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October 11, 2006

Ms. Nancy Gust
County of Sacramento
711 G Street
Sacramento, CA 95814

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

RE: Final Staff Analysis, Proposed Statement of Decision, and Hearing Date
Racial Profiling: Law Enforcement Training (01-TC-01)
County of Sacramento, Claimant
Penal Code Section 13519.4
Statutes 2000, Chapter 684

Dear Ms. Gust:

The final staff analysis and proposed statement of decision for this test claim are complete and enclosed for your review.

Hearing

The test claim and proposed statement of decision are set for hearing on **Thursday, October 26, 2006, at 9:30 a.m.** in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

PAULA HIGASHI
Executive Director

Enc. Final Staff Analysis and Proposed Statement of Decision

MAILED: Mail List FAXED: _____
DATE: 10/11/06 INITIAL: LD
CHRON: _____ FILE: ✓
WORKING BINDER: _____

ITEM 4

TEST CLAIM
FINAL STAFF ANALYSIS

Penal Code Section 13519.4

Statutes 2000, Chapter 684

Racial Profiling: Law Enforcement Training
(01-TC-01)

County of Sacramento, Claimant

EXECUTIVE SUMMARY

Background

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by the Commission on Peace Officer Standards and Training ("POST").

Law enforcement officers are required to take a basic training course prior to exercising their duties as peace officers, and must subsequently complete 24 hours of continuing professional training every two years. The test claim statute, as interpreted by POST, required a five-hour initial racial profiling training course and a two-hour refresher course every five years. Both of these courses can be certified by POST to allow local agencies to apply the training hours towards the 24-hour continuing professional training requirement. Since POST can certify a course retroactively, it is possible for racial profiling courses that were developed and presented prior to the time POST developed its curriculum to be certified to meet the requirements of the test claim statute.

The test claim presents the following issues:

- Is the test claim statute subject to article XIII B, section 6 of the California Constitution?
- Does the test claim statute impose a "new program or higher level of service" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim statute impose "costs mandated by the state" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

The Test Claim Statute Imposes a Partially Reimbursable State-Mandated Program on Local Agencies

Because the initial five-hour racial profiling training was incorporated into the basic training course for law enforcement officers as of January 1, 2004, and there is no state mandate for local agencies to provide basic training to new recruits, the initial five-hour training can only

be required of incumbent officers who completed basic training on or before January 1, 2004. The activity is a mandate on the local agency because the Fair Labor Standards Act requires employers to compensate their employees for work-related mandatory training when such training occurs during the employees' regular working hours. Additionally, a Memorandum of Understanding between the employer and employee organization, in effect as of January 1, 2001, can require the employer to compensate the employee for work-related mandatory training when it occurs outside the employee's regular working hours.

However, the test claim statute imposes costs mandated by the state *only* to the extent that attending the initial five-hour racial profiling training course causes the officer to exceed his or her 24-hour continuing education requirement, when the two-year cycle that included the initial five-hour racial profiling course occurs between January 1, 2002 and July 2004, and the continuing education for that cycle was attended *prior to* the initial racial profiling course.

The two-hour racial profiling refresher course does not impose costs mandated by the state since that course is only required every five years, beginning after the initial course is provided, and officers can readily incorporate the two-hour course into their 24-hour, two-year continuing education requirement.

Conclusion

Staff concludes that Penal Code section 13519.4, subdivision (f), which mandates the five-hour initial racial profiling training, imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for up to five hours of initial racial profiling training under the following conditions:

1. the training is provided to incumbent law enforcement officers who completed basic training on or before January 1, 2004;
2. the training is certified by POST;
3. the training is attended during the officer's regular work hours, or training is attended outside the officer's regular work hours *and* there is an obligation imposed by an MOU existing on January 1, 2001, which requires that the local agency pay for continuing education training; and
4. the training causes the officer to exceed his or her 24-hour continuing education requirement, when the two-year continuing education cycle that included the initial five-hour racial profiling training occurs between January 1, 2002 and July 2004, and the continuing education for that cycle was attended *prior to* the initial racial profiling course.

Staff further concludes that Penal Code section 13519.5, subdivision (i), which mandates the two-hour refresher racial profiling training, does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, because it does not impose "costs mandated by the state."

Recommendation

Staff recommends the Commission adopt this analysis and partially approve this test claim.

STAFF ANALYSIS

Claimant

County of Sacramento

Chronology

08/13/01	County of Sacramento filed test claim with the Commission on State Mandates (Commission)
09/14/01	The Department of Finance (DOF) submitted comments on test claim with the Commission
09/24/01	POST filed comments on test claim with the Commission
06/18/02	County of Sacramento filed reply to DOF comments
08/03/05	Commission staff requested additional comments on test claim from POST
08/10/05	POST filed additional requested comments on test claim with the Commission
08/16/06	Commission staff issued draft staff analysis
09/05/06	DOF submitted comments to the Commission
10/13/06	Commission staff issued final staff analysis

Background

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling, as defined, and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by POST.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.[1] The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.[2] Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.[3]

In enacting the test claim statute (Stats. 2000, ch. 684), the Legislature found that racial profiling[4] is a practice that presents a great danger to the fundamental principles of a democratic society, is abhorrent and cannot be tolerated.[5] The Legislature further found that

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[1] Penal Code section 13500 et seq.

[2] *About California POST*, <http://www.POST.ca.gov>

[3] Penal Code sections 13522 and 13523.

[4] Racial profiling is defined as "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." (Pen. Code § 13519.4, subd. (d), as enacted in Stats. 2000, ch. 684.)

[5] Penal Code section 13519.4, subdivision (c)(1) (as enacted in Stats. 2000, ch. 684).

motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.[6]

The test claim statute required every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002.[7] The training shall be prescribed and certified by POST, in collaboration with a five-person panel appointed by the Governor, Senate Rules Committee and Speaker of the Assembly.[8]

Once the initial training on racial profiling is completed, each law enforcement officer in California, as described in subdivision (a) of Penal Code section 13510, who adheres to the standards approved by POST, is required to complete a two-hour refresher course every five years thereafter, or on a more frequent basis if deemed necessary.[9]

POST developed a five-hour approved curriculum to meet the initial training required by Penal Code section 13519.4, subdivision (f). The curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency, who must complete a Racial Profiling Train-the-Trainer Course prior to facilitating the training. That course is given on an ongoing basis by the Museum of Tolerance in Los Angeles at no cost to the law enforcement agency, and the newly-trained instructor is provided with all necessary course material to train his or her own officers.[10]

The five-hour initial racial profiling training was incorporated into the Regular Basic Course[11] for peace officer applicants after January 1, 2004,[12] and POST suggested that incumbent peace officers complete the five-hour training by July 2004.[13] POST can certify a course retroactively,[14] thus it is possible for racial profiling courses that were developed and presented prior to the time POST developed its curriculum to be certified as meeting the requirements of Penal Code section 13519.4. Additionally, both the five-hour racial profiling course and the

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[6] Penal Code section 13519.4, subdivision (c)(2).

[7] Penal Code section 13519.4, subdivision (f); Statutes 2004, chapter 700 (SB 1234) renumbered subdivision *(f)* to subdivision *(g)*. Commission staff makes no findings regarding any substantive changes which may have been made in the 2004 legislation since it was not pled in the test claim. Accordingly, staff will continue to refer to this provision as "subdivision (f)" as originally set forth in the test claim statute.

[8] Penal Code section 13519.4, subdivision (f).

[9] Penal Code section 13519.4, subdivision (i).

[10] Comments filed by POST, August 10, 2005.

[11] Penal Code section 832.3 requires peace officers to complete a course of training prescribed by POST before exercising the powers of a peace officer.

[12] California Code of Regulations, title 11, section 1081, subdivision (a)(33).

[13] POST Legislative Training Mandates, updated August, 2004.

[14] California Code of Regulations, title 11, section 1052, subdivision (d).

two-hour refresher course can be certified by POST to allow agencies and officers to apply the training hours toward their 24-hour Continuing Professional Training requirement.[15, 16]

Prior Test Claim Decisions

In the past, the Commission has decided six other test claims addressing POST training for peace officers that are relevant for this analysis.

1. Domestic Violence Training

In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- the test claim statute does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- the test claim statute does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours and, thus, no additional costs are incurred by local agencies; and
- the test claim statute does not require local agencies to provide domestic violence training.

2. Domestic Violence and Incident Reporting

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the Commission recognized that the test claim statute imposed a new program or higher level of service, the Commission found that local agencies incurred *no* increased "costs mandated by the state" in carrying out the two-hour course for the following reasons:

- *immediately before and after* the effective date of the test claim statute, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years;
- the two-hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum;
- the two-hour training is *neither* "separate and apart" *nor* "on top of" the 24-hour minimum;
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two-hour course;

[15] Letter from POST, dated August 10, 2005.

[16] Title 11, section 1005(d)(1) requires peace officers to complete 24 hours of POST-qualifying training every two years.

- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question; and
- of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

That test claim was subsequently litigated and decided in the Second District Court of Appeal (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 [*County of Los Angeles II*]), where the Commission's decision was upheld and reimbursement was ultimately denied.

3. Sexual Harassment Training in the Law Enforcement Workplace

In September 2000, the Commission approved in part and denied in part a test claim filed by the County of Los Angeles regarding sexual harassment training for peace officers (*Sexual Harassment Training in the Law Enforcement Workplace,* 97-TC-07). The test claim statute required POST to develop complaint guidelines to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The statute also required the course of basic training for law enforcement officers to include instruction on sexual harassment in the workplace, and veteran peace officers that had already completed basic training were required to receive supplementary training on sexual harassment in the workplace. The Commission reached the following conclusions:

- the sexual harassment complaint guidelines to be followed by local law enforcement agencies developed by POST constituted a reimbursable state-mandated program;
- the modifications to the course of basic training did not constitute a reimbursable state-mandated program since it did not impose any mandated duties on the local agency; and
- the supplemental training that required veteran peace officers to receive a one-time, two-hour course on sexual harassment in the workplace constituted a reimbursable state-mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute which required the local agency to provide or pay for continuing education training.[17]

[17] Reimbursable "costs mandated by the state" for this test claim included: 1) salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment in the workplace; and 2) costs to present the one-time, two-hour course in the form of materials and trainer time.

