1. Section 3212.8 is added to the Labor Code, to read:

3212.8. (a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall

within the scope of active law enforcement service or active firefighting services, such as stenographers, telephone operators, and other office workers, the term "injury" as used in this division, includes hepatitis when any part of the hepatitis develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit. The compensation that is awarded for hepatitis shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

(b) The hepatitis so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) The hepatitis so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

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Assembly Bill No. 196

CHAPTER 833

An act to amend Section 31720.7 of the Government Code, and to amend Sections 3212, 3212.6, 3212.8, and 3212.9 of the Labor Code, relating to medical conditions.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 196, Correa. Public employees: medical conditions.

The County Employees Retirement Law of 1937 provides that, for purposes of qualification for disability retirement benefits, the development of a blood-borne infectious disease by specified safety members, firefighters, and members in active law enforcement, as defined, shall be presumed to arise out of and in the course of employment if the member demonstrates that he or she was exposed to blood or blood products as a result of performance of job duties.

This bill would eliminate the requirement that the member demonstrate that exposure for purposes of that presumption.

Under existing law, a person injured in the course of employment is generally entitled to receive workers' compensation on account of that injury. Existing law provides that, in the case of certain state and local firefighting and law enforcement personnel, the term "injury" includes hernia, tuberculosis, and meningitis that develops or manifests itself during a period while the member is in the service of the governmental entity, and establishes a disputable presumption in this regard.

This bill would extend these provisions to members of the California Highway Patrol.

Existing law also defines "injury" in the case of specified state and local firefighting and law enforcement personnel and patrol members, to include hepatitis that develops or manifests itself during the period while the member is in the service of the governmental entity.

This bill would expand the scope of this provision to include any blood-borne infectious disease.

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

SECTION 1. Section 31720.7 of the Government Code is amended to read:

31720.7. (a) If a safety member, a firefighter, a county probation officer, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200), or both, or under this retirement system, under the Public Employees' Retirement System, or under a retirement system established under this chapter in another county, develops a blood-borne infectious disease, the disease so developing or manifesting itself in those cases shall be presumed to arise out of, and in the course of, employment. The disease so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(b) Any safety member, firefighter, county probation officer, or member active in law enforcement described in subdivision (a) permanently incapacitated for the performance of duty as a result of a blood-borne infectious disease shall receive a service-connected disability retirement.

(c) The presumption described in subdivision (a) is rebuttable by other evidence. Unless so rebutted, the board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) "Blood-borne infectious disease," for purposes of this section, means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including, but not limited to, those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

(e) "Member in active law enforcement," for purposes of this section, means members employed by a sheriff's office, by a police or fire department of a city, county, city and county, district, or by another public or municipal corporation or political subdivision or who are described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code or who are employed by any county forestry or firefighting department or unit, except any of those members whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers, and includes a member engaged in active law enforcement who is not classified as a safety member.

SEC. 2. Section 3212 of the Labor Code is amended to read:

3212. In the case of members of a sheriff's office or the California Highway Patrol, district attorney's staff of inspectors and investigators or of police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, whether such members are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographer, telephone operators, and other officeworkers, the term "injury" as used in this act includes hernia when any part of the hernia develops or manifests itself during a period while such member is in the service in such office, staff, division, department or unit, and in the case of members of such fire departments, except those whose principal duties are clerical, such as stenographers, telephone operators and other officeworkers, and in the case of county forestry or firefighting departments, except those whose principal duties are clerical, such as stenographers, telephone operators and other officeworkers, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographer, telephone operators, and other officeworkers, the term "injury" includes pneumonia and heart trouble which develops or manifests itself during a period while such member is in the service of such office, staff, department or unit. In the case of regular salaried county or city and county peace officers, the term "injury" also includes any hernia which manifests itself or develops during a period while the officer is in the service. The compensation which is awarded for such hernia, heart trouble or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

Such hernia, heart trouble or pneumonia so developing or manifesting itself in such cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals

board is bound to find in accordance with it. Such presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such hernia, heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

SEC. 3. Section 3212.6 of the Labor Code is amended to read:

3212.6. In the case of a member of a police department of a city or county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, or a prison or jail guard or correctional officer who is employed by a public agency, when that person is employed upon a regular, full-time salary, or in the case of members of fire departments of any city, county, or district, or other public or municipal corporations or political subdivisions, when those members are employed on a regular fully paid basis, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting and first-aid response services, or of any county forestry or firefighting department or unit, where those members are employed on a regular fully paid basis, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response service such as stenographers, telephone operators, and other officeworkers, the term "injury" includes tuberculosis that develops or manifests itself during a period while that member is in the service of that department or office. The compensation that is awarded for the tuberculosis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

A public entity may require applicants for employment in firefighting positions who would be entitled to the benefits granted by this section to be tested for infection for tuberculosis.

SEC. 4. Section 3212.8 of the Labor Code is amended to read:

3212.8. (a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or active firefighting services, such as stenographers, telephone operators, and other office workers, the term "injury" as used in this division, includes a blood-borne infectious disease when any part of the blood-borne infectious disease develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit. The compensation that is awarded for a blood-borne infectious disease shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

(b) The blood-borne infectious disease so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) The blood-borne infectious disease so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(d) For the purposes of this section, "blood-borne infectious disease" means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

SEC. 5. Section 3212.9 of the Labor Code is amended to read:

3212.9. In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or a county probation officer, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service,

when that person is employed on a regular, full-time salary, or in the case of a member of a fire department of any city, county, or district, or other public or municipal corporation or political subdivision, or any county forestry or firefighting department or unit, when those members are employed on a regular full-time salary, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement or firefighting, such as stenographers, telephone operators, and other officeworkers, the term "injury" includes meningitis that develops or manifests itself during a period while that person is in the service of that department, office, or unit. The compensation that is awarded for the meningitis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

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State of California
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Claim No. CSM 01-TC-23

TEST CLAIM FORM

Local Agency or School District Submitting Claim

CSAC-EIA and County of Tehama

Contact Person	Telephone No.
Allan P. Burdick/Juliana F. Gmur (MAXIMUS, INC.)	**(916) 485-8102**
	Fax (916) 485-0111

Address

4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB 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.

Chapter 683, Statutes of 1995 and Chapter 802, Statutes of 1996

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

Name and Title of Authorized Representative	Telephone No.
GINA C. DEAN, Management Analyst	**(916) 631-7363**

Signature of Authorized Representative	Date
Gina Dean	6.25.02

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COMMISSION ON STATE MANDATES
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TEST CLAIM FORM

Local Agency or School District Submitting Claim

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Chapter 683, Statutes of 1995 and Chapter 802, Statutes of 1996

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

Name and Title of Authorized Representative | Telephone No.

RICHARD ROBINSON, County Administrative Officer

Signature of Authorized Representative | Date 6/25/02

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of:
CSAC-EIA
and
The County of Tehama

Tuberculosis Presumption For Firefighters, Jail Guards and Correctional Officers

Chapter 683, Statutes of 1995
and
Chapter 802, Statutes of 1996

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

Pre-existing workers' compensation law included tuberculosis as an "injury" for which law enforcement personnel could be compensated and provided a presumption in favor of the employee that the infection had occurred on the job. Chapter 683, Statutes of 1995, expanded this population of employees who could make use of this presumption to include firefighters. Chapter 802, Statutes of 1996, further expanded this population to include prison guards, jail guards and correctional officers.

These Chapters amended Section 3212.6 of the Labor Code, to state, in pertinent part:

> In the case of a member of a police department of a city or county, or a member of a sheriff's office of a county, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, or a prison or jail guard or correctional officer who is employed by a public agency, when that person is employed upon a regular, full-time salary, or in the case of members o fire departments of any city, county, or district, or other public or municipal corporations or political subdivisions, when those members are employed on a regular fully paid basis, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require

> firefighting and first-aid response services, or any county forestry or firefighting department or unit whose members are employed on a regular fully paid basis, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response service such as stenographers, telephone operators, and other office workers, the term "injury" includes tuberculosis that develops or manifests itself during a period while that member is in the service of that department or office. The compensation that is awarded for the tuberculosis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.
>
> The tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.
>
> A public entity may require applicants for employment in firefighting positions who would be entitled to the benefits granted by this section to be tested for infection for tuberculosis.

This Chapter creates a new injury heretofore not compensable for firefighting personnel, jail and prison guards and correctional officers, provided a presumption that shifts the burden of proof to the employer to disprove that the illness was work related and places substantial restrictions upon the employer as to the proof necessary to defeat the claim.

The effect of a presumption is that the employee does not have to demonstrate that the illness arose out of and in the course of his or her employment. The first effect of a presumption is to encourage the filing of workers' compensation claims because of the fact that otherwise it would be often difficult, if not impossible, to demonstrate that a particular illness arose out of and in the course of one's employment. The presumption not only works in the favor of the employee, but works to the detriment of the employer who must now prove that the illness did not arise out of and in the course of the employee's employment, which is difficult. This creates a burden on the employer to disprove the illness occurring as a result of the employment.

The net effect of this legislation is to cause an increase in workers' compensation claims for tuberculosis and decrease the possibility that any defenses can be raised by the

employer to defeat the claims. Thus, the total costs of these claims, from initial presentation to ultimate resolution are reimbursable.

The California State Association of Counties - Excess Insurance Authority (CSAC-EIA) is a special district, being a joint powers authority which processes workers' compensation claims for member counties. CSAC-EIA does not have full estimates on the costs of this program, but same are substantially in excess of $200 per year. Similarly, the County of Tehama does not have complete estimates on the cost of discharging this program, but estimates that the costs for just one case will exceed $200.00 per year.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no requirement prior to 1975, nor in any of the intervening years, until the passage of Chapter 683, Statutes of 1995, filed on October 10, 1995, which mandated the inclusion of tuberculosis as an injury for firefighters and the creation of a presumption in favor of tuberculosis infection on the job. Then, the passage of Chapter 802, Statutes of 1996, filed on September 24, 1996, mandated the inclusion of tuberculosis as an injury for prison and jail guards and correctional officers and the creation of a presumption in favor of tuberculosis infection on the job.

The Commission on State Mandates has recognized that the institution of presumptions for workers' compensation for law enforcement and firefighters is a reimbursable state mandated program. *See* Firefighter's Cancer Presumption, SB 90-4081; and Cancer Presumption, Peace Officers, CSM-4416.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, the mandated activities are contained in Labor Code §3212.6. These sections directly relate to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The CSAC-EIA is a special district, being a joint powers authority which processes workers' compensation claims for member counties. CSAC-EIA does not have full estimates on the costs of this program, but same are substantially in excess of $200 per year. Similarly, the County of Tehama does not have complete estimates on the cost of discharging this program, but estimates that the costs for just one case will exceed $200.00 per year.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by CSAC-EIA and the County of Tehama as a result of the statute on which this test claim is based are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Government

Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."

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 XIIIB of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

F. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles* v. *State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

Only local government employs firefighters, jail guards and correctional officers. Thus, this requirement is unique to government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the Legislature wishes to expand compensability for injury for those who, through employment as firefighters, jail guards and correctional officers, place themselves at higher risk of such injury for the protection of the public. Additionally, this legislation is to encourage individuals to pursue careers with jails, correctional facilities and firefighting, which pose hazards to those so employed not found in other career paths.

In summary, the statute mandates that CSAC-EIA and the County of Tehama bear the burden of proof to show that injury due to exposure to tuberculosis was not arising out of and in the course of employment and further mandates the barring of the defense of showing a pre-existing condition. CSAC-EIA and the County of Tehama believe that the creation of a presumption for exposure to tuberculosis for firefighters, prison and jail guards and correctional officers satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

3. 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.

4. 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.

5. 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.

6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.

7. 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.

None of the above disclaimers have any application to the test claim herein stated by CSAC-EIA and the County of Tehama.

CONCLUSION

The enactment of Chapter 683, Statutes of 1995 and Chapter 802, Statutes of 1996, imposed a new state mandated program and cost on CSAC-EIA and the County of Tehama by extending to firefighters, prison and jail guards and correctional officers the presumption that the tuberculosis infection arose out of and in the course of employment. The mandated program meets all of the criteria and tests for the Commission on State

Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit 1: Chapter 683, Statutes of 1995
Exhibit 2: Chapter 802, Statutes of 1996

CLAIM CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 25th day of June, 2002, at Sacramento, California, by:

Gina Dean

Gina C. Dean
Management Analyst
CSAC Excess Insurance Authority

DECLARATION OF GINA C. DEAN

I, Gina C. Dean, make the following declaration under oath:

I am a management Analyst for CSAC-Excess Insurance Authority. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

I declare that I have examined the CSAC-EIA's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "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 stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 25th day of June, 2002 at Sacramento, California.