4. Law Enforcement Racial and Cultural Diversity Training

In October 2000, the Commission denied a test claim filed by the County of Los Angeles regarding racial and cultural diversity training for law enforcement officers (*Law Enforcement Racial and Cultural Diversity Training,* 97-TC-06). The test claim statute required that, no later than August 1, 1993, the basic training course for law enforcement officers include adequate instruction, as developed by POST, on racial and cultural diversity. The Commission found that the test claim statute did not impose any mandated duties or activities on local agencies since the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who seeks peace officer status.

5. Elder Abuse Training

In January 2001, the Commission approved in part and denied in part a test claim filed by the City of Newport Beach regarding elder abuse training for city police officers and deputy sheriffs (*Elder Abuse Training,* 98-TC-12). The test claim statute required city police officers or deputy sheriffs at a supervisory level and below who are assigned field or investigative duties to complete an elder abuse training course, as developed by POST, by January 1, 1999, or within 18 months of being assigned to field duties. The Commission reached the following conclusions:

- The elder abuse training *did constitute* a reimbursable state-mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute, which requires the local agency to provide or pay for continuing education training.[18]
- The elder abuse training *did not constitute* a reimbursable state-mandated program when applied to city police officers or deputy sheriffs hired after the effective date of the test claim statute, since such officers could apply the two-hour elder abuse training course towards their 24-hour continuing education requirement.

6. Mandatory On-The-Job Training For Peace Officers Working Alone

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/ 02-TC-06). The Commission found that these executive orders do not impose a reimbursable

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[18] Reimbursable "costs mandated by the state" for this test claim included: 1) costs to present the one-time, two-hour course in the form of trainer time and necessary materials provided to trainees; and 2) salaries, benefits and incidental expenses for each city police officer or deputy sheriff to receive the one-time, two-hour course on elder abuse in those instances where the police officer or deputy sheriff already completed their 24 hours of continuing education at the time the training requirement was imposed on the particular officer, and when a new two-year training cycle did not commence until after the deadline for that officer or deputy to complete elder abuse training.

state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Claimant's Position

The claimant contends that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that costs for the following activities will be incurred and are reimbursable:

- Development costs for the racial profiling training beginning in fiscal year 2000-2001, including travel, training, salary and benefit costs.
- Implementation costs beginning in fiscal year 2001-2002 for over 1,000 incumbent police officers to receive an eight-hour racial profiling class during regular business hours, and may include some overtime pay at one and one-half pay rates for a total of least $65,269.
- Set up and preparation time for instructors at an additional $3,000.
- Ongoing racial profiling training for new officers, as they are hired, which includes the eight-hour class during regular business hours and may include some overtime pay at one and one-half pay rates.
- Ongoing training for the refresher course.

Position of Department of Finance

DOF stated in its comments that the test claim is without merit because the test claim statute does not impose an obligation on any *law enforcement agency* to provide training; rather the statute imposes the requirement on the *law enforcement officer*. Further, no duty is imposed on any local government entity to pay the expense of training law enforcement officers, since the local agency has the option when hiring new law enforcement officers to hire only those persons who have already obtained the training. Finally, since the test claim statute specifies that refresher courses are required only of each law enforcement officer who adheres to the standards imposed by POST, there is no mandate because local agency participation in and compliance with POST programs and standards is optional.

DOF subsequently filed comments agreeing with the draft staff analysis.

Position of POST

In its September 17, 2001 comments, POST stated the following:

> Pursuant to the passage of Senate Bill 1102, [POST] is presently in the process of developing a prescribed course that will meet the intent of Senate

Bill 1102, as well as the needs of all law enforcement agencies that participate in the POST program.

Local agencies participate in the POST program on a voluntary basis. There is no requirement for any department to present this training. Because the prescribed curriculum for this training is still in the design phase, it is not possible to calculate the cost of presenting such training or the fiscal impact on agencies in the POST program. Suffice it to say that POST is desirous of finding a cost-efficient means of presenting the training so that fiscal impact on the field is not onerous.

In its August 10, 2005 comments, POST stated that subject matter experts from throughout the state in concert with the Governor's Panel on Racial Profiling developed the *Racial Profiling: Issues and Impact* curriculum. This curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency. The comments further stated:

> It is believed that in-house instructors provide validity to the training and can relate the material directly to agency policies.
>
> The curriculum was designed as a "course-in-a-box" and includes an instructor guide, facilitated discussion questions, class exercises, and a companion training video. … The course was designed to ensure training consistency throughout the State.
>
> Due to the complexity and sensitivity of the topic, POST regulation requires that each instructor complete the 24-hour Racial Profiling Train-the-Trainer Course prior to facilitating the training. The Training for Trainers course is presented on an on-going basis by the Museum of Tolerance in Los Angeles. The course is presented under contract and is of no cost to the [local law enforcement] agency. At the completion of the training, the instructor is provided with all necessary course material to train their own officers.

The mandated basic curriculum is five hours, and the refresher course is two hours. Both courses can be certified by POST to allow agencies to apply the training hours towards the 24-hour Continuing Professional Training requirement.

DISCUSSION

The courts have found that article XIII B, section 6 of the California Constitution[19] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[20] "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."[21] 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.[22] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[23]

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.[24] To determine if the program is new or imposes a higher level of service, the test claim statute must be compared with the legal requirements in effect immediately before the enactment of the test claim statute.[25] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[26]

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[19] 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."

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

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

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

[23] *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*).

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

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

[26] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[27]

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.[28] 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."[29]

The analysis addresses the following issues:

- Is the test claim statute subject to article XIII B, section 6 of the California Constitution?
- Does the test claim statute impose a "new program or higher level of service" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim statute impose "costs mandated by the state" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

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

A. Does the test claim statute mandate any activities?

In order for the test claim statute to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies. If the language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered.

The test claim statute, Statutes 2000, chapter 684, amended Penal Code section 13519.4 by adding subdivisions (c)(1) through (c)(4), and subdivisions (d) through (j). Each of these new provisions is summarized below.

Subdivisions (c)(1) through (c)(4): These subdivisions state the Legislature's findings and declarations regarding racial profiling and do not mandate any activities.

Subdivision (d): This subdivision provides a definition for racial profiling and does not mandate any activities.

Subdivision (e): This subdivision states that law enforcement officers "shall not engage in racial profiling" and thus prohibits, rather than mandates, an activity.

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[27] *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.

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

[29] *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.

Subdivision (f): This subdivision states that every law enforcement officer in the state shall participate in expanded racial profiling training that is prescribed and certified by POST, to begin no later than January 1, 2002; it further sets forth requirements for POST to collaborate with a five-person panel appointed by the Governor and the Legislature in developing the training. Thus, the provision does mandate an activity on local law enforcement officers. Whether this mandates an activity on local agencies is analyzed below.

Subdivision (g): This subdivision states that members of the panel established pursuant to subdivision (f) shall not be compensated except for reasonable per diem related to their work for panel purposes, and does not mandate any activities on local government agencies.

Subdivision (h): This subdivision specifies that certain requirements be incorporated into the racial profiling curriculum, but does not mandate any activities on local agencies.

Subdivision (i): This subdivision requires that once the initial racial profiling training is completed, each law enforcement officer as described in Penal Code section 13510, subdivision (a), who adheres to the standards approved by POST, complete a refresher course every five years thereafter or on a more frequent basis if deemed necessary. Thus, the provision does mandate an activity on specified law enforcement officers. Whether this mandates an activity on local agencies is analyzed below.

Subdivision (j): This provision requires the Legislative Analyst to conduct a study of data being voluntarily collected on racial profiling and provide a report to the Legislature. It does not mandate any activities on local agencies.

The Requirement for Initial Racial Profiling Training Mandates Activities on Local Agencies for Incumbent Officers Only

Penal Code section 13519.5, subdivision (f), states in pertinent part:

> Every law enforcement officer in this state shall participate in expanded training [in racial profiling] as prescribed and certified by [POST]. Training shall begin being offered no later than January 1, 2002.

The plain meaning of this provision requires that law enforcement officers participate in expanded training regarding racial profiling, that the training is prescribed and certified by POST, and that such training was required to begin being offered no later than January 1, 2002.

Claimant contends that subdivision (f) requires local agencies to develop a racial profiling course and is seeking reimbursement for travel, training, salary and benefit costs for developing an eight-hour racial profiling curriculum. The plain language of subdivision (f) does not require local agencies to develop the training; instead, the statute requires *POST*, in collaboration with a designated panel, to prescribe and certify the training. Thus, the activity of local agencies developing the racial profiling training is not mandated by the test claim statute and, therefore, is not reimbursable pursuant to article XIII B, section 6 of the California Constitution.

Claimant also contends that subdivision (f) requires local agencies to provide an initial racial profiling course to both its new recruits and incumbent officers, and is seeking reimbursement for salary and benefit costs, in some instances at overtime rates, for the time taken by these employees to attend an *eight-hour* course. However, POST states that it developed a *five-hour* course to meet the "expanded training" requirement in Penal Code section 13519.4,

subdivision (f). Moreover, as of January 1, 2004, that five-hour racial profiling curriculum was incorporated into the Regular Basic Course requirements established by POST.

For the reasons cited below, staff finds that there is no requirement for new recruits, i.e., employees who have not yet received basic training, to participate in racial profiling training. Furthermore, there is no requirement for the local agency to provide basic training to its new recruits.

New recruits who have not received basic training are not yet considered "law enforcement officers."[30] Since 1971, Penal Code section 832 has required "every *person* described in this chapter as a peace officer" to satisfactorily complete an introductory course of training prescribed by POST before they can exercise the powers of a peace officer.[31] Any "person" completing the basic training course "who does not become employed as a peace officer" within three years is required to pass an examination developed or approved by POST.[32] Since 1994, POST has been authorized to charge a fee for the basic training examination to each "applicant" who is not sponsored or employed by a local law enforcement agency.[33]

For those "persons" who have acquired prior equivalent peace officer training, POST is required to provide the opportunity for testing instead of the attendance at a "basic training academy or accredited college."[34] Moreover, "each *applicant* for admission to a basic course of training certified by [POST] who is *not* sponsored by a local or other law enforcement agency ... shall be required to submit written certification from the Department of Justice ... that the *applicant* has no criminal history background...."[35] [Emphasis added.]

Thus, until an employee completes basic training, he or she is not a "law enforcement officer" for purposes of the test claim statute, and there is no requirement on the individual to attend racial profiling training.