Gina Dean

Gina C. Dean
Management Analyst
CSAC Excess Insurance Authority

CLAIM CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 25 day of June, 2002, at Red Bluff, California, by:

Richard Robinson
County Administrative Officer
County of Tehama

DECLARATION OF RICHARD ROBINSON

I, Richard Robinson, make the following declaration under oath:

I am the County Administrative Officer for the County of Tehama. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

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 are, in my opinion, "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 stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 25 day of June, 2002 at Red Bluff, California.

Richard Robinson
County Administrative Officer
County of Tehama

Senate Bill No. 658

CHAPTER 683

An act to amend Section 3212.6 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 8, 1995. Filed with Secretary of State October 10, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 658, Peace. Workers' compensation.

Under existing law, a person injured in the course of employment is generally entitled to receive workers' compensation on account of that injury. Existing law provides that, in the case of a member of a police department of a city or county, or a member of the sheriff's office of a county, or an inspector or investigator in a district attorney's office of any county, when any member is employed upon a regular, full-time salary, whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographers, telephone operators, and other officeworkers, the term "injury" includes tuberculosis that develops or manifests itself during a period while the member is in the service of the department or office.

This bill would extend those provisions to members of a fire department of a city, county, or district and other firefighters and persons whose duties include firefighting and first-aid response, as specified. The bill would impose a state-mandated local program by expanding the scope of workers' compensation liability for certain local entities.

This bill would authorize any public entity to require applicants for employment in firefighting positions who would be entitled to the these benefits to be tested for infection for tuberculosis.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 3212.6 of the Labor Code is amended to read:

3212.6. In the case of a member of a police department of a city or county, or a member of the sheriff's office of a county, or an inspector or investigator in a district attorney's office of any county, when any such member is employed upon a regular, full-time salary, whose principal duties consist of active law enforcement service, or in the case of members of fire departments of any city, county, or district, or other public or municipal corporations or political subdivisions, when those members are employed on a regular fully paid basis, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting and first-aid response services, or of any county forestry or firefighting department or unit, where those members are employed on a regular fully paid basis, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response service such as stenographers, telephone operators, and other officeworkers, the term "injury" includes tuberculosis that develops or manifests itself during a period while that member is in the service of that department or office. The compensation that is awarded for the tuberculosis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

A public entity may require applicants for employment in firefighting positions who would be entitled to the benefits granted by this section to be tested for infection for tuberculosis.

SEC. 2. 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.

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Assembly Bill No. 521

CHAPTER 802

An act to amend Section 3212.6 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 22, 1996. Filed with Secretary of State September 24, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 521, Aguiar. Workers' compensation.

Under existing law, a person injured in the course of employment is generally entitled to receive workers' compensation on account of that injury. Existing law provides that, in the case of certain law enforcement officers and firefighters, the term "injury" includes tuberculosis that develops or manifests itself during a period while the member is in the service of the department or office.

This bill would extend those provisions to prison and jail guards and correctional officers employed by a public agency. Since the bill would require the payment of additional benefits by local agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 3212.6 of the Labor Code is amended to read:

3212.6. In the case of a member of a police department of a city or county, or a member of the sheriff's office of a county, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, or a prison or jail guard or correctional officer who is employed by a public agency, when that person is employed upon a regular, full-time salary, or in the case of members of fire departments of any city, county, or district, or other public or municipal corporations or

political subdivisions, when those members are employed on a regular fully paid basis, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting and first-aid response services, or of any county forestry or firefighting department or unit, where those members are employed on a regular fully paid basis, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response service such as stenographers, telephone operators, and other officeworkers, the term "injury" includes tuberculosis that develops or manifests itself during a period while that member is in the service of that department or office. The compensation that is awarded for the tuberculosis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

A public entity may require applicants for employment in firefighting positions who would be entitled to the benefits granted by this section to be tested for infection for tuberculosis.

SEC. 2. 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, 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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TEST CLAIM FORM

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Claim No. 01-TC-24

Local Agency or School District Submitting Claim

CSAC-EIA and County of Tehama

Contact Person

Allan P. Burdick/Juliana F. Gmur (MAXIMUS, INC.)

Telephone No.

(916) 485-8102
Fax (916) 485-0111

Address

4320 Auburn Blvd., Suite 2000
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Representative Organization to be Notified

California State Association of Counties

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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.

Chapter 883, Statutes of 2000

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

Name and Title of Authorized Representative

GINA C. DEAN, Management Analyst

Telephone No.

(916) 631-7363

Signature of Authorized Representative

Gina Dean

Date

6-25-02

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4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB 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.

Chapter 883, Statutes of 2000

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

Name and Title of Authorized Representative | Telephone No.

RICHARD ROBINSON, County Administrative Officer

Signature of Authorized Representative Richard W. Robinson | Date 6/25/02

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of:
CSAC-EIA
and
The County of Tehama

Meningitis Presumption for Law Enforcement and Firefighters

Chapter 883, Statutes of 2000

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

To expand upon the term "injury" as it pertains to workers' compensation, Chapter 883, Statutes of 2000, includes meningitis as a compensable injury for police, sheriff and fire personnel. This Chapter also creates a presumption that meningitis occurring during the service period arose out of and in the course of employment or service.

The Chapter added Section 3212.9 of the Labor Code, which states:

> In the case of a member of a police department of a city, county, city and county, or the member of a sheriff's office of a county, or a county probation officer, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, when that person is employed on a regular, full-time salary or in the case of a member of a fire department of any city, county, district, or other public or municipal corporation or political subdivision, or any county forestry or firefighting department or unit, when those members are employed on a regular full-time salary excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or firefighting, such as stenographers, telephone operators, and other office workers, the term "injury" includes meningitis that develops or manifests itself during a period while that person is in the service of

> that department, office, or unit. The compensation that is awarded for meningitis shall include, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the provisions of this division.
>
> The meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

This Chapter creates a new injury heretofore not compensable and provides a presumption that shifts the burden of proof to the employer.

The effect of a presumption is that the employee does not have to demonstrate that the illness arose out of or in the course of his or her employment. The first effect of a presumption is to encourage the filing of workers' compensation claims because of the fact that otherwise it would be often difficult, if not impossible, to demonstrate that a particular illness arose out of or in the course of one's employment. The presumption not only works in the favor of the employee, but works to the detriment of the employer who must now prove that the illness did not arise out of or in the course of the employee's employment, which is difficult.

The net effect of this legislation is to cause an increase in workers' compensation claims for meningitis and decrease the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the total costs of these claims, from initial presentation to ultimate resolution are reimbursable.

The California State Association of Counties - Excess Insurance Authority (CSAC-EIA) is a special district, being a joint powers authority which processes workers' compensation claims for member counties. CSAC-EIA does not have full estimates on the costs of this program, but same are substantially in excess of $200 per year. Similarly, the County of Tehama does not have complete estimates on the cost of discharging this program, but estimates that the costs for just one case will exceed $200.00 per year.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no requirement prior to 1975, nor in any of the intervening years, until the passage of Chapter 883, Statutes of 2000, filed on September 29, 2000, which mandated

the inclusion of meningitis as a compensable injury for law enforcement and firefighters, and the creation of a presumption in favor of meningitis infection on the job.

The Commission on State Mandates has recognized that the institution of presumptions for workers' compensation for law enforcement and firefighters is a reimbursable state mandated program. *See* Firefighter's Cancer Presumption, SB 90-4081; and Cancer Presumption, Peace Officers, CSM-4416

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, the mandated activities are contained in Labor Code §3212.9. These sections directly relate to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The CSAC-EIA is a special district, being a joint powers authority which processes workers' compensation claims for member counties. CSAC-EIA does not have full estimates on the costs of this program, but same are substantially in excess of $200 per year. Similarly, the County of Tehama does not have complete estimates on the cost of discharging this program, but estimates that the costs for just one case will exceed $200.00 per year.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by CSAC-EIA and the County of Tehama as a result of the statute on which this test claim is based are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Government Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."

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 XIIIB of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles* v. *State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

Only local government employs law enforcement and firefighters. Thus, this requirement is unique to government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the Legislature wishes to expand compensability for injury for those who, through employment as law enforcement officers or firefighters, place themselves at higher risk of such injury for the protection of the public. Additionally, this legislation is to encourage individuals to pursue careers with law enforcement and firefighting, which pose hazards to those so employed not found in other career paths.

In summary, the statute mandates that CSAC-EIA and the County of Tehama bear the burden of proof to show that injury due to meningitis was not arising out of and in the course of employment. CSAC-EIA and the County of Tehama believe that the creation of a presumption for on the job exposure to meningitis satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

3. 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.

4. 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.

5. 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.

6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.

7. 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.

None of the above disclaimers have any application to the test claim herein stated by CSAC-EIA and the County of Tehama.

CONCLUSION

The enactment of Chapter 883, Statutes of 2000 imposed a new state mandated program and cost on CSAC-EIA and the County of Tehama by establishing a presumption that illnesses arising out of meningitis arose out of and in the course of employment. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit 1: Chapter 883, Statutes of 2000

CLAIM CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 25th day of June, 2002, at Sacramento, California, by:

Gina Dean

Gina C. Dean
Management Analyst
CSAC Excess Insurance Authority

CLAIM CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 25 day of June, 2002, at Red Bluff, California, by:

Richard Robinson
County Administrative Officer
County of Tehama

DECLARATION OF GINA C. DEAN

I, Gina C. Dean, make the following declaration under oath:

I am a management Analyst for CSAC Excess Insurance Authority. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

I declare that I have examined the CSAC-EIA's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "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 stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 25th day of June, 2002 at Sacramento, California.

Gina Dean

Gina C. Dean
Management Analyst
CSAC Excess Insurance Authority

DECLARATION OF RICHARD ROBINSON

I, Richard Robinson, make the following declaration under oath:

I am the County Administrative Officer for the County of Tehama. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

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 are, in my opinion, "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 stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 25 day of June, 2002 at Red Bluff, California.

Richard Robinson
County Administrative Officer
County of Tehama

Assembly Bill No. 2043

CHAPTER 883

An act to amend Section 5402 of, and to add Section 3212.9 to, the Labor Code, relating to workers' compensation.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2043, Maddox. Workers' compensation: injuries.

Under existing law, a person injured in the course of employment is generally entitled to receive workers' compensation on account of that injury. Existing law provides that, in the case of certain firefighting and law enforcement personnel, the term "injury" includes various medical conditions that are developed or manifested during a period while the person is in that service, and establishes a disputable presumption in this regard.

This bill would provide that in the case of certain local firefighting and law enforcement personnel, the term "injury" also includes meningitis that develops or manifests itself during a period while the person is in that service.

This bill would make other technical changes.

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

SECTION 1. Section 3212.9 is added to the Labor Code, to read:

3212.9. In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a county probation officer, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, when that person is employed on a regular, full-time salary, or in the case of a member of a fire department of any city, county, or district, or other public or municipal corporation or political subdivision, or any county forestry or firefighting department or unit, when those members are employed on a regular full-time salary, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement or firefighting, such as stenographers, telephone operators, and other officeworkers, the term "injury" includes meningitis that develops or manifests itself during a period while that person is in the service of that department, office, or unit. The compensation that is awarded for the meningitis shall include full hospital, surgical, medical treatment, disability

indemnity, and death benefits as provided by the provisions of this division.

The meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

SEC. 2. Section 5402 of the Labor Code is amended to read:

5402. (a) Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400.

(b) If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 90-day period.

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EXHIBIT B

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR
GRAY DAVIS, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

August 1, 2002

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 5, 2002, the Department of Finance has reviewed the test claim submitted by the California State Association of Counties - Excess Insurance Authority (CSAC-EIA) and the County of Tehama (both hereafter referred to as claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 490, Statutes of 2000, (SB 32, Peace) and Chapter 833, Statutes 2001, (AB 196, Correa) are reimbursable state mandated costs (Claim No. CSM-01-TC-20 "Hepatitis and Blood-Borne Illnesses Presumption for Law Enforcement and Firefighters"). Commencing with page 2, of the test claim, claimant has identified the following new duty, which it asserts is a reimbursable state mandate:

- Increased workers' compensation claims for hepatitis.

As the result of our review, we have concluded that the statute may have resulted in a new state mandated program and cost on the claimant by establishing a presumption that hepatitis occurring during the employee's service period arose out of and in the course of employment. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

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 5, 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 Jennifer Osborn, Principal Program Budget Analyst or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF JENNIFER OSBORN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-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. 490, Statutes of 2000, (SB 32, Peace) and Chapter 833, Statutes of 2001 (AB 196, Correa) 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 2, 2002
at Sacramento, CA

Jennifer Osborn

PROOF OF SERVICE

Test Claim Name: Hepatitis and Blood-Borne Illnesses Presumption for Law Enforcement and Firefighters
Test Claim Number: CSM-01-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, 8 Floor, Sacramento, CA 95814.

On August 1, 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, 8th 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 Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

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

California State Association of Counties - Excess Insurance Authority
3017 Gold Canal Drive
Rancho Cordova, CA 95670

Carol Berg
1121 L Street, Suite 1060
Sacramento, CA 95814

Executive Director
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

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

Gina Dean, Management Analyst
California State Association of Counties
1100 K Street
Sacramento, CA 95814

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

Director
Department of Industrial Relations
455 Golden Gate venue
San Francisco, CA 94102

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

Leslie McGill
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Paul Minney
Spector, Middleton, Young and Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Steve Smith, CEO
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Keith B. Peterson
Six Ten and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Jim Spano
State Controller's Office
Division of Audits
300 Capital Mall, Suite 518
Sacramento, CA 95814

Barbara Redding
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

David Wellhouse
David Wellhouse and Associates, Inc.
9175 Kiefer Blvd., 121
Sacramento, CA 95826

Richard Robinson
County Administrative Officer
County of Tehama
County Clerk's Office
P.O. Box 250
Red Bluff, CA 96080

Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
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 1, 2002 at Sacramento, California.

Mary Latorre

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 2, 2002

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 5, 2002, the Department of Finance has reviewed the test claim submitted by the California State Association of Counties (CSAC-EIA) and the County of Tehama (both hereafter referred to as claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 683, Statutes of 1995, (SB 658, Peace) and Chapter 802, Statutes of 1996, (AB 521, Aguiar) are reimbursable state mandated costs (Claim No. CSM-01-TC-23 "Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers"). Commencing with page 2, of the test claim, claimant has identified the following new duty, which it asserts is a reimbursable state mandate:

- Increases in workers' compensation claims for tuberculosis for firefighters, prison guards, jail guards, and correctional officers.

As the result of our review, we have concluded that the statute may have resulted in a new state mandated program and cost on the claimant by expanding the presumption that tuberculosis occurring during the employee's service period arose out of or in the course of employment. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

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 5, 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 Jennifer Osborn, Principal Program Budget Analyst or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Nora Martinez for

Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF JENNIFER OSBORN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-23

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. 683, Statutes of 1995, (SB 658, Peace) and Chapter 802, Statutes of 1996 (AB 521, Aguiar) 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 2, 2002
at Sacramento, CA

Jennifer Osborn
Jennifer Osborn

PROOF OF SERVICE

Test Claim Name: Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers
Test Claim Number: CSM-01-TC-23

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, 8 Floor, Sacramento, CA 95814.

On August 2, 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, 8th 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 Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

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

California State Association of Counties
3017 Gold Canal Drive, Suite 300
Rancho Cordova, CA 95670

Allan Burdick
MAXIMUS
4320 Auburn Blvd, Suite 2000
Sacramento, CA, 95814

Glenn Haas, Bureau Chief
State Controller's Office Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Gina Dean, Management Analyst
California State Association of Counties
1100 K Street
Sacramento, CA 95814

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

Director
Department of Industrial Relations
455 Golden Gate Avenue
San Francisco, CA 95816

California State Firefighters' Association
2701 K Street
Sacramento, CA 95816

Leslie McGill
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Executive Director
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Paul Minney
Spector, Middleton, Young and Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Barbara Redding
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Richard Robinson
County Administrative Officer
County of Tehama
County Clerk's Office
P.O. Box 250
Red Bluff, CA 96080

Steve Smith, CEO
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Jim Spano
State Controller's Office
Division of Audits
300 Capital Mall, Suite 518
Sacramento, CA 95814

David Wellhouse
David Wellhouse and Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

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 2, 2002, at Sacramento, California.

Mary Latorre

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

July 31, 2002

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 5, 2002, the Department of Finance has reviewed the test claim submitted by the California State Association of Counties - Excess Insurance Authority (CSAC-EIA) and the County of Tehama (both hereafter referred to as claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 883, Statutes of 2000, (AB 2043, K. Maddox) are reimbursable state mandated costs (Claim No. CSM-01-TC-24 "Meningitis Presumption for Law Enforcement and Firefighters"). Commencing on page 2, of the test claim, claimant has identified the following new duty, which it asserts is a reimbursable state mandate:

- Increases in workers' compensation claims for meningitis.

As the result of our review, we have concluded that the statute may have resulted in a new state mandated program and cost on CSAC-EIA and the County of Tehama by establishing a presumption that meningitis occurring during the employee's service period arose out of and in the course of employment. This statute places the burden of proof on local agencies rather than the individual that contracted the disease. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

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 5, 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 Jennifer Osborn, Principal Program Budget Analyst, 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

Attachment A

DECLARATION OF JENNIFER OSBORN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-24

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. 883, Statutes of 2000, (AB 2043, K. Maddox) 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.

July 31, 2002
at Sacramento, CA

Nora Martinez for
Jennifer Osborn

PROOF OF SERVICE

Test Claim Name: Meningitis Presumption for Law Enforcement and Firefighters
Test Claim Number: CSM-01-TC-24

I, Mary Latorre, 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, 8th Floor, Sacramento, CA 95814.

On July 31, 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 non-state 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, 8 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 Accounting & Reporting
Attention: William Ashby
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Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
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California State Association of Counties - Excess Insurance Authority
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Sacramento, CA 95826

Ms. Nancy Wolfe
Assistant State Fire Marshal
Office of State Fire Marshal
1131 S Street
Sacramento, CA 94244-2460

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 July 31, 2002 at Sacramento, California.

Mary Latorre

EXHIBIT C

STATE OF CALIFORNIA
Gray Davis, Gove

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102
Telephone: (415) 703-4600
Facsimile: (415) 703-4720

MAILING ADDRESS:
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August 7, 2002

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

Re: **Cancer Presumption for Law Enforcement and Firefighters, 01-TC-19**

Hepatitis and Blood-Borne Illness Presumption for Law Enforcement and Firefighters, 01-TC-20

Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers, 01-TC-23

Meningitis Presumption for Law Enforcement and Firefighters, 01-TC-24

Lower Back Injury Presumption for Law Enforcement, 01-TC-25

Dear Ms. Higashi:

Pursuant to Title 2, California Code of Regulations ("C.C.R.") section 1183.02, The following is the consolidated response by the Department of Industrial Relations, Division of Workers' Compensation ("DWC" or "Agency"), to the above-named test claims. This response is consolidated because the Agency's comments to the key issues are identical for all five claims.

Article XIII B, section 6 of the California Constitution ("Section 6") provides in pertinent part that whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse the local government for the costs of such program or increased level of service.

Pursuant to Government Code § 17553 and 2 C.C.R. § 1183.02, the California State Association of Counties – Excess Insurance Authority ("CSAC") and the County of Tehama have filed test claims asserting that the following statutes, which establish rebuttable presumptions of compensation for specific injuries suffered by law

enforcement officers and firefighters, create reimbursable state mandates under Section 6:

1. Labor Code 3212.1 (Cancer Presumption for Law Enforcement and Firefighters)
2. Labor Code 3212.6 (Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers)
3. Labor Code 3212.8 (Hepatitis and Blood-Borne Illness Presumption for Law Enforcement and Firefighters)
4. Labor Code 3212.9 (Meningitis Presumption for Law Enforcement and Firefighters)
5 Labor Code 3213.2 (Lower Back Injury Presumption for Law Enforcement)

The above-cited statutes are all Legislative enactments. Neither DWC nor any division of the Department of Industrial Relations has promulgated regulations to implement these statutes. In this regard, the California Constitution confers "plenary power" to the Legislature to develop California's workers' compensation laws. Article XIV, section 4 of the Constitution provides in pertinent part (emphasis added):

> The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party.

DWC's position is that the Labor Code presumptions do not impose a new program or higher level of service within an existing program upon local entities within the meaning of Section 6. The statutes at issue are evidentiary burdens of proof affecting the entitlement of a defined classification of employees to workers' compensation benefits for specific injuries. Increased costs for local governments associated with the payment workers' compensation benefits should not be considered reimbursable mandates.

1. The Presumptions Do Not Create "New Programs" Requiring Reimbursement.

Local governments are not entitled to reimbursement for all increased costs mandated by state law. Instead, they are only entitled to recover costs resulting from a new program or an increased level of service of an existing program imposed on them by the State. Government Code § 17514; Lucia Mar Unified School Dist. v. Honig (1988) 44 Cal.3d 830, 835. The terms "new program" or "increased costs" are defined using "the commonly understood meanings of the term[s]--programs that carry out the governmental function of providing services to the public, or laws which, to implement 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 (1987) 43 Cal.3d 46, 56.

The statutes at issue, Labor Code §§ 3212.1 (cancer), 3212.6 (tuberculosis), 3212.8 (hepatitis), 3212.9 (meningitis), and 3213.2 (lower back) all establish "presumptions of industrial causation" for the specific injury set forth in the respective statute. Assuming an injured worker meets the threshold requirements (generally, the injury or onset of the disease must occur while employed in the defined occupation group), the burden of proof in any subsequently litigated case is shifted to the employer who must provide controverting evidence in order to defeat the claim.[1] The purpose of these presumptions "*is to provide additional compensation benefits* to certain public employees who provide vital and hazardous services by easing the burden of proof of industrial causation." Zipton v. Workers' Compensation Appeals Board (1990) 218 Cal.App.3d 980, 987 (emphasis added). They "are a reflection of public policy, ... implemented by shifting the burden of proof in an industrial injury case." Id., at 988, n. 4.

As indicated above, the presumptions are not irrefutable; local governments are not mandated by these statutes to accept all workers' compensation claims falling within the ambit of the applicable presumption. They have the option to rebut any claim before the Workers' Compensation Appeals Board by presenting a preponderance of evidence showing the non-existence of industrial causation.[2] Reeves v. Workers' Compensation Appeals Board (2000) 80 Cal.App.4th 22, 30, 95 Cal.Rptr.2d 74.

Appellate cases have found that state statues mandating a higher level of compensation to local government employees, such as workers' compensation benefits, are not "new programs" whose costs would be subject to reimbursement under Section 6. In County of Los Angeles, supra, 43 Cal.3d 46, the Supreme Court decided that local governments were not entitled to reimbursement for costs incurred in complying with legislation increasing workers' compensation benefit payments. According to the court, "programs" were reimbursable under Section 6 only if they were "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. The court found that Section 6 "has no application to, and the State need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive." Id. at p. 57- 58.

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[1] For example, under Labor Code § 3212.1 (cancer), the presumption "may be controverted by 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."

[2] Labor Code § 3202.5 provides that parties, regardless of the liberal construction of workers' compensation laws towards extending benefits to injured workers, must meet their evidentiary burden of proof by a preponderance of the evidence. According to the statute, preponderance of the evidence means "such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth."

Similarly, in City of Richmond v. Commission on State Mandates (1998) 64 Cal.App.4th 1190, the Court of Appeal held that a statute entitling the survivors of local safety officers killed in the line of duty to death benefits under both the Public Employees' Retirement System and the workers' compensation laws was not a state mandate requiring reimbursement. The court first found that the statute, which specifically removed an exemption from receiving workers' compensation death benefits, did not constitute a mandated new program or higher level of service. According to the court, the higher cost of compensating its employees could not be considered a requirement to provide a new program or higher level of service to the public (emphasis added):

> Increasing the cost of providing services cannot be equated with requiring an increased level of service under a 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.* [Citation.]

Id. at 1196. See also City of Sacramento v. State of California (1990) 50 Cal.3d 51 (Statute extending mandatory unemployment insurance coverage to local government employees, an increase in the cost of providing service, was not a "new program" or "higher level of service and imposed no "unique" obligation on local governments).