With regard to new recruits, DOF states that there is no mandate on the local agency to provide the racial profiling training or pay for it, but rather the requirement is on the new recruit alone. DOF further asserts that the claimant has the option of hiring officers already trained in racial profiling as part of the required basic training for peace officers. Staff agrees there is no mandate on local agencies to provide basic training to their law enforcement recruits.

Staff determined that there is no provision in statute or POST regulations that requires local agencies to provide basic training. Since 1959, Penal Code section 13510 et seq. required

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[30] Penal Code section 13510 establishes that, for the "purpose of raising the level of competence of local law enforcement officers," POST sets minimum standards governing the recruitment of various types of "peace officers." Thus, the terms "law enforcement officer" and "peace officer" are used interchangeably in the Penal Code.

[31] See also POST's regulation, Title 11, California Code of Regulations, section 1005, subdivision (a)(1).

[32] Penal Code section 832, subdivision (e).

[33] Penal Code section 832, subdivision (g).

[34] *Ibid.*

[35] Penal Code section 13511.5.

POST to adopt rules establishing minimum standards relating to the physical, mental and moral fitness governing the recruitment of new local law enforcement officers.[36] In establishing the standards for training, the Legislature instructed POST to permit the required training to be conducted by *any* institution approved by POST.[37] In fact, there are 39 POST-certified basic training academies in California.

Staff acknowledges that some local law enforcement agencies hire persons who have not yet completed their basic training course, and then sponsor or provide the training themselves. However, other agencies require the successful completion of the POST Regular Basic Course before the applicant will be considered for the job.[38] There are several community colleges approved by POST to offer the Regular Basic Course, that are open to any interested individual, whether or not employed or sponsored by a local agency.

Thus, staff further finds that since the initial five-hour racial profiling training is, as of January 1, 2004, a required element of the basic training curriculum, and there is no state mandate for local agencies to provide to new recruits their basic training, the test claim statute does not mandate local agencies to incur costs to send their new recruits to racial profiling training as part of the basic training course.

With regard to claimant's incumbent law enforcement officers who *had* completed basic training on or before January 1, 2004, and thus did not receive the initial racial profiling training in their basic training, DOF asserts that the test claim statute does not impose any obligations on local agencies to provide the training. Instead, DOF contends, the statute imposes a training obligation on law enforcement officers alone.

Subdivision (f) requires "every law enforcement officer in this state" to attend expanded training in racial profiling. The plain language of the test claim statute does not mandate or require local agencies to provide or pay for the racial profiling training, and there are no other state statutes, regulations, or executive orders requiring local agencies to pay for continuing education training for every law enforcement officer in the state.

However, with regard to the POST-prescribed and certified initial five-hour racial profiling course, POST states the following:

> The curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency. It is believed that in-house instructors provide validity to the training and can relate the material directly to agency policies....
>
> Due to the complexity and sensitivity of the topic, POST regulation requires that each instructor complete the 24-hour Racial Profiling Train-the-Trainer Course prior to facilitating the training. The Training for Trainers course is presented on an on-going basis by the Museum of Tolerance in Los Angeles. The course is presented under contract and is of no cost to the agency. At

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[36] These standards are set forth in Title 11, California Code of Regulations.

[37] Penal Code section 13511.

[38] See Job Bulletin for Police Officer for City of San Carlos.

the completion of the training, the instructor is provided with all the necessary course material to train their own officers.

The course was originally planned to be four hours in length. After two pilot presentations it was determined that the material could not be covered sufficiently in four hours; therefore, an additional hour was added, which extended the mandated curriculum to five hours.

Thus, there is evidence in the record that to implement the training requirement, there is an expectation on the local agency to be involved with providing the racial profiling training.[39] Although claimant states that it developed an *eight-hour* racial profiling course, POST's initial racial profiling curriculum is a *five-hour course* and represents both the minimum and maximum number of hours mandated by the state. Any hours exceeding five for this training is within the discretion of the local agency, and therefore cannot be considered an activity mandated by the state.

Claimant asserts that even if the training requirement is imposed upon the *officer*, the *employer* is responsible for compensating the employee for the training time — as if he or she is working — pursuant to the Fair Labor Standards Act ("FLSA"). Staff agrees that, where law enforcement officers are *employees* of local agencies, the FLSA is relevant to this claim.

The FLSA generally provides employee protection by establishing the minimum wage, maximum hours and overtime pay under federal law. In 1985, the United States Supreme Court found that the FLSA applies to state and local governments.[40] The FLSA is codified in Title 29 of the Code of Federal Regulations (CFR).

Claimant contends that since racial profiling training is required by the state and is not voluntary, training time needs to be counted as compensable working time under 29 CFR section 785.27, and treated as an obligation imposed on the local agency. Section 785.27 states the following:

> Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:
>
> (a) Attendance is outside of the employee's regular working hours;
>
> (b) Attendance is in fact voluntary;
>
> (c) The course, lecture or meeting is not directly related to the employee's job; and
>
> (d) The employee does not perform any productive work during such attendance.

All four criteria must be met for the employer to avoid paying the employee for time spent in training courses. Here, attendance at the initial course is *not* voluntary, and the racial

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[39] POST regulation requires trainers from the local agency to attend a 24-hour "Train-the-Trainer Racial Profiling Course" prior to providing the initial five-hour racial profiling course. The claimant has not requested reimbursement for this activity, and staff therefore makes no finding on it.

[40] *Garcia v. San Antonio Metropolitan Transit Authority et al.* (1985) 469 U.S. 528.

profiling course *is* directly related to the employee's job. Therefore, staff agrees with the claimant that, pursuant to this section, local agencies are required to compensate their employees for racial profiling training *if the training occurs during the employee's regular working hours.*

Accordingly, staff finds that local agencies are mandated by the state through Penal Code section 13519.4, subdivision (f), to compensate incumbent officers for attendance at the initial racial profiling training *if* the training occurs during regular work hours. However, because POST has designated five hours as the necessary amount of time to present the curriculum, any claims must be based on a five-hour course.

In 1987, an exception to the FLSA was enacted which provides that time spent by law enforcement officer employees of state and local governments in training required for certification by a higher level of government that occurs *outside of the employee's regular working hours* is noncompensable. The relevant provisions, located in 29 CFR section 553.226, state in pertinent part the following:

> (a) The general rules for determining the compensability of training time under the FLSA are set forth in §§ 785.27 through 785.32 of this title.
>
> (b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of State and local governments in required training is considered to be noncompensable:
> ...
>
> *(2) Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does* ***not*** *constitute compensable hours of work.* (Emphasis added.)

Staff finds that 29 CFR section 553.226, subdivision (b)(2), applies when the racial profiling training is conducted outside the employee's regular working hours. In such cases, the local agency is not required to compensate the employee. Rather, the cost of compensating officers attending racial profiling training *becomes a term or condition of employment subject to the negotiation and collective bargaining* between the local agency and the employee.

Collective bargaining between local agencies and their employees is governed by the Meyers-Milias-Brown Act. (Gov. Code, §§ 3500 et seq.) The Act requires the governing body of the local agency and its representatives to meet and confer in good faith regarding wages, hours and other terms of employment with representatives of employee organizations. If an agreement is reached, the parties enter into a collective bargaining agreement, or memorandum of understanding (MOU). Only upon the approval and adoption by the governing board of the local agency, does the MOU become binding on the local agency and its employees.[41]

Although paying for racial profiling training conducted outside the employee's regular working hours is an issue negotiated at the local level, staff recognizes that the California Constitution

[41] Government Code sections 3500, 3503, and 3505.1.

prohibits the Legislature from impairing obligations or denying rights to the parties of a valid, binding contract absent an emergency.[42] In the present case, the test claim statute became effective on January 1, 2001, and was not enacted as an urgency measure.

Accordingly, staff finds that compensating the officer for the initial racial profiling training outside the employee's regular working hours is an obligation imposed on those local agencies that, as of January 1, 2001 (the effective date of the statute), are bound by an existing MOU, which requires the agency to pay for continuing education training.

However, when the existing MOU terminates, or in the case of a local agency that is not bound by an existing MOU on January 1, 2001, requiring that the agency pay for continuing education training, the initial racial profiling training conducted outside the employee's regular working hours becomes a negotiable matter subject to the discretion of the local agency. Under those circumstances, staff finds that the requirement to pay for the initial racial profiling training is not an obligation imposed by the state on a local agency.

As a final matter, the test claim statute states that the training shall begin *no later than* January 1, 2002, which does not preclude the agency from providing racial profiling training sooner than that date. Where a local agency conducted the training *prior to* POST releasing its "prescribed and certified" racial profiling training, up to five hours of such training could be considered a mandated activity if the curriculum is approved and certified by POST as meeting the POST specifications for the racial profiling topic. POST can certify such training curriculum *retroactively*, pursuant to California Code of Regulations, title 11, section 1052.

In conclusion, staff finds that Penal Code section 13519.4, subdivision (f), mandates *up to five hours* of racial profiling training under the following conditions:

1. the training is provided to incumbent law enforcement officers who completed basic training on or before January 1, 2004;
2. the training is certified by POST; and
3. the training is attended during the employee's regular working hours, or the training occurs outside the employee's regular working hours *and* there is an obligation imposed by an MOU existing on January 1, 2001 (the effective date of the test claim statute), which requires that the local agency pay for continuing education training.

The Requirement for Refresher Racial Profiling Training Mandates an Activity on Local Agencies

Penal Code section 13519.4, subdivision (i), states the following:

> Once the initial basic training [for racial profiling] is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by [POST] shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

[42] California Constitution, article 1, section 9.

Claimant is requesting reimbursement for salary and benefit costs, in some instances at overtime rates, for the officers' time spent in attending the refresher racial profiling course. POST has certified that two hours is needed for this refresher racial profiling course.

Since this requirement is applicable to law enforcement officers of specified local agencies that adhere to the standards approved by POST, DOF asserts there is no mandate because belonging to POST is *voluntary* on the part of local agencies. However, in *County of Los Angeles II*, a recent California Second District Court of Appeal case regarding reimbursement for peace officer training mandated by state statute, the court stated that "[w]e agree that POST certification is, for all practical purposes, not a 'voluntary' program..."[43]

Additionally, as with the five-hour racial profiling course for incumbent law enforcement officers, FLSA similarly requires local agencies to compensate their officers for racial profiling training when it occurs during regular work hours and in some cases outside the employee's regular working hours depending on the MOU negotiated between the employees and the local agency.