The State does not have a responsibility to provide workers' compensation benefits to employees of local governments, regardless of the employees' duties or job titles. Such responsibility lies solely with the local government, who must either obtain workers' compensation insurance from insurer authorized to write such insurance in the State of California (such as the State Compensation Insurance Fund), or become self-insured. See Insurance Code § 11870; Labor Code § 3700. In this regard, the Labor Code presumptions do not create "new programs" or shift a financial burden from the State to local governments, because local governments by statute have been and are solely liable for providing workers' compensation benefits.

2. The Provision of Worker's Compensation Benefits Are Not Unique to Local Government.

   A. The Presumptions Do Not Create a New Injuries That Were Not Otherwise Compensable.

The presumptions of causation created by Labor Code §§ 3212.1, 3212.6, 3212.8, 3212.9, and 3212.2 do not create new workers' compensation benefits (either indemnity or medical), but instead shifts the burden of proof in cases involving the specific injuries and occupations from the injured worker to the local government.

CSAC's and the County of Tehama's suggestion that the presumptions create a "new injury heretofore not compensable" is inaccurate. Regardless of the existence of the presumptions, all of the injuries defined in the statutes, if arising out of employment or in the course of employment, are compensable under the workers' compensation laws and

require local governments (or private employers, for that matter) to pay benefits, whether medical or indemnity. For example, a hepatitis infection contracted in the course of employment by a law enforcement officer is a compensable injury under the workers' compensation laws, regardless of Labor Code § 3212.8's presumption. City of Fresno v. Workers' Compensation Appeals Board (1992) 57 Cal.Comp.Cases 375 (writ denied); see also City of Santa Cruz v. Workers' Compensation Appeals Board (1980) 45 Cal.Comp.Cases 315 (writ denied) (meningitis infection contracted by police officer a compensable injury).[3] There is nothing about the injuries subject to the presumptions, or the workers' compensation benefits that must be provided as a result of the injuries, that is "unique" to local government such that reimbursement is required under Section 6.

B. The Presumptions Are Incidental To The Cost Of Providing Workers' Compensation Benefits.

The requirement that local governments pay workers' compensation benefits is not unique to local governments and therefore does not constitute a reimbursable state mandate. Statutes that establish such benefits are laws of general application that apply to both private and public employers alike.[4] As expressly stated by the Supreme Court in County of Los Angeles, 43 Cal.3d at 58 (emphasis added):

> 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.*

As noted above, the Constitution grants the Legislature "plenary power" to establish a system of workers' compensation. The ability of the Legislature to address medical

[3] See also Labor Code § 3208.05, which provides that "injury" includes a reaction to or a side effect arising from health care provided by an employer to a health care worker, if such health care is intended to prevent the development or manifestation any bloodborne disease, illness, or syndrome, including hepatitis.

[4] For example, Labor Code § 4600 provides that an employer must provide medical treatment that is reasonably required to cure or relieve the effects of an occupational injury. See also Labor Code § 4635, et seq. (vocational rehabilitation); Labor Code § 4650, et seq. (disability payments); Labor Code § 4700 et seq. (death benefits).

doubts over the compensability of specific injuries and preexisting diseases by means of statutory presumptions in favor of injured employees is well established. San Francisco v. Workers' Compensation Appeals Board (1978) 22 Cal.3d 103, 116-117 (addressing the validity of Labor Code § 3212.5, which created a presumption of compensability for heart trouble and pneumonia suffered by peace officers). The creation of presumptions of compensability for a specific class of employees as applied to workers' compensation laws, laws of general application, are beyond the scope of programs or services to the public that Section 6 seeks to address. Although the presumptions *may* increase of the cost of providing benefits, they do not impose a reimbursable mandate.

3. Assuming The Presumptions Are Reimbursable Mandates, The Actual "Cost" Of The Presumptions Must Be Determined.

Essentially, CSAC and the County of Tehama assert that the statutory presumptions will force them to incur higher costs on the administration of workers' compensation claims for specific injuries suffered by firefighters and law enforcement officers. Under Section 6, local governments are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state. Lucia Mar Unified School Dist. v. Honig (1988) 44 Cal.3d 830, 835. For this purpose, "costs" mean actual costs incurred. County of Sonoma v. Commission on State Mandates (2000) 84 Cal.App.4th 1264, 1285.

It will be difficult to ascertain fixed, actual costs in the statutory presumptions found in Labor Code §§ 3212.1, 3212.6, 3212.8, 3212.9, and 3212.2. Unlike the tangible cost of updated fire equipment (see Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d 521) the "cost" of a presumption may vary widely depending on how a local government decides to administers its claims. Certainly, with any number of workers' compensation claims filed, a proportion will be readily accepted by an employer as valid. Likewise, a proportion will be denied and litigated. As to these claims, a statutory presumption will have no material affect.[6] However, it is assumed that the claims in the middle, where it cannot be said with a measure of assurance that the claim is valid, is where a presumption will have its greatest influence over whether the claim is ultimately accepted.

CSAC and the County of Tehama did not provide a basis for their estimation that the legislatively-imposed presumptions will cost at least $200.00 per claim. It is hoped that as

[5] In litigated claims, the claims administer will bear the burden of proof. This will likely result in an increase of litigation expenses in order to produce the requisite preponderance of evidence necessary to defend against the claim. CSEA and the County of Tehama offer no costs estimates of this evidentiary shifting.

the record develops further in these test claims, the Commission will require a reasonable estimation as to the "cost" of statutory presumptions.[6]

Based on the foregoing, the Division of Workers' Compensation does not find the presumptions set forth in Labor Code §§ 3232.1 (cancer), 3212.6 (tuberculosis), 3212.8 (hepatitis), 3212.9 (meningitis), and 3212.2 (lower back), to be reimbursable state mandates under Article XIII B, section 6 of the California Constitution.

I am an Industrial Relations Counsel with the Department of Industrial Relations, Division of Workers' Compensation. I declare under penalty of perjury that the foregoing response is true and correct of my own knowledge, except as to matters that are stated in it on my information and belief, and as to those matters I believe it to be true.

Dated: 8/7/02

George P. Parisotto
Industrial Relations Counsel
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[6] Other costs considerations should be considered. For example, would workers' compensation benefits provided for injuries defined under the Labor Code sections at issue offset other payments, such as state disability and/or retirement benefits.

Appendix – Labor Code Statutes

1. Labor Code 3212.1
Cancer Presumption for Law Enforcement and Firefighters

(a) This section applies to active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments: (1) a fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision, (2) a fire department of the University of California and the California State University, (3) the Department of Forestry and Fire Protection, and (4) a county forestry or firefighting department or unit. This section also applies to peace officers, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivisions (a) and (b) of Section 830.37, of the Penal Code, who are primarily engaged in active law enforcement activities.

(b) The term "injury," as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

(c) The compensation that is awarded for cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by 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. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(e) The amendments to this section enacted during the 1999 portion of the 1999-2000 Regular Session shall be applied to claims for benefits filed or pending on or after January 1, 1997, including, but not limited to, claims for benefits filed on or after that date that have previously been denied, or that are being appealed following denial.

2. Labor Code 3212.6
Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers

In the case of a member of a police department of a city or county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, or a prison or jail guard or correctional officer who is employed by a public agency, when that person is employed upon a regular, full-time salary, or in the case of members of fire departments of any city, county, or district, or other public or municipal corporations or political subdivisions, when those members are employed on a regular fully paid basis, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting and first-aid response services, or of any county forestry or firefighting department or unit, where those members are employed on a regular fully paid basis, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response service such as stenographers, telephone operators, and other officeworkers, the term "injury" includes tuberculosis that develops or manifests itself during a period while that member is in the service of that department or office. The compensation that is awarded for the tuberculosis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity. A public entity may require applicants for employment in firefighting positions who would be entitled to the benefits granted by this section to be tested for infection for tuberculosis.

3. Labor Code 3212.8
Hepatitis and Blood-Borne Illness Presumption for Law Enforcement and Firefighters

(a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or active firefighting services, such as stenographers, telephone operators, and other office workers, the term "injury" as used in this division, includes a blood-borne infectious disease when any part of the blood-borne infectious disease develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit. The compensation that is awarded for a blood-borne infectious disease shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

(b) The blood-borne infectious disease so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) The blood-borne infectious disease so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(d) For the purposes of this section, "blood-borne infectious disease" means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

4. Labor Code 3212.9
Meningitis Presumption for Law Enforcement and Firefighters

In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or a county probation officer, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, when that person is employed on a regular, full-time salary, or in the case of a member of a fire department of any city, county, or district, or other public or municipal corporation or political subdivision, or any county forestry or firefighting department or unit, when those members are employed on a regular full-time salary, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement or firefighting, such as stenographers, telephone operators, and other officeworkers, the term "injury" includes meningitis that develops or manifests itself during a period while that person is in the service of that department, office, or unit. The compensation that is awarded for the meningitis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

5. Labor Code 3213.2
Lower Back Injury Presumption for Law Enforcement

(a) In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a peace officer employed by the Department of the California Highway Patrol, or a peace officer employed by the University of California, who has been employed for at least five years as a peace officer on a regular, full-time salary and has been required to wear a duty belt as a condition of employment, the term "injury," as used in this division, includes lower back impairments. The compensation that is awarded for lower back impairments shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

(b) The lower back impairment so developing or manifesting itself in the peace officer shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) For purposes of this section, "duty belt" means a belt used for the purpose of holding a gun, handcuffs, baton, and other items related to law enforcement.

PROOF OF SERVICE BY MAIL

(FED.R.CIV.PROC., RULE 5; CAL. CODE CIV. PROC., §§ 1013A, 2015.5)

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

I declare that I am a citizen of the United States and that I am employed in the City and County of San Francisco of the State of California. I am over the age of 18 years and not a party to the within entitled action. My business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, California 94102. On August 7, 2002 I served the attached:

Response to Test Claims Nos. 01-TC-19, 01-TC-20, 01-TC-23, 01-TC-24 and 01-TC-25

on all interested parties by placing true copies thereof in sealed envelopes with postage thereon fully prepaid in the United States mail in San Francisco, California addressed as stated below:

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I am readily familiar with this office's practice of collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on the motion of the party served, service is presumed invalid if the postal cancellation date or postage meter is more than one day after the date of deposit for mailing in this affidavit.

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct, that I am employed in the office of a member of the bar of this court at whose direction this service was made, and that this declaration was executed at San Francisco, California on August 7, 2002.

Laura M. Zarry

EXHIBIT D

RESPONSE TO DEPARTMENT OF FINANCE AND DEPARTMENT OF INDUSTRIAL RELATIONS

On Original Test Claim
Chapter 490, Statutes of 2000 and Chapter 833, Statutes of 2001
Labor Code Section 3212.8
Claim no. CSM-01-TC-20

Hepatitis and Blood-Borne Illnesses Presumption for Law Enforcement and Firefighters

The following are comments and responses to the letters of the Department of Finance, dated August 1, 2002, and the Department of Industrial Relations, dated August 7, 2002, regarding the original test claim as submitted by CSAC-EIA and the County of Tehama.

A. Department of Finance's Comments

"As the result of our review, we have concluded that the statute may have resulted in a new state mandated program and cost on the claimant by establishing a presumption that hepatitis occurring during the employee's service period arose out of and in the course of employment. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program."

The Department of Finance has taken the position that a new state-mandated program may exist and thus is not in opposition to the position of the claimants.

B. Department of Industrial Relations Comments

1. The Department of Industrial Relations, in its consolidated response, makes a number of points to support its position that the hepatitis/blood borne illness presumption is not a new program:

a. Public entities can only recover costs from a new program or increased service in an existing program.

b. The statute in question creates a rebuttable presumption in furtherance of the public policy "to provide additional compensation benefits to certain public employees who provide vital and hazardous services." (Citing Zipton v. WCAB (1990) 218 Cal.App.3d 980, 987.)

c. Workers' Compensation benefits are not reimbursable state mandates unless they are "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 land." (Citing County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56.)

d. An increased cost in employee compensation is not an increased cost in providing services to the public. (Citing City of Richmond v. Commission on State Mandates (1998) 64 Cal.App.4th 1190, 1196 and City of Sacramento v. State of California (1990) 50 Cal.3d 51.)

e. The state does not have to provide workers' compensation benefits to employees of local government. By law, that responsibility lies with the employer. Thus the state did not shift a financial burden onto local government nor is the new presumption, a new program.