Thus, staff finds that Penal Code section 13519.4, subdivision (i), does mandate up to two hours of refresher racial profiling training for incumbent law enforcement officers under the conditions set forth under the subdivision (f) analysis of this issue.

B. Does the test claim statute constitute a "program?"

The test claim statute must also constitute a "program" in order to be subject to article XIII B, section 6 of the California Constitution. Courts have defined a "program" as one that carries out the governmental function of providing a service to the public, 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.[44]

The *County of Los Angeles I* case further explained that the term "program" as it is used in article XIII B, section 6, "was [intended] to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities." (Emphasis added.)[45] Accordingly, the court found that no reimbursement was required for increases in workers' compensation and unemployment insurance benefits applied to all employees of private and public businesses.[46]

Here, on the other hand, the requirements imposed by the test claim statute are carried out by state and local law enforcement agencies. Although both state and local entities are involved, these requirements do not apply "generally to all residents and entities in the state," as did the requirements for workers' compensation and unemployment insurance benefits in the *County of Los Angeles I* case.

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[43] *County of Los Angeles II, supra,* 110 Cal.App.4th 1176, 1194.

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

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

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

Therefore, staff finds that the test claim statute imposes requirements peculiar to government to implement a state policy which does not apply generally to all residents and entities in the state, and thus constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim statute impose a "new program or higher level of service" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

The courts have held that a test claim statute imposes a "new program or higher level of service" when: a) the requirements are new in comparison with the preexisting scheme; *and* b) the requirements were intended to provide an enhanced service to the public.[47] Both of these conditions must be met in order to find that a "new program or higher level of service" was created by the test claim statute. The first step in making this determination is to compare the test claim statute with the legal requirements in effect immediately before the enactment of the test claim statute.

In 1990, the Legislature established requirements for law enforcement officers to be instructed in racial and cultural diversity.[48] As stated above, the test claim statute imposed additional requirements in Penal Code section 13519.4, subdivisions (f) and (i), to provide and compensate incumbent law enforcement officers for attending racial profiling training under certain circumstances. Those requirements are new in comparison to the preexisting scheme.

Furthermore, the test claim statute was intended to help prevent the "pernicious" practice of racial profiling by law enforcement officers,[49] which demonstrates the intent to provide an enhanced service to the public. Thus, the test claim statute does impose a "new program or higher level of service."

Issue 3: Does the test claim statute impose "costs mandated by the state" on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

For the mandated activities to impose a reimbursable, state-mandated program, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant to Government Code section 17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.

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

[48] Statutes 1990, Chapter 480; Penal Code section 13519.4.

[49] Penal Code section 13519.4, subdivision (c).

The Initial Racial Profiling Training Requirement Imposes "Costs Mandated by the State"

The test claim alleged costs of $65,269 for providing the initial racial profiling training for incumbent officers pursuant to subdivision (f). Thus, there is evidence in the record, signed under penalty of perjury, that there are increased costs as a result of the test claim statute.

However, POST stated that the initial racial profiling course can be "certified by POST which would allow agencies to apply the training hours towards the 24-hour Continuing Professional Training requirement."[50] POST regulations provide that local law enforcement officers must receive at least 24 hours of Advanced Officer continuing education training every two years. [51] Thus, the issue is whether there are *increased costs* as a result of the test claim statute, or whether any costs can be absorbed into *existing* 24-hour continuing education requirement.

In 1998, the Commission analyzed whether a statute that required continuing education training for peace officers imposed "costs mandated by the state" in the *Domestic Violence Training and Incident Reporting* (*"Domestic Violence"*) test claim. That test claim statute included the following language: "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government."

The issue was whether the domestic violence training could be absorbed into the 24-hour requirement which would ultimately result in no increased costs. The Commission determined that if the domestic violence training course caused an increase in the total number of required continuing education hours, then the increased costs associated with the new training course were reimbursable as "costs mandated by the state." On the other hand, if there was no overall increase in the total number of continuing education hours, then there were no increased training costs associated with the training course. Instead, the cost of the training course was accommodated or absorbed by local law enforcement agencies within their existing resources available for training.

The Commission found that there were no "costs mandated by the state" in the *Domestic Violence* test claim. The claim was denied for the following reasons:

- Immediately before and after the effective date of the test claim statute, POST's minimum required number of continuing education hours for the law enforcement officers in question remained the same at 24 hours. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years.
- The two-hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum.
- The two-hour training is neither "separate and apart" nor "on top of" the 24-hour minimum.

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[50] Letter from POST, dated August 10, 2005.

[51] California Code of Regulations, title 11, section 1005, subdivision (d).

- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two-hour course.
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question.
- Of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from the many elective courses certified by POST.

That test claim was subsequently litigated and decided in the Second District Court of Appeal (*County of Los Angeles II, supra*), where reimbursement was ultimately denied. The court stated the following:

> POST training and certification is ongoing and extensive, and local law enforcement agencies may chose from a menu of course offerings to fulfill the 24-hour requirement. Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. Officer downtime will be incurred. However, merely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.
>
> ...
>
> While we are mindful that legislative disclaimers, findings and budget control language are not determinative to a finding of a state mandated reimbursable program, [citations omitted], our interpretation is supported by the hortatory statutory language that, "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government."[52]

Here, staff finds the initial five-hour racial profiling course, when demonstrated that it exceeds the 24-hour continuing education requirement, does impose "costs mandated by the state" for the following reasons.

First, unlike the domestic violence training statute, the test claim statute did not establish legislative intent that racial profiling training be funded from existing resources and that annual training costs of local government should not be increased. Moreover, although POST states it is *possible* to certify the initial racial profiling training and make it part of the 24-hour continuing education, it did not interpret the test claim statute to *require its inclusion* within the 24-hour continuing education requirement as it did with the *Domestic Violence* test claim.

Second, the test claim statute requires a one-time initial five-hour racial profiling training to begin by January 1, 2002, and the Legislative Training Mandates document issued by POST suggests that incumbent officers complete the initial racial profiling course by July 2004.

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[52] *County of Los Angeles II, supra,* 110 Cal.App.4th 1176, 1194-1195.

Thus, although not mandated, POST recommends the initial training be completed within a specified period of time. Such administrative interpretations of statutes are accorded great weight and respect.[53]

Third, claimant asserts that "an officer can readily exceed the 24 hours mandatory training required every two years, even prior to this new training mandate."[54] It is possible that some law enforcement officers could have already met or been close to meeting their 24-hour continuing education requirements within their particular two-year continuing education cycle *before* they were required to take the initial racial profiling training.

Based on the foregoing, staff finds that Penal Code section 13519.4, subdivision (f), imposes "costs mandated by the state" to the extent that the initial racial profiling course causes law enforcement officers to exceed their 24-hour continuing education requirement, when the two-year cycle that included the initial five-hour racial profiling course occurs between January 1, 2002 and July 2004, and the continuing education for that cycle was attended *prior to* the initial racial profiling course.

None of the Exceptions in Government Code Section 17556 Are Applicable to Deny Reimbursement for the Initial Racial Profiling Training

For the reasons stated below, staff finds that none of the exceptions apply to deny the portion of the test claim dealing with Penal Code section 13519.4, subdivision (f).

Government Code section 17556, subdivision (c), states that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds that:

> The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government...

Here, because the federal FLSA requires employee training time to be compensated under certain circumstances, this raises the issue of whether the obligation to pay for racial profiling training is an obligation imposed by the state, or an obligation arising out of existing federal law through the provisions of the FLSA.

Staff finds that there is no federal statutory or regulatory scheme requiring local agencies to provide racial profiling training to incumbent officers. Rather, what triggers the provisions of the FLSA requiring local agencies to compensate incumbent officers for racial profiling training is the test claim statute. If the state had not created this program, incumbent officers would not be required to receive racial profiling training, and local agencies would not be obligated to compensate those officers for such training. Therefore, Government Code section 17556, subdivision (c), is inapplicable to deny the claim.

Government Code section 17556, subdivision (e), states that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds that:

> The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that

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[53] *Hoechst Celanese Corp. V. Franchise Tax Board* (2001) 25 Cal.4th 508.

[54] Declaration of Deputy Alex Nishimura, dated June 18, 2002.

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.

The Penal Code provides authority for POST to allocate from the Peace Officers' Training Fund state aid to cities, counties or districts which have applied and qualified for aid.[55] Although any aid provided under the Penal Code for racial profiling training must be considered an offset to reimbursable amounts, there is no evidence in the record that this provision does not result in "no net costs" or "sufficient" funding for the mandated activities. Therefore, Government Code section 17556, subdivision (e), is inapplicable to deny the claim.

The Racial Profiling Refresher Training Does Not Impose "Costs Mandated by the State"

Claimant asserted in the test claim that it would incur ongoing costs in employee salaries and benefits to provide the refresher course "every five years, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends."

However, POST stated that the two-hour racial profiling refresher course can be "certified by POST which would allow agencies to apply the training hours towards the 24-hour Continuing Professional Training requirement."[56] Thus, the issue is whether there are *increased costs* as a result of the requirement for a racial profiling refresher course, or whether those costs can be absorbed into the *existing* 24-hour continuing education requirement.

Unlike the five-hour initial racial profiling course required under subdivision (f), staff finds the two-hour racial profiling refresher course required under subdivision (i) *does not* impose "costs mandated by the state" for the following reasons.

As determined by POST, the two-hour racial profiling refresher course, required to be completed every five years, applies to the existing 24-hour continuing education training requirement imposed on officers. In *County of Los Angeles II*, the court focused on the fact that any increased costs resulting from the two-hour domestic violence update training, required only every *two* years, were "incidental" to the cost of administering the POST certification. The court stated:

> Thus, while the County may lose some flexibility in tailoring its training programs, such loss of flexibility does not rise to the level of a state mandated reimbursable program because the loss of flexibility is incidental to the greater goal of providing domestic violence training. Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. [57]

Since the two-hour racial profiling refresher training is only required every *five* years, beginning after the initial course is provided, officers can more readily plan for incorporating the training into their 24-hour, two-year continuing education requirement.

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[55] Penal Code section 13523.

[56] Letter from POST, dated August 10, 2005.

[57] *County of Los Angeles II, supra*, 110 Cal.App.4th 1176, 1194-1195.

Based on the foregoing, staff finds that Penal Code section 13519.4, subdivision (i), does not impose "costs mandated by the state."