The Department properly stated the law regarding when a mandate is compensable and when it is not. Its application of law to the facts, however, is faulty. The Department filed a consolidated response to the five related test claims filed by the claimants. This presumption differs from the others because it is not an expansion of an already existing presumption. This presumption is newly created in Labor Code section 3213.8 and therefore is a new program. If the change, however, is seen as part of the workers' compensation program as a whole, then Labor Code section 3213.8 is not a new program but is, instead, a higher level of service within an existing program

The Department relies on several cases wherein a change in law created changes and increased costs to local government. In each case, the courts found against the existence of a reimbursable state mandate. Yet, these cases had something in common and can be distinguished from the statute in question. In County of Los Angeles, the challenge was made to a statute that increased workers' compensation benefits to all workers regardless of whether the employer was a public or private entity. Clearly, this is not a statute that imposes a unique requirement on local government. City of Sacramento also concerned changes made due to a federal law that extended mandatory unemployment insurance to state and local government and non-profit entities. Again, not a requirement unique to local government. Finally, City of Richmond eliminated an exception available only to local governments whereby safety members' surviving spouses would not be able to obtain double death benefits. Although this elimination of the exception created new costs for the city, it essentially placed the city in the same position as other employers. Therefore there was no reimbursable state mandate. In the instant case, however, the shift in the burden of proof is not a law of general application, applies uniquely to local government and does not place local government on equal footing with other employers.

The Department' reliance on County of Los Angeles for support of its proposition against reimbursement is misplaced. Indeed, the Department actually succeeds in supporting the claimant's position in favor of reimbursement through the analysis of County of Los Angeles read in combination with the prior case, Zipton. The Department states that workers' compensation benefits are only reimbursable if they involve "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 land." Looking to Zipton we find that state policy, which is "to provide additional compensation benefits to certain public employees who provide vital and hazardous services." This is a unique requirement on local governments who must now provide a higher level of service, in the

form of absorbing with increased workers compensation claims, for a unique group of employees that are not on par with all residents and entities in the land.

Moreover, this Commission has already found similar presumptions reimbursable. Chapter 1568, Statutes of 1982 added Labor Code §3212.1 creating a presumption of cancer in favor of firefighters only. A claim was filed with this Commission. *See* Firefighter's Cancer Presumption, SB 90-4081. The matter was resolved with a reimbursement rate of fifty per cent. Chapter 1171, Statutes of 1989, extended the presumption to peace officers. *See* Cancer Presumption, Peace Officers, CSM-4416. That matter resolved at the same reimbursement rate. This current claim involves a similar presumption as applied to a similar class of employees and should be found just as reimbursable.

2. The Department explains that the presumption only shifts the burden of proof and does not create new injuries that were not otherwise compensable. The example to illustrate the point is "a hepatitis infection contracted in the course of employment by a law enforcement officer is a compensable injury under the workers' compensation laws, regardless of Labor Code section 3212.8's presumption."

To paraphrase an old philosophical debate: If a man chops down a protected tree in a forest, and there is no one around to hear, will he be charged with a crime? What the Department has failed to understand is: The issue is one of proof. The disease is compensable if it arose during or in the course of employment. The whole question of compensability revolves around the issue of how the disease was contracted. Before the presumption, the employee had to prove the infection happened on the job. Now, the presumption created by Labor Code section 3212.8 places the employer in the position of having to prove that the infection did not happen on the job. This shift is monumental as it places the employer is the position of disproving a fact. The only way to rebut the presumptions is by tracking the employee's non-work hour movements and contacts for a several month period. This onerous burden creates compensable injuries that were not heretofore compensable.

3. The Department argues that employers in general have to pay workers' compensation benefits, not just local governments. Thus higher costs, if any, involved with a law of general application is not reimbursable.

Although some of the body of law that is workers' compensation are laws of general application, the presumption created by Labor Code section 3212.8 is not. It applies to a unique class of employees who are unique to local government. As explained above, the California Supreme Court in County of Los Angeles found an exception for reimbursement of certain workers' compensation programs. The statute in question fits squarely within that exception.

4. Finally, that Department states that if this program is reimbursable, the costs will be difficult to ascertain as they will not involve tangible costs like the purchase of new equipment.

The claimants are aware of the difficulties involved with ascertaining the amount of the reimbursable claim but are confident that such a number can and will be established. Indeed, there is precedence for establishing a reimbursement rate as noted above regarding the prior claims of the cancer presumptions.

CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 21st day of August, 2002, at Sacramento, California, by:

Gina Dean

Gina C. Dean,
Management Analyst
CSAC Excess Insurance Authority

CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 22th day of August, 2002, at Red Bluff, California, by:

Richard Robinson,
County Administrative Officer
County of Tehama

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On August 30, 2002, I served:

RESPONSE TO DEPARTMENT OF FINANCE AND DEPARTMENT OF INDUSTRIAL RELATIONS
On Original Test Claim
Chapter 490, Statutes of 2000 and Chapter 833, Statutes of 2001
Labor Code Section 3212.8
Claim no. CSM-01-TC-20

Hepatitis and Blood-Borne Illnesses Presumption for Law Enforcement and Firefighters

by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the Untied States mail at Sacramento, California, with postage thereon fully prepaid.

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 this 30th day of August, 2002, at Sacramento, California.

Declarant

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

Mr. William Ashby
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Glenn Hass, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
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Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
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Ms. Jennifer Osborn, Principal Program Budget Analyst
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915 L Street
Sacramento, CA 95814

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

Executive Director
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

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Commission on Peace Officers Standards and Training
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Ms. Carol Berg
Education Mandated Cost Network
1121 L Street; Suite 1060
Sacramento, CA 95814

Mr. Keith B. Peterson, President
Six Ten and Associates
5252 Balboa Avenue; Suite 807
San Diego, CA 92117

RESPONSE TO DEPARTMENT OF FINANCE AND DEPARTMENT OF INDUSTRIAL RELATIONS

On Original Test Claim
Chapter 683, Statutes of 1995 and Chapter 802, Statutes of 1996
Labor Code Section 3212.6
Claim no. CSM-01-TC-23

Tuberculosis Presumption for Firefighters, Jail Guards and Correctional Officers

The following are comments and responses to the letters of the Department of Finance, dated August 2, 2002, and the Department of Industrial Relations, dated August 7, 2002, regarding the original test claim as submitted by CSAC-EIA and the County of Tehama.

A. Department of Finance's Comments

"As the result of our review, we have concluded that the statute may have resulted in a new state mandated program and cost on the claimant by expanding the presumption that tuberculosis occurring during the employee's service period arose out of or in the course of employment. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program."

The Department of Finance has taken the position that a new state-mandated program may exist and thus is not in opposition to the position of the claimants.

B. Department of Industrial Relations Comments

1. The Department of Industrial Relations, in its consolidated response, makes a number of points to support its position that the TB presumption is not a new program:

a. Public entities can only recover costs from a new program or increased service in an existing program.

b. The statute in question creates a rebuttable presumption in furtherance of the public policy "to provide additional compensation benefits to certain public employees who provide vital and hazardous services." (Citing Zipton v. WCAB (1990) 218 Cal.App.3d 980, 987.)

c. Workers' Compensation benefits are not reimbursable state mandates unless they are "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 land." (Citing County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56.)

d. An increased cost in employee compensation is not an increased cost in providing services to the public. (Citing City of Richmond v. Commission on

State Mandates (1998) 64 Cal.App.4th 1190, 1196 and City of Sacramento v. State of California (1990) 50 Cal.3d 51.)

e. The state does not have to provide workers' compensation benefits to employees of local government. By law, that responsibility lies with the employer. Thus the state did not shift a financial burden onto local government nor is the new presumption, a new program.

The Department properly stated the law regarding when a mandate is compensable and when it is not. Its application of law to the facts, however, is faulty. The change in the burden of proof as set forth in Labor Code section 3212.6 is not a new program but is, instead, a higher level of service within an existing program.

The Department relies on several cases wherein a change in law created changes and increased costs to local government. In each case, the courts found against the existence of a reimbursable state mandate. Yet, these cases had something in common and can be distinguished from the statute in question. In County of Los Angeles, the challenge was made to a statute that increased workers' compensation benefits to all workers regardless of whether the employer was a public or private entity. Clearly, this is not a statute that imposes a unique requirement on local government. City of Sacramento also concerned changes made due to a federal law that extended mandatory unemployment insurance to state and local government and non-profit entities. Again, not a requirement unique to local government. Finally, City of Richmond eliminated an exception available only to local governments whereby safety members' surviving spouses would not be able to obtain double death benefits. Although this elimination of the exception created new costs for the city, it essentially placed the city in the same position as other employers. Therefore there was no reimbursable state mandate. In the instant case, however, the shift in the burden of proof is not a law of general application, applies uniquely to local government and does not place local government on equal footing with other employers.

The Department' reliance on County of Los Angeles for support of its proposition against reimbursement is misplaced. Indeed, the Department actually succeeds in supporting the claimant's position in favor of reimbursement through the analysis of County of Los Angeles read in combination with the prior case, Zipton. The Department states that workers' compensation benefits are only reimbursable if they involve "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 land." Looking to Zipton we find that state policy, which is "to provide additional compensation benefits to certain public employees who provide vital and hazardous services." This is a unique requirement on local governments who must now provide a higher level of service, in the form of absorbing with increased workers compensation claims, for a unique group of employees that are not on par with all residents and entities in the land.

Moreover, this Commission has already found similar presumptions reimbursable. Chapter 1568, Statutes of 1982 added Labor Code §3212.1 creating a presumption of cancer in favor of firefighters only. A claim was filed with this Commission. *See*

Firefighter's Cancer Presumption, SB 90-4081. The matter was resolved with a reimbursement rate of fifty per cent. Chapter 1171, Statutes of 1989, extended the presumption to peace officers. *See* Cancer Presumption, Peace Officers, CSM-4416. That matter resolved at the same reimbursement rate. This current claim involves a similar presumption as applied to a similar class of employees and should be found just as reimbursable.

2. The Department explains that the presumption only shifts the burden of proof and does not create new injuries that were not otherwise compensable. The example to illustrate the point is "a hepatitis infection contracted in the course of employment by a law enforcement officer is a compensable injury under the workers' compensation laws, regardless of Labor Code section 3212.8's presumption."

To paraphrase an old philosophical debate: If a man chops down a protected tree in a forest, and there is no one around to hear, will he be charged with a crime? What the Department has failed to understand is: The issue is one of proof. The disease is compensable if it arose during or in the course of employment. The whole question of compensability revolves around the issue of how the disease was contracted. Before the presumption, the employee had to prove the infection happened on the job. Now, the presumption created by Labor Code section 3212.6 places the employer in the position of having to prove that the infection did not happen on the job. This shift is monumental as it places the employer is the position of disproving a fact. The only way to rebut the presumptions is by tracking the employee's non-work hour movements and contacts for a several month period. This onerous burden creates compensable injuries that were not heretofore compensable.

3. The Department argues that employers in general have to pay workers' compensation benefits, not just local governments. Thus higher costs, if any, involved with a law of general application is not reimbursable.

Although some of the body of law that is workers' compensation are laws of general application, the presumption created by Labor Code section 3212.6 is not. It applies to a unique class of employees who are unique to local government. As explained above, the California Supreme Court in County of Los Angeles found an exception for reimbursement of certain workers' compensation programs. The statute in question fits squarely within that exception.

4. Finally, that Department states that if this program is reimbursable, the costs will be difficult to ascertain as they will not involve tangible costs like the purchase of new equipment.

The claimants are aware of the difficulties involved with ascertaining the amount of the reimbursable claim but are confident that such a number can and will be established. Indeed, there is precedence for establishing a reimbursement rate as noted above regarding the prior claims of the cancer presumptions.

CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 26th day of August, 2002, at Sacramento, California, by:

Gina Dean

Gina C. Dean,
Management Analyst
CSAC Excess Insurance Authority

CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 26th day of August, 2002, at Red Bluff, California, by:

Richard Robinson,
County Administrative Officer
County of Tehama

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On August 30, 2002, I served:

RESPONSE TO DEPARTMENT OF FINANCE AND DEPARTMENT OF INDUSTRIAL RELATIONS
On Original Test Claim
Chapter 683, Statutes of 1995 and Chapter 802, Statutes of 1996
Labor Code Section 3212.6
Claim no. CSM-01-TC-23

Tuberculosis Presumption for Firefighters, Jail Guards and Correctional Officers

by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the Untied States mail at Sacramento, California, with postage thereon fully prepaid.

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 this 30 day of August, 2002, at Sacramento, California.

Declarant

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

Mr. William Ashby
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
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Mr. Glenn Hass, Bureau Chief
State Controller's Office
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Sacramento, CA 95816

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Division of Audits
300 Capitol Mall, Suite 518
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Ms. Carol Berg
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RESPONSE TO DEPARTMENT OF FINANCE AND DEPARTMENT OF INDUSTRIAL RELATIONS

On Original Test Claim
Chapter 883, Statutes of 2000
Labor Code Section 3212.9
Claim no. CSM-01-TC-24

Meningitis Presumption for Law Enforcement and Firefighters

The following are comments and responses to the letters of the Department of Finance, dated July 31, 2002, and the Department of Industrial Relations, dated August 7, 2002, regarding the original test claim as submitted by CSAC-EIA and the County of Tehama.

A. Department of Finance's Comments

"As the result of our review, we have concluded that the statute may have resulted in a new state mandated program and cost on CSAC-EIA and the County of Tehama by establishing a presumption that meningitis occurring during the employee's service period arose out of and in the course of employment. This statute places the burden of proof on the local agencies rather than the individual who contracted the disease. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program."

The Department of Finance has taken the position that a new state-mandated program may exist and thus is not in opposition to the position of the claimants.

B. Department of Industrial Relations Comments

1. The Department of Industrial Relations, in its consolidated response, makes a number of points to support its position that the meningitis presumption is not a new program:

a. Public entities can only recover costs from a new program or increased service in an existing program.

b. The statute in question creates a rebuttable presumption in furtherance of the public policy "to provide additional compensation benefits to certain public employees who provide vital and hazardous services." (Citing Zipton v. WCAB (1990) 218 Cal.App.3d 980, 987.)

c. Workers' Compensation benefits are not reimbursable state mandates unless they are "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 land." (Citing County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56.)

d. An increased cost in employee compensation is not an increased cost in providing services to the public. (Citing City of Richmond v. Commission on State Mandates (1998) 64 Cal.App.4th 1190, 1196 and City of Sacramento v. State of California (1990) 50 Cal.3d 51.)

e. The state does not have to provide workers' compensation benefits to employees of local government. By law, that responsibility lies with the employer. Thus the state did not shift a financial burden onto local government nor is the new presumption, a new program.

The Department properly stated the law regarding when a mandate is compensable and when it is not. Its application of law to the facts, however, is faulty. The Department filed a consolidated response to the five related test claims filed by the claimants. This presumption differs from the others because it is not an expansion of an already existing presumption. This presumption is newly created in Labor Code section 3212.9 and therefore is a new program. If the change, however, is seen as part of the workers' compensation program as a whole, then Labor Code section 3212.9 is not a new program but is, instead, a higher level of service within an existing program.

The Department relies on several cases wherein a change in law created changes and increased costs to local government. In each case, the courts found against the existence of a reimbursable state mandate. Yet, these cases had something in common and can be distinguished from the statute in question. In County of Los Angeles, the challenge was made to a statute that increased workers' compensation benefits to all workers regardless of whether the employer was a public or private entity. Clearly, this is not a statute that imposes a unique requirement on local government. City of Sacramento also concerned changes made due to a federal law that extended mandatory unemployment insurance to state and local government and non-profit entities. Again, not a requirement unique to local government. Finally, City of Richmond eliminated an exception available only to local governments whereby safety members' surviving spouses would not be able to obtain double death benefits. Although this elimination of the exception created new costs for the city, it essentially placed the city in the same position as other employers. Therefore there was no reimbursable state mandate. In the instant case, however, the shift in the burden of proof is not a law of general application, applies uniquely to local government and does not place local government on equal footing with other employers.

The Department' reliance on County of Los Angeles for support of its proposition against reimbursement is misplaced. Indeed, the Department actually succeeds in supporting the claimant's position in favor of reimbursement through the analysis of County of Los Angeles read in combination with the prior case, Zipton. The Department states that workers' compensation benefits are only reimbursable if they involve "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 land." Looking to Zipton we find that state policy, which is "to provide additional compensation benefits to certain public employees who provide vital and hazardous services." This is a unique requirement on local governments who must now provide a higher level of service, in the

form of absorbing with increased workers compensation claims, for a unique group of employees that are not on par with all residents and entities in the land.

Moreover, this Commission has already found similar presumptions reimbursable. Chapter 1568, Statutes of 1982 added Labor Code §3212.1 creating a presumption of cancer in favor of firefighters only. A claim was filed with this Commission. *See* Firefighter's Cancer Presumption, SB 90-4081. The matter was resolved with a reimbursement rate of fifty per cent. Chapter 1171, Statutes of 1989, extended the presumption to peace officers. *See* Cancer Presumption, Peace Officers, CSM-4416. That matter resolved at the same reimbursement rate. This current claim involves a similar presumption as applied to a similar class of employees and should be found just as reimbursable.

2. The Department explains that the presumption only shifts the burden of proof and does not create new injuries that were not otherwise compensable. The example to illustrate the point is "a hepatitis infection contracted in the course of employment by a law enforcement officer is a compensable injury under the workers' compensation laws, regardless of Labor Code section 3212.8's presumption."

To paraphrase an old philosophical debate: If a man chops down a protected tree in a forest, and there is no one around to hear, will he be charged with a crime? What the Department has failed to understand is: The issue is one of proof. The disease is compensable if it arose during or in the course of employment. The whole question of compensability revolves around the issue of how the disease was contracted. Before the presumption, the employee had to prove the infection happened on the job. Now, the presumption created by Labor Code section 3212.9 places the employer in the position of having to prove that the infection did not happen on the job. This shift is monumental as it places the employer is the position of disproving a fact. The only way to rebut the presumptions is by tracking the employee's non-work hour movements and contacts for a several month period. This onerous burden creates compensable injuries that were not heretofore compensable.

3. The Department argues that employers in general have to pay workers' compensation benefits, not just local governments. Thus higher costs, if any, involved with a law of general application is not reimbursable.

Although some of the body of law that is workers' compensation are laws of general application, the presumption created by Labor Code section 3212.9 is not. It applies to a unique class of employees who are unique to local government. As explained above, the California Supreme Court in County of Los Angeles found an exception for reimbursement of certain workers' compensation programs. The statute in question fits squarely within that exception.

4. Finally, that Department states that if this program is reimbursable, the costs will be difficult to ascertain as they will not involve tangible costs like the purchase of new equipment.

The claimants are aware of the difficulties involved with ascertaining the amount of the reimbursable claim but are confident that such a number can and will be established. Indeed, there is precedence for establishing a reimbursement rate as noted above regarding the prior claims of the cancer presumptions.

CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 26th day of August, 2002, at Sacramento, California, by:

Gina Dean

Gina C. Dean,
Management Analyst
CSAC Excess Insurance Authority

CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 27th day of August, 2002, at Red Bluff, California, by:

Richard Robinson,
County Administrative Officer
County of Tehama

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On August 30, 2002, I served:

RESPONSE TO DEPARTMENT OF FINANCE AND DEPARTMENT OF INDUSTRIAL RELATIONS
On Original Test Claim
Chapter 883, Statutes of 2000
Labor Code Section 3212.9
Claim no. CSM-01-TC-24

Meningitis Presumption for Law Enforcement and Firefighters

by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the Untied States mail at Sacramento, California, with postage thereon fully prepaid.

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 this 30th day of August, 2002, at Sacramento, California.

Declarant

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Hearing Date: September 27, 2007
J:\MANDATES\2001\tc\01-tc-20\dsa.doc

ITEM ____

TEST CLAIM
DRAFT STAFF ANALYSIS

Labor Code Sections 3212.6, 3212.8, and 3212.9

Statutes 1995, Chapter 683
Statutes 1996, Chapter 802
Statutes 2000, Chapter 883
Statutes 2000, Chapter 490
Statutes 2001, Chapter 833

Presumption of Causation in Workers' Compensation Claims
(01-TC-20, 01-TC-23, 01-TC-24)

County of Tehama and California State Association of Counties-Excess Insurance Authority (CSAC-EIA), Claimants

EXECUTIVE SUMMARY

Background

This consolidated test claim addresses evidentiary presumptions in workers compensation cases given to certain members of police, sheriff's and fire departments and inspectors or investigators of a district attorney's office that develop tuberculosis, hepatitis and other blood-borne infectious diseases, or meningitis during employment.

The County of Tehama and CSAC-EIA, a joint powers authority formed by and for California counties for insurance and risk management purposes, filed the consolidated test claims, *Hepatitis and Blood-Borne Illnesses Presumption* (01-TC-20), *Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers* (01-TC-23), and *Meningitis Presumption for Law Enforcement and Firefighters* (01-TC-24), seeking reimbursement for costs incurred by CSAC-EIA and its member counties.

Generally, before an employer is liable for payment of workers' compensation benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury was proximately caused by the employment. The burden of proof is normally on the employee to show proximate cause by a preponderance of the evidence.

The Legislature eased the burden of proving industrial causation for certain public employees that provide vital and hazardous services by establishing a series of evidentiary presumptions for certain "injuries." Here, the test claim statutes, Labor Code sections 3212.6, 3212.8, and 3212.9, provide these evidentiary presumptions to certain employees of police, sheriff's and fire departments and inspectors or investigators of a district attorney's office that develop or manifest tuberculosis, hepatitis or other blood-borne infectious disease, or meningitis, during the period of employment. In these situations, the tuberculosis, hepatitis or other blood-borne infectious disease, or meningitis, is presumed to have arisen out of and in the course of the employment. If the local agency employer decides to dispute the claim, the burden of proving that the "injury" did not arise out of and in the course of employment is shifted to the employer.

Staff Analysis

Staff finds that CSAC-EIA has standing to pursue the test claim on behalf of its member counties, but does not have standing to claim reimbursement for its own costs. Under the principles of collateral estoppel, staff finds that the Second District Court of Appeal's unpublished decision on this issue in *CSAC Excess Insurance Authority v. Commission on State Mandates* (Dec. 22, 2006, B188169) is binding and applies in this case.

Staff further finds that the test claim statutes are not subject to article XIII B, section 6 of the California Constitution because they do not mandate new programs or higher levels of service on local agencies within the meaning of article XIII B, section 6. The express language of Labor Code sections 3212.6, 3212.8, and 3212.9, do not impose any state-mandated requirements on local agencies. Rather, the decision to dispute these types of workers' compensation claims and prove that the injury did not arise out of and in the course of employment remains entirely with the local agency. Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required for a statute to constitute a new program or higher level of service.

Conclusion

Staff concludes California State Association of Counties-Excess Insurance Authority does not have standing to claim reimbursement under article XIII B, section 6 of the California Constitution, on its own behalf for the costs it incurred as the insurer of its member counties. However, California State Association of Counties-Excess Insurance Authority does have standing to pursue test claims for reimbursement on behalf of its member counties.

Staff further concludes that Labor Code section 3212.6, as amended by Statutes 1995, chapter 683, and Statutes 1996, chapter 802; Labor Code section 3212.8, as added and amended by Statutes 2000, chapter 490 and Statutes 2001, chapter 833; and Labor Code section 3212.9, as added by Statutes 2000, chapter 883, are not subject to article XIII B, section 6 of the California Constitution because they do not mandate a new program or higher level of service on local agencies.

Recommendation

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

STAFF ANALYSIS

Claimants

County of Tehama and California State Association of Counties-Excess Insurance Authority (CSAC-EIA)

Chronology

06/28/02	Co-claimants, County of Tehama and CSAC-EIA, file test claims, *Hepatitis and Blood-Borne Illnesses Presumption* (01-TC-20), *Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers* (01-TC-23), and *Meningitis Presumption for Law Enforcement and Firefighters* (01-TC-24), with the Commission on State Mandates (Commission)
07/05/02	Commission staff issues completeness letters on 01-TC-20, 01-TC-23, and 01-TC-24
07/31/02	The Department of Finance (Finance) files comments on 01-TC-24
08/01/02	Finance files comments on 01-TC-20
08/02/02	Finance files comments on 01-TC-23
08/07/02	Department of Industrial Relations (DIR) files consolidated comments on 01-TC-20, 01-TC-23, and 01-TC-24
08/30/02	Co-claimants file individual responses on 01-TC-20, 01-TC-23, and 01-TC-24 to comments by DIR and Finance
07/15/04	Commission staff issues individual requests for additional information from CSAC-EIA on 01-TC-20, 01-TC-23, and 01-TC-24
08/05/04	CSAC-EIA files individual responses to Commission staff requests for additional information on 01-TC-20, 01-TC-23, and 01-TC-24
06/20/07	Commission's Executive Director consolidates the three test claims based on common issues, allegations and statutes
08/02/07	Commission staff issues draft staff analysis on consolidated test claim

Background

This consolidated test claim addresses evidentiary presumptions in workers compensation cases given to certain members of police, sheriff's and fire departments and inspectors or investigators of a district attorney's office that develop tuberculosis, hepatitis and other blood-borne infectious diseases, or meningitis during employment.