Conclusion

Staff finds that Penal Code section 13519.4, subdivision (f), imposes a reimbursable state-mandated program within the meaning of article XIII, section 6 of the California Constitution, and Government Code section 17514, for *up to five hours* of initial racial profiling training under the following conditions:

1. the training is provided to incumbent law enforcement officers who completed basic training on or before January 1, 2004;
2. the training is certified by POST;
3. the training is attended during the officer's regular work hours, or training is attended outside the officer's regular work hours *and* there is an obligation imposed by an MOU existing on January 1, 2001, which requires that the local agency pay for continuing education training; and
4. the training causes the officer to exceed his or her 24-hour continuing education requirement, when the two-year continuing education cycle that included the initial five-hour racial profiling training occurs between January 1, 2002 and July 2004, and the continuing education for that cycle was attended *prior to* the initial racial profiling course.

Staff further finds that Penal Code section 13519.5, subdivision (i), which mandates the two-hour refresher racial profiling training, does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, because it does not impose "costs mandated by the state."

Recommendation

Staff recommends the Commission adopt this analysis and partially approve the test claim.

ITEM 5

TEST CLAIM
PROPOSED STATEMENT OF DECISION

Penal Code Section 13519.4

Statutes 2000, Chapter 684

Racial Profiling: Law Enforcement Training
(01-TC-01)

County of Sacramento, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates ("Commission") is whether the Proposed Statement of Decision accurately reflects the Commission's decision on the *Racial Profiling: Law Enforcement Training* test claim.[1]

Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission's vote on Item 4 modifies the staff analysis, staff recommends that the motion to adopt the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a Proposed Statement of Decision be continued to the December 2006 Commission hearing.

[1] California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Section 13519.4;

Statutes 2000, Chapter 684;

Filed on August 13, 2001 by the County of Sacramento, Claimant.

Case No.: 01-TC-01

Racial Profiling: Law Enforcement Training

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

(Proposed for Adoption on October 26, 2006)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 26, 2006. [Witness list will be included in the final Statement of Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis, to partially approve this test claim, at the hearing by a vote of [vote count will be included in the final Statement of Decision].

Summary of Findings

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by the Commission on Peace Officer Standards and Training (POST).

Law enforcement officers are required to take a basic training course prior to exercising their duties as peace officers, and must subsequently complete 24 hours of continuing professional training every two years. The test claim statute, as interpreted by POST, required a five-hour initial racial profiling training course and a two-hour refresher course every five years. Both of these courses can be certified by POST to allow local agencies to apply the training hours towards the 24-hour continuing professional training requirement. Since POST can certify a course retroactively, it is possible for racial profiling courses that were developed and

presented prior to the time POST developed its curriculum to be certified to meet the requirements of the test claim statute.

Because the initial five-hour racial profiling training was incorporated into the basic training course for law enforcement officers as of January 1, 2004, and there is no state mandate for local agencies to provide basic training to new recruits, the initial five-hour training can only be required of incumbent officers who completed basic training on or before January 1, 2004. The activity is a mandate on the local agency because the Fair Labor Standards Act requires employers to compensate their employees for work-related mandatory training when such training occurs during the employees' regular working hours. Additionally, a Memorandum of Understanding between the employer and employee organization, in effect as of January 1, 2001, can require the employer to compensate the employee for work-related mandatory training when it occurs outside the employee's regular working hours.

However, the test claim statute imposes costs mandated by the state *only* to the extent that attending the initial five-hour racial profiling training course causes the officer to exceed his or her 24-hour continuing education requirement, when the two-year cycle that included the initial five-hour racial profiling course occurs between January 1, 2002 and July 2004, and the continuing education for that cycle was attended *prior to* the initial racial profiling course.

The two-hour racial profiling refresher course does not impose costs mandated by the state since that course is only required every five years, beginning after the initial course is provided, and officers can readily incorporate the two-hour course into their 24-hour, two-year continuing education requirement.

BACKGROUND

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling, as defined, and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by POST.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.[2] The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.[3] Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.[4]

In enacting the test claim statute (Stats. 2000, ch. 684), the Legislature found that racial profiling[5] is a practice that presents a great danger to the fundamental principles of a democratic society, is abhorrent and cannot be tolerated.[6] The Legislature further found that

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[2] Penal Code section 13500 et seq.

[3] *About California POST*, <http://www.POST.ca.gov>

[4] Penal Code sections 13522 and 13523.

[5] Racial profiling is defined as "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." (Pen. Code § 13519.4, subd. (d), as enacted in Stats. 2000, ch. 684.)

[6] Penal Code section 13519.4, subdivision (c)(1) (as enacted in Stats. 2000, ch. 684).

motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.[7]

The test claim statute required every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002.[8] The training shall be prescribed and certified by POST, in collaboration with a five-person panel appointed by the Governor, Senate Rules Committee and Speaker of the Assembly.[9]

Once the initial training on racial profiling is completed, each law enforcement officer in California, as described in subdivision (a) of Penal Code section 13510 who adheres to the standards approved by POST, is required to complete a two-hour refresher course every five years thereafter, or on a more frequent basis if deemed necessary.[10]

POST developed a five-hour approved curriculum to meet the initial training required by Penal Code section 13519.4, subdivision (f). The curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency, who must complete a Racial Profiling Train-the-Trainer Course prior to facilitating the training. That course is given on an ongoing basis by the Museum of Tolerance in Los Angeles at no cost to the law enforcement agency, and the newly-trained instructor is provided with all necessary course material to train his or her own officers.[11]

The five-hour initial racial profiling training was incorporated into the Regular Basic Course[12] for peace officer applicants after January 1, 2004,[13] and POST suggested that incumbent peace officers complete the five-hour training by July 2004.[14] POST can certify a course retroactively,[15] thus it is possible for racial profiling courses that were developed and presented prior to the time POST developed its curriculum to be certified as meeting the requirements of Penal Code section 13519.4. Additionally, both the five-hour racial profiling course and the

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[7] Penal Code section 13519.4, subdivision (c)(2).

[8] Penal Code section 13519.4, subdivision (f); Statutes 2004, chapter 700 (SB 1234) renumbered subdivision *(f)* to subdivision *(g)*. The Commission makes no findings regarding any substantive changes which may have been made in the 2004 legislation since it was not pled in the test claim. Accordingly, this provision will continue to be referred to as "subdivision (f)" as originally set forth in the test claim statute.

[9] Penal Code section 13519.4, subdivision (f).

[10] Penal Code section 13519.4, subdivision (i).

[11] Comments filed by POST, August 10, 2005.

[12] Penal Code section 832.3 requires peace officers to complete a course of training prescribed by POST before exercising the powers of a peace officer.

[13] California Code of Regulations, title 11, section 1081, subdivision (a)(33).

[14] POST Legislative Training Mandates, updated August, 2004.

[15] California Code of Regulations, title 11, section 1052, subdivision (d).

two-hour refresher course can be certified by POST to allow agencies and officers to apply the training hours toward their 24-hour Continuing Professional Training requirement.[16, 17]

Prior Test Claim Decisions

In the past, the Commission has decided six other test claims addressing POST training for peace officers that are relevant for this analysis.

1. Domestic Violence Training

In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- the test claim statute does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- the test claim statute does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours and, thus, no additional costs are incurred by local agencies; and
- the test claim statute does not require local agencies to provide domestic violence training.

2. Domestic Violence and Incident Reporting

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the Commission recognized that the test claim statute imposed a new program or higher level of service, the Commission found that local agencies incurred *no* increased "costs mandated by the state" in carrying out the two-hour course for the following reasons:

- *immediately before and after* the effective date of the test claim statute, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years;
- the two-hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum;
- the two-hour training is *neither* "separate and apart" *nor* "on top of" the 24-hour minimum;
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two-hour course;

[16] Letter from POST, dated August 10, 2005.

[17] Title 11, section 1005(d)(1) requires peace officers to complete 24 hours of POST-qualifying training every two years.

- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question; and
- of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

That test claim was subsequently litigated and decided in the Second District Court of Appeal (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 [*County of Los Angeles II*]), where the Commission's decision was upheld and reimbursement was ultimately denied.

3. Sexual Harassment Training in the Law Enforcement Workplace

In September 2000, the Commission approved in part and denied in part a test claim filed by the County of Los Angeles regarding sexual harassment training for peace officers (*Sexual Harassment Training in the Law Enforcement Workplace,* 97-TC-07). The test claim statute required POST to develop complaint guidelines to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The statute also required the course of basic training for law enforcement officers to include instruction on sexual harassment in the workplace, and veteran peace officers that had already completed basic training were required to receive supplementary training on sexual harassment in the workplace. The Commission reached the following conclusions:

- the sexual harassment complaint guidelines to be followed by local law enforcement agencies developed by POST constituted a reimbursable state-mandated program;
- the modifications to the course of basic training did not constitute a reimbursable state-mandated program since it did not impose any mandated duties on the local agency; and
- the supplemental training that required veteran peace officers to receive a one-time, two-hour course on sexual harassment in the workplace constituted a reimbursable state-mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute which required the local agency to provide or pay for continuing education training.[18]

[18] Reimbursable "costs mandated by the state" for this test claim included: 1) salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment in the workplace; and 2) costs to present the one-time, two-hour course in the form of materials and trainer time.

4. Law Enforcement Racial and Cultural Diversity Training

In October 2000, the Commission denied a test claim filed by the County of Los Angeles regarding racial and cultural diversity training for law enforcement officers (*Law Enforcement Racial and Cultural Diversity Training,* 97-TC-06). The test claim statute required that, no later than August 1, 1993, the basic training course for law enforcement officers include adequate instruction, as developed by POST, on racial and cultural diversity. The Commission found that the test claim statute did not impose any mandated duties or activities on local agencies since the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who seeks peace officer status.

5. Elder Abuse Training

In January 2001, the Commission approved in part and denied in part a test claim filed by the City of Newport Beach regarding elder abuse training for city police officers and deputy sheriffs (*Elder Abuse Training,* 98-TC-12). The test claim statute required city police officers or deputy sheriffs at a supervisory level and below who are assigned field or investigative duties to complete an elder abuse training course, as developed by POST, by January 1, 1999, or within 18 months of being assigned to field duties. The Commission reached the following conclusions:

- The elder abuse training *did constitute* a reimbursable state-mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute, which requires the local agency to provide or pay for continuing education training.[19]
- The elder abuse training *did not constitute* a reimbursable state-mandated program when applied to city police officers or deputy sheriffs hired after the effective date of the test claim statute, since such officers could apply the two-hour elder abuse training course towards their 24-hour continuing education requirement.