The County of Tehama and CSAC-EIA, a joint powers authority formed by and for California counties for insurance and risk management purposes, filed the consolidated test claims, *Hepatitis and Blood-Borne Illnesses Presumption* (01-TC-20), *Tuberculosis Presumption for Firefighters, Jail Guards, and Correctional Officers* (01-TC-23), and *Meningitis Presumption for Law Enforcement and Firefighters* (01-TC-24), seeking reimbursement for costs incurred by CSAC-EIA and its member counties.

In the usual workers' compensation case, before an employer can be held liable for benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury is proximately caused by the employment.[1] Although the workers' compensation law must be "liberally construed" in favor of the injured employee, the burden is normally on the employee to show proximate cause by a preponderance of the evidence.[2] If liability is established, the employee is entitled to compensation for the full hospital, surgical, and medical treatment, disability indemnity, and death benefits, as defined and calculated by the Labor Code.[3]

As early as 1937, the Legislature began to ease the burden of proof for purposes of liability for certain public employees that provide "vital and hazardous services" by establishing a presumption of industrial causation; that the injury arose out of and in the course of employment.[4] The presumptions have the effect of shifting to the employer the burden of proof as to the nonexistence of the presumed fact. Thus, the employer has the burden to prove that the employee's injury did not arise out of or in the course of employment.[5]

Labor Code section 3208, which was last amended in 1971, defines "injury" for purposes of workers' compensation as "any injury or disease arising out of the employment." As described below, this definition of "injury" includes tuberculosis, hepatitis, and meningitis.

Test Claim Statutes

Labor Code section 3212.6 provided that "injury" includes tuberculosis for purposes of workers' compensation claims brought by certain members of police and sheriff's departments and inspectors or investigators of a district attorney's office, when the tuberculosis develops or manifests itself during a period that the member is in service with his/her department or office. In addition, the tuberculosis shall be presumed to arise out of and in the course of employment, if the tuberculosis develops or manifests itself during a period while these employees are in service of that department or office.[6] This presumption may be rebutted.[7] In 1995, Labor Code section 3212.6 was amended to extend this rebuttable presumption of industrial causation to certain members of fire departments.[8] In 1996, Labor Code section 3212.6, was amended again to extend the rebuttable presumption of industrial causation of tuberculosis to prison and jail guards, and correctional officers employed by a public agency.[9]

Labor Code section 3212.8 was added in 2000, and provides that, for the purposes of workers' compensation, "injury" includes hepatitis for certain members of police, sheriff's, and fire

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[1] Labor Code section 3600, subdivisions (a)(2) and (3).

[2] Labor Code sections 3202, 3202.5.

[3] Labor Code sections 4451, et seq.

[4] *Zipton v. Workers' Comp. Appeals* Bd. (1990) 218 Cal.App.3d 980, 987.

[5] *Id.* at page 988, footnote 4.

[6] Statutes 1976, chapter 466, section 6.

[7] *Ibid.*

[8] Statutes 1995, chapter 683.

[9] Statutes 1996, chapter 802.

departments when any part of the hepatitis develops or manifests itself during the period of employment. In such cases the hepatitis shall be presumed to arise out of and in the course of employment.[10] This presumption may be rebutted, however, the employer cannot attribute the hepatitis to any disease existing prior to its development or manifestation.[11] In 2001, Labor Code section 3212.8 was amended by replacing "hepatitis" with "blood-borne infectious disease," and thus, providing a rebuttable presumption for more blood related "injuries."[12]

Labor Code section 3212.9 was added in 2000, and provides that, for the purposes of workers' compensation, "injury" includes meningitis for certain members of police, sheriff's and fire departments and inspectors or investigators of a district attorney's office, when the meningitis develops or manifests itself during the period of employment.[13] In such cases, the meningitis shall be presumed to arise out of and in the course of employment.[14] As with Labor Code sections 3212.6 and 3212.8, the presumption created by Labor Code section 3212.9 is rebuttable.

All test claim statutes provide that the compensation which is awarded for tuberculosis/hepatitis and blood-borne infectious disease/meningitis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by California workers' compensation laws.

Related Test Claims and Litigation

Although not having precedential effect, the Second District Court of Appeal, in an unpublished decision for *CSAC Excess Insurance Authority v. Commission on State Mandates*, Case No. B188169, upheld the Commission's decisions to deny related test claims entitled *Cancer Presumption for Law Enforcement and Firefighters* (01-TC-19), *Lower Back Injury Presumption for Law Enforcement* (01-TC-25), and *Skin Cancer Presumption for Lifeguards* (01-TC-27), which addressed issues identical to those raised in the current consolidated test claim.

In the test claim entitled *Cancer Presumption for Law Enforcement and Firefighters*, CSAC-EIA and the County of Tehama alleged that Labor Code section 3212.1, as amended by Statutes 1999, chapter 595, and Statutes 2000, chapter 887, imposed state-mandated costs for which reimbursement is required under article XIII B, section 6. Under the 1999 amendment to section 3212.1, the employee need only show that he or she was exposed to a known carcinogen while in the service of the employer. The employer still has the right to dispute the employee's claim as it did under prior law. But when disputing the claim, the burden of proving that the carcinogen is not reasonably linked to the cancer is shifted to the employer. The 2000 amendment to Labor Code section 3212.1 extended the cancer presumption to peace officers defined in Penal Code section 830.37, subdivisions (a) and (b); peace officers that are members of an arson-investigating unit or are otherwise employed to enforce the laws relating to fire prevention or fire suppression.

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[10] Statutes 2000, chapter 490.

[11] *Ibid.*

[12] Statutes 2001, chapter 833.

[13] Statutes 2000, chapter 883.

[14] *Ibid.*

In the test claim entitled *Lower Back Injury Presumption for Law Enforcement*, CSAC-EIA and the County of Tehama alleged that Labor Code section 3213.2, as added by Statutes 2001, chapter 834, imposes a reimbursable state-mandated program. Labor Code section 3213.2 provides a rebuttable presumption of industrial causation to certain publicly employed peace officers who wear a duty belt as a condition of employment and, either during or within a specified period after termination of service, suffer a lower back injury.

In the test claim entitled *Skin Cancer Presumption for Lifeguards*, the City of Newport Beach alleged that Labor Code section 3212.11, as added by Statutes 2001, chapter 846, imposes a reimbursable state-mandated program. Labor Code section 3212.11 provides a rebuttable presumption of industrial causation to certain publicly employed lifeguards who develop skin cancer during or immediately following their employment.

The Commission denied each test claim finding that pursuant to existing case law interpreting article XIII B, section 6, the statutes do not mandate new programs or higher levels of service on local agencies.[15]

On December 22, 2006, the Second District Court of Appeal issued its unpublished decision in *CSAC Excess Insurance Authority v. Commission on State Mandates*, affirming the Commission's decision that the 1999, 2000, 2001 additions and amendments to Labor Code section 3212.1, 3212.11, and 3213.2, do not constitute reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[16] Final judgment in the case was entered on May 22, 2007.[17] In its decision affirming the Commission's finding that the test claim statutes did not constitute reimbursable state-mandated programs, the Second District Court of Appeal found:

- CSAC EIA did not have standing as a claimant under article XIII B, section 6, in its own right, but did have standing to seek reimbursement on behalf of its member counties.
- Workers' compensation is not a program administered by local governments, as a result, the test claim 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 claim statutes' presumptions will impose increased workers' compensation costs solely on local entities.
- Costs alone do not 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. The service provided by the counties represented by CSAC-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.

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[15] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (*Kern High School Dist.*); *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

[16] Exhibit E, Supporting Documentation, *CSAC Excess Insurance Authority v. Commission on State Mandates*, Second District Court of Appeal, Case No. B188169 (Unpubl. Opn.).

[17] Exhibit E, Supporting Documentation, Judgment.

Claimant's Position

Co-claimants, County of Tehama and CSAC-EIA, contend 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.

Co-claimants assert that Labor Code sections 3212.6, 3212.8, and 3212.9, create and/or expand compensable injuries under workers' compensation, provide presumptions of industrial causation, and restrict arguments to rebut those presumptions.

Co-claimants conclude in each test claim:

> The net effect of this legislation is to cause an increase in workers' compensation claims for [tuberculosis/hepatitis and blood-borne infectious diseases/meningitis], and decrease the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the total costs of these claims, from initial presentation to ultimate resolution are reimbursable.

Department of Finance's (Finance) Position

The Department of Finance filed comments on July 31, 2002, August 1, 2002, and August 2, 2002, concluding that the test claim statutes may create a reimbursable state-mandated program.[18]

Department of Industrial Relations (DIR) Position

The DIR contends that the test claim statutes are not reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution. The DIR asserts that the presumption of industrial causation available for certain members of police, sheriff's and fire departments and inspectors or investigators of a district attorney's office does not result in a new program or higher level of service for the following reasons:

1. Local governments are not required to accept all workers' compensation claims. They have the option to rebut any claim before the Workers' Compensation Appeals Board by presenting a preponderance of evidence showing the non-existence of industrial causation.
2. Statutes mandating a higher level of compensation to local government employees, such as workers' compensation benefits, are not "new programs" whose costs would be subject to reimbursement under article XIII B, section 6.
3. There is no shift of a financial burden from the State to local governments because local governments, by statute, have always been solely liable for providing workers' compensation benefits to their employees.[19]

[18] Exhibit B.

[19] Exhibit C.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[20] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[21] "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."[22] 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.[23] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[24]

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.[25] 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.[26] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[27]

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[20] California Constitution, 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."

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

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

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

[24] *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*).

[25] *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 (*Los Angeles I*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

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

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

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[28]

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.[29] 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."[30]

Issue 1: Does CSAC-EIA have standing as a claimant in its own right and/or as a representative seeking reimbursement on behalf of its member counties for this consolidated test claim?

In the *CSAC Excess Insurance Authority* case, the Second District Court of Appeal held that CSAC-EIA did not have standing as a claimant in its own right under article XIII B, section 6. The court reasoned that CSAC-EIA, as a joint powers authority, does not constitute a "local agency" or "special district" as defined by Government Code sections 17518 and 17520, and therefore, is not eligible to claim reimbursement of costs under article XIII B, section 6. The court also held that CSAC-EIA did have standing to seek reimbursement on behalf of its member counties. The court reasoned that because the joint powers agreement expressly authorized CSAC-EIA to exercise all of the powers common to counties in California, to do all acts necessary for the exercise of those powers, and to sue and be sued in its own name, the joint powers agreement authorized CSAC-EIA to bring 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.

As an unpublished opinion, the *CSAC Excess Insurance Authority* decision of the Second District Court of Appeal may not be cited as a binding precedential decision in this staff analysis unless it is relevant under the doctrine of collateral estoppel.[31] Collateral estoppel precludes a party from re-litigating the matters previously litigated and determined in a prior proceeding and makes the decision on the matter in the prior proceeding binding in the subsequent matter. In order for collateral estoppel to apply, the following elements must be satisfied: (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.[32] For the reasons below, staff finds that the elements of collateral estoppel are

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[28] *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.

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

[30] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[31] California Rules of Court, Rule 8.1115.

[32] *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

satisfied in this case. Thus, the court's holding in *CSAC Excess Insurance Authority*, that CSAC-EIA *does not* have standing to pursue the claims on its own behalf for the costs it incurred as the insurer of the member counties *and* that CSAC-EIA *does* have standing to pursue the claims on behalf of its member counties, is binding and applies to this staff analysis.