6. Mandatory On-The-Job Training For Peace Officers Working Alone

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/ 02-TC-06). The Commission found that these executive orders do not impose a reimbursable

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[19] Reimbursable "costs mandated by the state" for this test claim included: 1) costs to present the one-time, two-hour course in the form of trainer time and necessary materials provided to trainees; and 2) salaries, benefits and incidental expenses for each city police officer or deputy sheriff to receive the one-time, two-hour course on elder abuse in those instances where the police officer or deputy sheriff already completed their 24 hours of continuing education at the time the training requirement was imposed on the particular officer, and when a new two-year training cycle did not commence until after the deadline for that officer or deputy to complete elder abuse training.

state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Claimant's Position

The claimant contends that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that costs for the following activities will be incurred and are reimbursable:

- Development costs for the racial profiling training beginning in fiscal year 2000-2001, including travel, training, salary and benefit costs.
- Implementation costs beginning in fiscal year 2001-2002 for over 1,000 incumbent police officers to receive an eight-hour racial profiling class during regular business hours, and may include some overtime pay at one and one-half pay rates for a total of least $65,269.
- Set up and preparation time for instructors at an additional $3,000.
- Ongoing racial profiling training for new officers, as they are hired, which includes the eight-hour class during regular business hours and may include some overtime pay at one and one-half pay rates.
- Ongoing training for the refresher course.

Position of Department of Finance (DOF)

DOF stated in its comments that the test claim is without merit because the test claim statute does not impose an obligation on any *law enforcement agency* to provide training; rather the statute imposes the requirement on the *law enforcement officer*. Further, no duty is imposed on any local government entity to pay the expense of training law enforcement officers, since the local agency has the option when hiring new law enforcement officers to hire only those persons who have already obtained the training. Finally, since the test claim statute specifies that refresher courses are required only of each law enforcement officer who adheres to the standards imposed by POST, there is no mandate because local agency participation in and compliance with POST programs and standards is optional.

DOF subsequently filed comments agreeing with the draft staff analysis.

Position of POST

In its September 17, 2001 comments, POST stated the following:

> Pursuant to the passage of Senate Bill 1102, [POST] is presently in the process of developing a prescribed course that will meet the intent of Senate Bill 1102, as well as the needs of all law enforcement agencies that participate in the POST program.
>
> Local agencies participate in the POST program on a voluntary basis. There is no requirement for any department to present this training. Because the prescribed curriculum for this training is still in the design phase, it is not possible to calculate the cost of presenting such training or the fiscal impact on agencies in the POST program. Suffice it to say that POST is desirous of finding a cost-efficient means of presenting the training so that fiscal impact on the field is not onerous.

In its August 10, 2005 comments, POST stated that subject matter experts from throughout the state in concert with the Governor's Panel on Racial Profiling developed the *Racial Profiling: Issues and Impact* curriculum. This curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency. The comments further stated:

> It is believed that in-house instructors provide validity to the training and can relate the material directly to agency policies.
>
> The curriculum was designed as a "course-in-a-box" and includes an instructor guide, facilitated discussion questions, class exercises, and a companion training video. ... The course was designed to ensure training consistency throughout the State.
>
> Due to the complexity and sensitivity of the topic, POST regulation requires that each instructor complete the 24-hour Racial Profiling Train-the-Trainer Course prior to facilitating the training. The Training for Trainers course is presented on an on-going basis by the Museum of Tolerance in Los Angeles. The course is presented under contract and is of no cost to the [local law enforcement] agency. At the completion of the training, the instructor is provided with all necessary course material to train their own officers.

The mandated basic curriculum is five hours, and the refresher course is two hours. Both courses can be certified by POST to allow agencies to apply the training hours towards the 24-hour Continuing Professional Training requirement.

COMMISSION FINDINGS

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," or 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 statute must be compared with the legal requirements in effect immediately before the enactment of the test claim statute.[26] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[27]

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[20] 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 (*County of Los Angeles I*) and *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, 878.

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]

The analysis addresses the following issues:

- Is the test claim statute subject to article XIII B, section 6 of the California Constitution?
- Does the test claim statute impose a "new program or higher level of service" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim statute impose "costs mandated by the state" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

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

A. Does the test claim statute mandate any activities?

In order for the test claim statute to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies. If the language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered.

The test claim statute, Statutes 2000, chapter 684, amended Penal Code section 13519.4 by adding subdivisions (c)(1) through (c)(4), and subdivisions (d) through (j). Each of these new provisions is summarized below.

Subdivisions (c)(1) through (c)(4): These subdivisions state the Legislature's findings and declarations regarding racial profiling and do not mandate any activities.

Subdivision (d): This subdivision provides a definition for racial profiling and does not mandate any activities.

Subdivision (e): This subdivision states that law enforcement officers "shall not engage in racial profiling" and thus prohibits, rather than mandates, an activity.

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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.

Subdivision (f): This subdivision states that every law enforcement officer in the state shall participate in expanded racial profiling training that is prescribed and certified by POST, to begin no later than January 1, 2002; it further sets forth requirements for POST to collaborate with a five-person panel appointed by the Governor and the Legislature in developing the training. Thus, the provision does mandate an activity on local law enforcement officers. Whether this mandates an activity on local agencies is analyzed below.

Subdivision (g): This subdivision states that members of the panel established pursuant to subdivision (f) shall not be compensated except for reasonable per diem related to their work for panel purposes, and does not mandate any activities on local government agencies.

Subdivision (h): This subdivision specifies that certain requirements be incorporated into the racial profiling curriculum, but does not mandate any activities on local agencies.

Subdivision (i): This subdivision requires that once the initial racial profiling training is completed, each law enforcement officer as described in Penal Code section 13510, subdivision (a), who adheres to the standards approved by POST, complete a refresher course every five years thereafter or on a more frequent basis if deemed necessary. Thus, the provision does mandate an activity on specified law enforcement officers. Whether this mandates an activity on local agencies is analyzed below.

Subdivision (j): This provision requires the Legislative Analyst to conduct a study of data being voluntarily collected on racial profiling and provide a report to the Legislature. It does not mandate any activities on local agencies.

The Requirement for Initial Racial Profiling Training Mandates Activities on Local Agencies for Incumbent Officers Only

Penal Code section 13519.5, subdivision (f), states in pertinent part:

> Every law enforcement officer in this state shall participate in expanded training [in racial profiling] as prescribed and certified by [POST]. Training shall begin being offered no later than January 1, 2002.

The plain meaning of this provision requires that law enforcement officers participate in expanded training regarding racial profiling, that the training is prescribed and certified by POST, and that such training was required to begin being offered no later than January 1, 2002.

Claimant contends that subdivision (f) requires local agencies to develop a racial profiling course and is seeking reimbursement for travel, training, salary and benefit costs for developing an eight-hour racial profiling curriculum. The plain language of subdivision (f) does not require local agencies to develop the training; instead, the statute requires *POST*, in collaboration with a designated panel, to prescribe and certify the training. Thus, the activity of local agencies developing the racial profiling training is not mandated by the test claim statute and, therefore, is not reimbursable pursuant to article XIII B, section 6 of the California Constitution.

Claimant also contends that subdivision (f) requires local agencies to provide an initial racial profiling course to both its new recruits and incumbent officers, and is seeking reimbursement for salary and benefit costs, in some instances at overtime rates, for the time taken by these employees to attend an *eight-hour* course. However, POST states that it developed a *five-hour* course to meet the "expanded training" requirement in Penal Code section 13519.4,

subdivision (f). Moreover, as of January 1, 2004, that five-hour racial profiling curriculum was incorporated into the Regular Basic Course requirements established by POST.

For the reasons cited below, the Commission finds that there is no requirement for new recruits, i.e., employees who have not yet received basic training, to participate in racial profiling training. Furthermore, there is no requirement for the local agency to provide basic training to its new recruits.

New recruits who have not received basic training are not yet considered "law enforcement officers."[31] Since 1971, Penal Code section 832 has required "every *person* described in this chapter as a peace officer" to satisfactorily complete an introductory course of training prescribed by POST before they can exercise the powers of a peace officer.[32] Any "person" completing the basic training course "who does not become employed as a peace officer" within three years is required to pass an examination developed or approved by POST.[33] Since 1994, POST has been authorized to charge a fee for the basic training examination to each "applicant" who is not sponsored or employed by a local law enforcement agency.[34]

For those "persons" who have acquired prior equivalent peace officer training, POST is required to provide the opportunity for testing instead of the attendance at a "basic training academy or accredited college."[35] Moreover, "each *applicant* for admission to a basic course of training certified by [POST] who is *not* sponsored by a local or other law enforcement agency ... shall be required to submit written certification from the Department of Justice ... that the *applicant* has no criminal history background...."[36] [Emphasis added.]

Thus, until an employee completes basic training, he or she is not a "law enforcement officer" for purposes of the test claim statute, and there is no requirement on the individual to attend racial profiling training.

With regard to new recruits, DOF states that there is no mandate on the local agency to provide the racial profiling training or pay for it, but rather the requirement is on the new recruit alone. DOF further asserts that the claimant has the option of hiring officers already trained in racial profiling as part of the required basic training for peace officers. The Commission agrees there is no mandate on local agencies to provide basic training to their law enforcement recruits.

The Commission determined that there is no provision in statute or POST regulations that requires local agencies to provide basic training. Since 1959, Penal Code section 13510 et seq.

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[31] Penal Code section 13510 establishes that, for the "purpose of raising the level of competence of local law enforcement officers," POST sets minimum standards governing the recruitment of various types of "peace officers." Thus, the terms "law enforcement officer" and "peace officer" are used interchangeably in the Penal Code.

[32] See also POST's regulation, Title 11, California Code of Regulations, section 1005, subdivision (a)(1).

[33] Penal Code section 832, subdivision (e).

[34] Penal Code section 832, subdivision (g).

[35] *Ibid.*

[36] Penal Code section 13511.5.

required POST to adopt rules establishing minimum standards relating to the physical, mental and moral fitness governing the recruitment of new local law enforcement officers.[37] In establishing the standards for training, the Legislature instructed POST to permit the required training to be conducted by *any* institution approved by POST.[38] In fact, there are 39 POST-certified basic training academies in California.

The Commission acknowledges that some local law enforcement agencies hire persons who have not yet completed their basic training course, and then sponsor or provide the training themselves. However, other agencies require the successful completion of the POST Regular Basic Course before the applicant will be considered for the job.[39] There are several community colleges approved by POST to offer the Regular Basic Course, that are open to any interested individual, whether or not employed or sponsored by a local agency.

Thus, the Commission further finds that since the initial five-hour racial profiling training is, as of January 1, 2004, a required element of the basic training curriculum, and there is no state mandate for local agencies to provide to new recruits their basic training, the test claim statute does not mandate local agencies to incur costs to send their new recruits to racial profiling training as part of the basic training course.

With regard to claimant's incumbent law enforcement officers who *had* completed basic training on or before January 1, 2004, and thus did not receive the initial racial profiling training in their basic training, DOF asserts that the test claim statute does not impose any obligations on local agencies to provide the training. Instead, DOF contends, the statute imposes a training obligation on law enforcement officers alone.

Subdivision (f) requires "every law enforcement officer in this state" to attend expanded training in racial profiling. The plain language of the test claim statute does not mandate or require local agencies to provide or pay for the racial profiling training, and there are no other state statutes, regulations, or executive orders requiring local agencies to pay for continuing education training for every law enforcement officer in the state.

However, with regard to the POST-prescribed and certified initial five-hour racial profiling course, POST states the following:

> The curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency. It is believed that in-house instructors provide validity to the training and can relate the material directly to agency policies....
>
> Due to the complexity and sensitivity of the topic, POST regulation requires that each instructor complete the 24-hour Racial Profiling Train-the-Trainer Course prior to facilitating the training. The Training for Trainers course is presented on an on-going basis by the Museum of Tolerance in Los Angeles. The course is presented under contract and is of no cost to the agency. At

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[37] These standards are set forth in Title 11, California Code of Regulations.

[38] Penal Code section 13511.

[39] See Job Bulletin for Police Officer for City of San Carlos.

> the completion of the training, the instructor is provided with all the necessary course material to train their own officers.
>
> The course was originally planned to be four hours in length. After two pilot presentations it was determined that the material could not be covered sufficiently in four hours; therefore, an additional hour was added, which extended the mandated curriculum to five hours.

Thus, there is evidence in the record that to implement the training requirement, there is an expectation on the local agency to be involved with providing the racial profiling training.[40] Although claimant states that it developed an *eight-hour* racial profiling course, POST's initial racial profiling curriculum is a *five-hour course* and represents both the minimum and maximum number of hours mandated by the state. Any hours exceeding five for this training is within the discretion of the local agency, and therefore cannot be considered an activity mandated by the state.

Claimant asserts that even if the training requirement is imposed upon the *officer*, the *employer* is responsible for compensating the employee for the training time — as if he or she is working — pursuant to the Fair Labor Standards Act ("FLSA"). The Commission agrees that, where law enforcement officers are *employees* of local agencies, the FLSA is relevant to this claim.

The FLSA generally provides employee protection by establishing the minimum wage, maximum hours and overtime pay under federal law. In 1985, the United States Supreme Court found that the FLSA applies to state and local governments.[41] The FLSA is codified in Title 29 of the Code of Federal Regulations (CFR).

Claimant contends that since racial profiling training is required by the state and is not voluntary, training time needs to be counted as compensable working time under 29 CFR section 785.27, and treated as an obligation imposed on the local agency. Section 785.27 states the following:

> Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:
>
> (a) Attendance is outside of the employee's regular working hours;
>
> (b) Attendance is in fact voluntary;
>
> (c) The course, lecture or meeting is not directly related to the employee's job; and
>
> (d) The employee does not perform any productive work during such attendance.

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[40] POST regulation requires trainers from the local agency to attend a 24-hour "Train-the-Trainer Racial Profiling Course" prior to providing the initial five-hour racial profiling course. The claimant has not requested reimbursement for this activity, and the Commission therefore makes no finding on it.

[41] *Garcia v. San Antonio Metropolitan Transit Authority et al.* (1985) 469 U.S. 528.

All four criteria must be met for the employer to avoid paying the employee for time spent in training courses. Here, attendance at the initial course is *not* voluntary, and the racial profiling course *is* directly related to the employee's job. Therefore, the Commission agrees with the claimant that, pursuant to this section, local agencies are required to compensate their employees for racial profiling training *if the training occurs during the employee's regular working hours.*

Accordingly, the Commission finds that local agencies are mandated by the state through Penal Code section 13519.4, subdivision (f), to compensate incumbent officers for attendance at the initial racial profiling training *if* the training occurs during regular work hours. However, because POST has designated five hours as the necessary amount of time to present the curriculum, any claims must be based on a five-hour course.

In 1987, an exception to the FLSA was enacted which provides that time spent by law enforcement officer employees of state and local governments in training required for certification by a higher level of government that occurs *outside of the employee's regular working hours* is noncompensable. The relevant provisions, located in 29 CFR section 553.226, state in pertinent part the following:

> (a) The general rules for determining the compensability of training time under the FLSA are set forth in §§ 785.27 through 785.32 of this title.
>
> (b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of State and local governments in required training is considered to be noncompensable:
>
> ...
>
> *(2) Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does* ***not*** *constitute compensable hours of work.* (Emphasis added.)

The Commission finds that 29 CFR section 553.226, subdivision (b)(2), applies when the racial profiling training is conducted outside the employee's regular working hours. In such cases, the local agency is not required to compensate the employee. Rather, the cost of compensating officers attending racial profiling training *becomes a term or condition of employment subject to the negotiation and collective bargaining* between the local agency and the employee.

Collective bargaining between local agencies and their employees is governed by the Meyers-Milias-Brown Act. (Gov. Code, §§ 3500 et seq.) The Act requires the governing body of the local agency and its representatives to meet and confer in good faith regarding wages, hours and other terms of employment with representatives of employee organizations. If an agreement is reached, the parties enter into a collective bargaining agreement, or memorandum of understanding (MOU). Only upon the approval and adoption by the governing board of the local agency, does the MOU become binding on the local agency and its employees.[42]

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[42] Government Code sections 3500, 3503, and 3505.1.

Although paying for racial profiling training conducted outside the employee's regular working hours is an issue negotiated at the local level, the Commission recognizes that the California Constitution prohibits the Legislature from impairing obligations or denying rights to the parties of a valid, binding contract absent an emergency.[43] In the present case, the test claim statute became effective on January 1, 2001, and was not enacted as an urgency measure.

Accordingly, the Commission finds that compensating the officer for the initial racial profiling training outside the employee's regular working hours is an obligation imposed on those local agencies that, as of January 1, 2001 (the effective date of the statute), are bound by an existing MOU, which requires the agency to pay for continuing education training.

However, when the existing MOU terminates, or in the case of a local agency that is not bound by an existing MOU on January 1, 2001, requiring that the agency pay for continuing education training, the initial racial profiling training conducted outside the employee's regular working hours becomes a negotiable matter subject to the discretion of the local agency. Under those circumstances, the Commission finds that the requirement to pay for the initial racial profiling training is not an obligation imposed by the state on a local agency.

As a final matter, the test claim statute states that the training shall begin *no later than* January 1, 2002, which does not preclude the agency from providing racial profiling training sooner than that date. Where a local agency conducted the training *prior to* POST releasing its "prescribed and certified" racial profiling training, up to five hours of such training could be considered a mandated activity if the curriculum is approved and certified by POST as meeting the POST specifications for the racial profiling topic. POST can certify such training curriculum *retroactively*, pursuant to California Code of Regulations, title 11, section 1052.

In conclusion, the Commission finds that Penal Code section 13519.4, subdivision (f), mandates *up to five hours* of racial profiling training under the following conditions:

1. the training is provided to incumbent law enforcement officers who completed basic training on or before January 1, 2004;
2. the training is certified by POST; and
3. the training is attended during the employee's regular working hours, or the training occurs outside the employee's regular working hours *and* there is an obligation imposed by an MOU existing on January 1, 2001 (the effective date of the test claim statute), which requires that the local agency pay for continuing education training.

The Requirement for Refresher Racial Profiling Training Mandates an Activity on Local Agencies

Penal Code section 13519.4, subdivision (i), states the following:

> Once the initial basic training [for racial profiling] is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by [POST] shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

[43] California Constitution, article 1, section 9.

Claimant is requesting reimbursement for salary and benefit costs, in some instances at overtime rates, for the officers' time spent in attending the refresher racial profiling course. POST has certified that two hours is needed for this refresher racial profiling course.

Since this requirement is applicable to law enforcement officers of specified local agencies that adhere to the standards approved by POST, DOF asserts there is no mandate because belonging to POST is *voluntary* on the part of local agencies. However, in *County of Los Angeles II*, a recent California Second District Court of Appeal case regarding reimbursement for peace officer training mandated by state statute, the court stated that "[w]e agree that POST certification is, for all practical purposes, not a 'voluntary' program..."[44]

Additionally, as with the five-hour racial profiling course for incumbent law enforcement officers, FLSA similarly requires local agencies to compensate their officers for racial profiling training when it occurs during regular work hours and in some cases outside the employee's regular working hours depending on the MOU negotiated between the employees and the local agency.

Thus, the Commission finds that Penal Code section 13519.4, subdivision (i), does mandate up to two hours of refresher racial profiling training for incumbent law enforcement officers under the conditions set forth under the subdivision (f) analysis of this issue.

B. Does the test claim statute constitute a "program?"

The test claim statute must also constitute a "program" in order to be subject to article XIII B, section 6 of the California Constitution. Courts have defined a "program" as one that carries out the governmental function of providing a service to the public, 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.[45]

The *County of Los Angeles I* case further explained that the term "program" as it is used in article XIII B, section 6, "was [intended] to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities." (Emphasis added.)[46] Accordingly, the court found that no reimbursement was required for increases in workers' compensation and unemployment insurance benefits applied to all employees of private and public businesses.[47]

Here, on the other hand, the requirements imposed by the test claim statute are carried out by state and local law enforcement agencies. Although both state and local entities are involved, these requirements do not apply "generally to all residents and entities in the state," as did the requirements for workers' compensation and unemployment insurance benefits in the *County of Los Angeles I* case.

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[44] *County of Los Angeles II, supra,* 110 Cal.App.4th 1176, 1194.