For purposes of collateral estoppel, issues are identical when the factual allegations at issue in the previous and current proceeding are the same.[33] The issue presented in here is the same issue in the *CSAC-Excess Insurance Authority* case; whether CSAC-EIA has standing to pursue the claims on its own behalf for the costs it incurred as the insurer of its member counties and/or pursue test claims on behalf of its member counties. On May 22, 2007, the *CSAC Excess Insurance Authority* case terminated with a final judgment on the merits. Furthermore, CSAC-EIA is a party involved in both the *CSAC Excess Insurance Authority* case and the consolidated test claim at issue here. Moreover, the parties in the *CSAC Excess Insurance Authority* case, specifically CSAC-EIA, had a full and fair opportunity to litigate the standing issue before the court. Thus, staff finds that the court's holding in *CSAC Excess Insurance Authority* applies to *Presumption of Causation in Workers' Compensation Claims* (01-TC-20, 01-TC-23, and 01-TC-24), the consolidated test claim at issue here.

Staff concludes CSAC-EIA does not have standing as a claimant in its own right, however, CSAC-EIA does have standing as a representative seeing reimbursement on behalf of its member counties for this consolidated test claim.

Issue 2: Do Labor Code sections 3212.6, 3212.8, and 3212.9, as added and amended in 1995, 1996, 2000, and 2001, constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution?

The case law is clear that even though a statute is addressed only to local government and imposes new costs on them, the statute may not constitute a reimbursable state-mandated program under article XIII B, section 6.[34] It is well-established that local agencies are not entitled to reimbursement for all increased costs, but only those resulting from a new program or higher level of service mandated by the state.[35] The costs identified by claimant for the test claim statutes are the total costs of tuberculosis, hepatitis and blood-borne infectious diseases, and meningitis claims, from initial presentation to ultimate resolution.

However, Labor Code sections 3212.6, 3212.8, and 3212.9, as added and amended in 1995, 1996, 2000, and 2001,[36] do not mandate local agencies to incur these costs. The statute simply *creates* the presumptions of industrial causation for the employee, but does not require a local agency to provide a new or additional service to the public. The relevant language in Labor

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[33] *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342.

[34] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1190; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197.

[35] *Kern High School Dist., supra,* 30 Cal.4th 727, 735-736.

[36] Labor Code section 3212.6, amended by Statutes 1995, chapter 638, and Statutes 1996, chapter 802, Labor Code section 3212.8, added and amended by Statutes 2000, chapter 490, and Statutes 2001, chapter 833, and Labor code section 3212.9, added by Statutes 2000, chapter 883.

Code sections 3212.6, 3212.8, and 3212.9, as they existed following 1996, 2001, and 2000, respectively, state that:

> The [tuberculosis/blood-borne infectious disease/meningitis] so developing or manifesting itself [in those cases] shall be presumed to arise out of and in the course of the employment [or service]. This presumption is disputable and *may* be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a [person] following termination of service for a period of three calendar months for each full year of [the requisite] service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity. (Emphasis added.)

These statutes authorize, but do not require, local agencies to dispute the claims of injured employees. Thus, it is the decision made by the local agency to dispute the claim that triggers any litigation costs incurred. Litigation costs are not mandated by the state.[37]

In addition, the Labor Code sections 3212.6, 3212.8, and 3212.9, on their face, do not mandate local agencies to pay workers' compensation benefits to injured employees. Even if the statute required the payment of increased benefits, the payment of benefits to employees would still have to constitute a new program or higher level of service. Local agencies, however, have had the responsibility to pay workers' compensation benefits for "any injury or disease arising out of employment" since 1971.[38] Labor Code section 4850 has further provided special compensation benefits to injured peace officers and firefighters since 1983, well before the enactment of the test claim statutes. Thus, the payment of employee benefits is not new and has not been shifted to local agencies from the state.

Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required for a statute to constitute a new program or higher level of service.[39] Rather, the California Supreme Court and other courts of appeal have determined that the following programs required under law are not administered by local agencies to provide a service to the public and, thus, reimbursement under article XIII B, section 6 of the California Constitution is not required: providing workers' compensation benefits to public employees; providing unemployment compensation protection to public employees; increasing Public Employment Retirement System (PERS) benefits to retired public employees; and paying death benefits to local safety officers under the PERS and workers' compensation systems.[40]

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[37] *Kern High School Dist., supra*, 30 Cal.4th 727, 742-743. Furthermore, there is no evidence that counties and cities are practically compelled to dispute the claims. The statutes do not impose a substantial penalty for not disputing the claim. (*Kern High School Dist., supra*, 30 Cal.4th at p. 751.)

[38] Labor Code section 3208, as last amended in 1971.

[39] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 877.

[40] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57; *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484; *City of Sacramento v. State of California*

More specifically within the context of workers' compensation, the Supreme Court decided *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, and, for the first time, defined a "new program or higher level of service" pursuant to article XIII B, section 6. Counties were seeking the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits to their employees as private individuals or organizations. The Supreme Court recognized that workers' compensation is not a new program and, thus, determined whether the legislation imposed a higher level of service on local agencies.[41] Although the Court defined a "program" to include "laws which, to implement a state policy, impose unique requirements on local governments," the Court emphasized that a new program or higher level of service requires "state mandated increases in the services provided by local agencies in existing programs."

> Looking at the language of article XIII B, 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."*[42]

The Court continued:

> The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility *for providing services which the state believed should be extended to the public.*[43]

Applying these principles, the Court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required by the California Constitution. The Court stated the following:

> 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 ... Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the

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(1990) 50 Cal.3d 51, 67; and *City of Richmond v. Commission on State Mandates, supra,* 64 Cal.App.4th 1190, 1195.

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

[42] *Ibid,* emphasis added.

[43] *Id.* at pages 56-57, emphasis added.

> 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.[44]

In 2004, the California Supreme Court, in *San Diego Unified School Dist.*, reaffirmed the conclusion that simply because a statute, which establishes a public employee benefit program, may increase the costs to the employer, the statute does not "in any tangible manner increase the level of service provided by those employers to the public" within the meaning of article XIII B, section 6.[45]

These principles apply even though the presumption is granted uniquely to public safety employees. In the Second District Court of Appeal case of *City of Anaheim*, the city sought reimbursement for costs incurred as a result of a statute that temporarily increased retirement benefits to public employees. The city argued 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 and entities."[46] The court held that reimbursement was not required because the statute did not impose any state-mandated activities on the city and the PERS program is not a program administered by local agencies as a service to the public.[47] The court reasoned as follows:

> Moreover, the goals of article XIII B of the California Constitution "were to protect residents from excessive taxation and government spending ... and preclude 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.[48]

The reasoning in *City of Anaheim* applies here. Simply because a statute applies uniquely to local government does not mean that reimbursement is required under article XIII B, section 6.[49]

Accordingly, staff finds that Labor Code section 3212.6, as amended in 1995 and 1996; Labor Code section 3212.8, as added and amended in 2000 and 2001; and Labor Code section 3212.9, as added in 2000, do not mandate new programs or higher levels of service and, thus, do not constitute reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.

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[44] *Id.* at pages 57-58, fn. omitted.

[45] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 875.

[46] *City of Anaheim, supra*, 189 Cal.App.3d at pp. 1483-1484.

[47] *Id.* at page 1484.

[48] *Ibid.*

[49] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 877, fn. 12; *County of Los Angeles, supra*, 110 Cal.App.4th at page 1190; *City of Richmond, supra*, 64 Cal.App.4th at page 1197.

Conclusion

Staff concludes California State Association of Counties-Excess Insurance Authority does not have standing to claim reimbursement under article XIII B, section 6 of the California Constitution, on its own behalf for the costs it incurred as the insurer of its member counties. However, California State Association of Counties-Excess Insurance Authority does have standing to pursue test claims for reimbursement on behalf of its member counties.

Staff further concludes that Labor Code section 3212.6, as amended by Statutes 1995, chapter 683, and Statutes 1996, chapter 802; Labor Code section 3212.8, as added and amended by Statutes 2000, chapter 490 and Statutes 2001, chapter 833; and Labor Code section 3212.9, as added by Statutes 2000, chapter 883, are not subject to article XIII B, section 6 of the California Constitution because they do not mandate a new program or higher level of service on local agencies.

Recommendation

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

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CSAC EXCESS INSURANCE AUTHORITY et al., Plaintiffs and Respondents, v. COMMISSION ON STATE MANDATES, Defendant and Appellant; CALIFORNIA DEPARTMENT OF FINANCE, Intervener and Appellant.	B188169 (Los Angeles County Super. Ct. Nos. BS092146 & BS095456)

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.

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)),[1] 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.

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

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[1] All further undesignated statutory references are to the Labor Code.

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."

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.)

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.)

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."[2]

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,

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[2] 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.

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. . . ."

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.)

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.)

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.

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.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

WILLHITE, Acting P.J.

MANELLA, J.

EXHIBIT E

ORIGINAL FILED

MAY 22 2007

LOS ANGELES SUPERIOR COURT

CAMILLE SHELTON (Bar No. 166945)
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Attorneys for Respondent
Commission on State Mandates

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CSAC EXCESS INSURANCE AUTHORITY, a public agency, and CITY OF NEWPORT BEACH, a municipality,

Petitioners,

v.

COMMISSION ON STATE MANDATES, STATE OF CALIFORNIA; DOES 1 THROUGH 10, inclusive,

Respondents.

CALIFORNIA DEPARTMENT OF FINANCE,

Respondent in Intervention,

v.

CSAC EXCESS INSURANCE AUTHORITY, a public agency,

Petitioner.

Case No.: BS092146
[Consolidated with Case No. BS095456]

~~[PROPOSED]~~ JUDGMENT DENYING PETITIONS FOR WRIT OF MANDATE

Judge: Honorable David P. Yaffe

Pursuant to the opinion of the Second District Court of Appeal in this proceeding,

IT IS ORDERED, ADJUDGED AND DECREED:

1. That Petitioner CSAC Excess Insurance Authority has standing to file test claims and sue on behalf of their member counties;

2. That the Petitions for Writ of Mandate are denied;

3. That the portions of the administrative rulings of the Commission on State Mandates denying the test claims that are the subject of this litigation are reinstated; and

4. That each party is to bear their own costs.

Dated: MAY 22 2007

DAVID P. YAFFE

DAVID P. YAFFE, Judge
Los Angeles County Superior Court

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR
ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

August 23, 2007

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

Dear Ms. Higashi:

As requested in your August 1, 2007 letter, the Department of Finance (Finance) has reviewed the draft staff analysis of the consolidated test claims 01-TC-20, 01-TC-23, and 01-TC-24, "Presumption of Causation in the Worker's Compensation Claims."

Finance concurs with the staff recommendation, which is consistent with the appellate court's unpublished decision in *CSAC Excess Insurance Authority v. Commission on State Mandates (B188169)*. The test claims should be denied because they do not create a new program or a higher level of service on a local government within the meaning of Section 6 of Article XIII B of the California Constitution. There may be increased costs for processing workers' compensation presumption claims, but the costs are not associated with a local government's functions of providing services to the public. The costs are internal employer-employee related issues, which are not state mandated reimbursable costs. Further, the California State Association of Counties-Excess Insurance Authority, a joint powers authority, does not have the legal authority to claim reimbursement for its own costs.

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 August 1, 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.

Thomas E. Dithridge
Program Budget Manager

Attachments

Attachment A

DECLARATION OF CASTAÑEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-20, CSM-01-TC-23, CSM-01-TC-24

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.

August 23, 2007
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Presumption of Causation in Workers' Compensation Claims
Test Claim Number: CSM-01-TC-20, CSM-01-TC-23, CSM-01-TC-24

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 August 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:

B-08
Ms. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
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Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd, Suite 2000
Sacramento, CA 95841

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

A-15
Ms. Carla Castañeda
Department of Finance
915 L Street, Suite 12th Floor
Sacramento, CA 95814

Mr. Glen Everroad
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Newport Beach, CA 92659

A-15
Ms. Susan Geanacou
Department of Finance
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Ms. Juliana Gmur
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Clovis, CA 93611

A-16
Ms. Paula Higashi
Executive Director
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Rancho Cucamonga, CA 91730

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County of Los Angeles
Auditor-Controller's Office
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Mr. Robert Miyashiro
Education Mandated Cost Network
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Sacramento, CA 95814

Mr. Mark Sigman
Riverside County Sheriff's Office
4095 Lemon Street
P.O. Box 512
Riverside, CA 92502

B-08
Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
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Ms. Bonnie Ter Keurst
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Executive Director
California Peace Officers' Association
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Mr. Tom McMains
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1455 Response Road Suite 190
Sacramento, CA 95814

Director
Department of Industrial Relations
770 L Street
Sacramento, CA 95814

A-15
Ms. Jeannie Oropeza
Department of Finance
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

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 August 23, 2007, at Sacramento, California.

Ann Slaughter