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

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

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

Therefore, the Commission finds that the test claim statute imposes requirements peculiar to government to implement a state policy which does not apply generally to all residents and entities in the state, and thus constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim statute impose a "new program or higher level of service" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

The courts have held that a test claim statute imposes a "new program or higher level of service" when: a) the requirements are new in comparison with the preexisting scheme; *and* b) the requirements were intended to provide an enhanced service to the public.[48] Both of these conditions must be met in order to find that a "new program or higher level of service" was created by the test claim statute. The first step in making this determination is to compare the test claim statute with the legal requirements in effect immediately before the enactment of the test claim statute.

In 1990, the Legislature established requirements for law enforcement officers to be instructed in racial and cultural diversity.[49] As stated above, the test claim statute imposed additional requirements in Penal Code section 13519.4, subdivisions (f) and (i), to provide and compensate incumbent law enforcement officers for attending racial profiling training under certain circumstances. Those requirements are new in comparison to the preexisting scheme.

Furthermore, the test claim statute was intended to help prevent the "pernicious" practice of racial profiling by law enforcement officers,[50] which demonstrates the intent to provide an enhanced service to the public. Thus, the test claim statute does impose a "new program or higher level of service."

Issue 3: Does the test claim statute impose "costs mandated by the state" on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

For the mandated activities to impose a reimbursable, state-mandated program, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant to Government Code section 17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.

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

[49] Statutes 1990, Chapter 480; Penal Code section 13519.4.

[50] Penal Code section 13519.4, subdivision (c).

The Initial Racial Profiling Training Requirement Imposes "Costs Mandated by the State"

The test claim alleged costs of $65,269 for providing the initial racial profiling training for incumbent officers pursuant to subdivision (f). Thus, there is evidence in the record, signed under penalty of perjury, that there are increased costs as a result of the test claim statute.

However, POST stated that the initial racial profiling course can be "certified by POST which would allow agencies to apply the training hours towards the 24-hour Continuing Professional Training requirement."[51] POST regulations provide that local law enforcement officers must receive at least 24 hours of Advanced Officer continuing education training every two years.[52] Thus, the issue is whether there are *increased costs* as a result of the test claim statute, or whether any costs can be absorbed into *existing* 24-hour continuing education requirement.

In 1998, the Commission analyzed whether a statute that required continuing education training for peace officers imposed "costs mandated by the state" in the *Domestic Violence Training and Incident Reporting* (*"Domestic Violence"*) test claim. That test claim statute included the following language: "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government."

The issue was whether the domestic violence training could be absorbed into the 24-hour requirement which would ultimately result in no increased costs. The Commission determined that if the domestic violence training course caused an increase in the total number of required continuing education hours, then the increased costs associated with the new training course were reimbursable as "costs mandated by the state." On the other hand, if there was no overall increase in the total number of continuing education hours, then there were no increased training costs associated with the training course. Instead, the cost of the training course was accommodated or absorbed by local law enforcement agencies within their existing resources available for training.

The Commission found that there were no "costs mandated by the state" in the *Domestic Violence* test claim. The claim was denied for the following reasons:

- Immediately before and after the effective date of the test claim statute, POST's minimum required number of continuing education hours for the law enforcement officers in question remained the same at 24 hours. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years.
- The two-hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum.
- The two-hour training is neither "separate and apart" nor "on top of" the 24-hour minimum.

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[51] Letter from POST, dated August 10, 2005.

[52] California Code of Regulations, title 11, section 1005, subdivision (d).

- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two-hour course.
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question.
- Of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from the many elective courses certified by POST.

That test claim was subsequently litigated and decided in the Second District Court of Appeal (*County of Los Angeles II, supra*), where reimbursement was ultimately denied. The court stated the following:

> POST training and certification is ongoing and extensive, and local law enforcement agencies may chose from a menu of course offerings to fulfill the 24-hour requirement. Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. Officer downtime will be incurred. However, merely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.
>
> ...
>
> While we are mindful that legislative disclaimers, findings and budget control language are not determinative to a finding of a state mandated reimbursable program, [citations omitted], our interpretation is supported by the hortatory statutory language that, "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government."[53]

Here, the Commission finds the initial five-hour racial profiling course, when demonstrated that it exceeds the 24-hour continuing education requirement, does impose "costs mandated by the state" for the following reasons.

First, unlike the domestic violence training statute, the test claim statute did not establish legislative intent that racial profiling training be funded from existing resources and that annual training costs of local government should not be increased. Moreover, although POST states it is *possible* to certify the initial racial profiling training and make it part of the 24-hour continuing education, it did not interpret the test claim statute to *require its inclusion* within the 24-hour continuing education requirement as it did with the *Domestic Violence* test claim.

Second, the test claim statute requires a one-time initial five-hour racial profiling training to begin by January 1, 2002, and the Legislative Training Mandates document issued by POST suggests that incumbent officers complete the initial racial profiling course by July 2004.

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[53] *County of Los Angeles II, supra,* 110 Cal.App.4th 1176, 1194-1195.

Thus, although not mandated, POST recommends the initial training be completed within a specified period of time. Such administrative interpretations of statutes are accorded great weight and respect.[54]

Third, claimant asserts that "an officer can readily exceed the 24 hours mandatory training required every two years, even prior to this new training mandate."[55] It is possible that some law enforcement officers could have already met or been close to meeting their 24-hour continuing education requirements within their particular two-year continuing education cycle *before* they were required to take the initial racial profiling training.

Based on the foregoing, the Commission finds that Penal Code section 13519.4, subdivision (f), imposes "costs mandated by the state" to the extent that the initial racial profiling course causes law enforcement officers to exceed their 24-hour continuing education requirement, when the two-year cycle that included the initial five-hour racial profiling course occurs between January 1, 2002, and July 2004, and the continuing education for that cycle was attended *prior to* the initial racial profiling course.

None of the Exceptions in Government Code Section 17556 Are Applicable to Deny Reimbursement for the Initial Racial Profiling Training

For the reasons stated below, the Commission finds that none of the exceptions apply to deny the portion of the test claim dealing with Penal Code section 13519.4, subdivision (f).

Government Code section 17556, subdivision (c), states that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds that:

> The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government...

Here, because the federal FLSA requires employee training time to be compensated under certain circumstances, this raises the issue of whether the obligation to pay for racial profiling training is an obligation imposed by the state, or an obligation arising out of existing federal law through the provisions of the FLSA.

The Commission finds that there is no federal statutory or regulatory scheme requiring local agencies to provide racial profiling training to incumbent officers. Rather, what triggers the provisions of the FLSA requiring local agencies to compensate incumbent officers for racial profiling training is the test claim statute. If the state had not created this program, incumbent officers would not be required to receive racial profiling training, and local agencies would not be obligated to compensate those officers for such training. Therefore, Government Code section 17556, subdivision (c), is inapplicable to deny the claim.

Government Code section 17556, subdivision (e), states that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds that:

> The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that

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[54] *Hoechst Celanese Corp. V. Franchise Tax Board* (2001) 25 Cal.4th 508.

[55] Declaration of Deputy Alex Nishimura, dated June 18, 2002.

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.

The Penal Code provides authority for POST to allocate from the Peace Officers' Training Fund state aid to cities, counties or districts which have applied and qualified for aid.[56] Although any aid provided under the Penal Code for racial profiling training must be considered an offset to reimbursable amounts, there is no evidence in the record that this provision does not result in "no net costs" or "sufficient" funding for the mandated activities. Therefore, Government Code section 17556, subdivision (e), is inapplicable to deny the claim.

The Racial Profiling Refresher Training Does Not Impose "Costs Mandated by the State"

Claimant asserted in the test claim that it would incur ongoing costs in employee salaries and benefits to provide the refresher course "every five years, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends."

However, POST stated that the two-hour racial profiling refresher course can be "certified by POST which would allow agencies to apply the training hours towards the 24-hour Continuing Professional Training requirement."[57] Thus, the issue is whether there are *increased costs* as a result of the requirement for a racial profiling refresher course, or whether those costs can be absorbed into the *existing* 24-hour continuing education requirement.

Unlike the five-hour initial racial profiling course required under subdivision (f), the Commission finds the two-hour racial profiling refresher course required under subdivision (i) *does not* impose "costs mandated by the state" for the following reasons.

As determined by POST, the two-hour racial profiling refresher course, required to be completed every five years, applies to the existing 24-hour continuing education training requirement imposed on officers. In *County of Los Angeles II*, the court focused on the fact that any increased costs resulting from the two-hour domestic violence update training, required only every *two* years, were "incidental" to the cost of administering the POST certification. The court stated:

> Thus, while the County may lose some flexibility in tailoring its training programs, such loss of flexibility does not rise to the level of a state mandated reimbursable program because the loss of flexibility is incidental to the greater goal of providing domestic violence training. Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. [58]

Since the two-hour racial profiling refresher training is only required every *five* years, beginning after the initial course is provided, officers can more readily plan for incorporating the training into their 24-hour, two-year continuing education requirement.

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[56] Penal Code section 13523.

[57] Letter from POST, dated August 10, 2005.

[58] *County of Los Angeles II, supra,* 110 Cal.App.4th 1176, 1194-1195.

Based on the foregoing, the Commission finds that Penal Code section 13519.4, subdivision (i), does not impose "costs mandated by the state."

CONCLUSION

The Commission finds that Penal Code section 13519.4, subdivision (f), imposes a reimbursable state-mandated program within the meaning of article XIII, section 6 of the California Constitution, and Government Code section 17514, for *up to five hours* of initial racial profiling training under the following conditions:

1. the training is provided to incumbent law enforcement officers who completed basic training on or before January 1, 2004;
2. the training is certified by POST;
3. the training is attended during the officer's regular work hours, or training is attended outside the officer's regular work hours *and* there is an obligation imposed by an MOU existing on January 1, 2001, which requires that the local agency pay for continuing education training; and
4. the training causes the officer to exceed his or her 24-hour continuing education requirement, when the two-year continuing education cycle that included the initial five-hour racial profiling training occurs between January 1, 2002 and July 2004, and the continuing education for that cycle was attended *prior to* the initial racial profiling course.

The Commission further finds that Penal Code section 13519.5, subdivision (i), which mandates the two-hour refresher racial profiling training, does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, because it does not impose "costs mandated by the state."

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Mailing List

Related Matter(s)

02-TC-05 Racial Profiling: Law Enforcement Training (K-14)

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