COMMISSION ON STATE MANDATES
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March 13, 2008

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 Parameters and Guidelines, and Hearing Date
Racial Profiling: Law Enforcement Training (01-TC-01)
Penal Code Section 13519.4
Statutes 2000, Chapter 684
County of Sacramento, Claimant

Dear Ms. Gust:

The final staff analysis and proposed parameters and guidelines for this program are complete and enclosed for your review.

Hearing

This matter is set for hearing on **Friday, March 28, 2008,** at 9:30 a.m., in Room 447 of the State Capitol, Sacramento, California. This matter is proposed for the consent calendar. 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 Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosures

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Hearing Date: March 28, 2008
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ITEM 4

FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Penal Code Section 13519.4

Statutes 2000, Chapter 684

Racial Profiling: Law Enforcement Training
01-TC-01

County of Sacramento, Claimant

EXECUTIVE SUMMARY

This test claim addresses a statute 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). On October 26, 2006, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *Racial Profiling: Law Enforcement Training* program (01-TC-01). The Commission found that the test claim statute constitutes a new program or higher level of service and imposes a 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 for incumbent law enforcement officers 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 found that Penal Code section 13519.5, subdivision (i), which requires 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."

Discussion

The claimant submitted the proposed parameters and guidelines and Department of Finance filed comments on the proposal. Substantive changes were made to the claimant's proposed parameters and guidelines, and a draft staff analysis and the proposed parameters and guidelines, as modified by staff, were issued for public comment. The State Controller's Office proposed nonsubstantive technical changes that were made by staff. The Department of Finance concurred with the staff analysis and proposed parameters and guidelines. Following are the substantive changes proposed by staff:

II. Eligible Claimants Were Revised to Remove Special Districts

The claimant defines eligible claimants for this program to include cities, counties, and special districts. The test claim was filed by a county. Counties and cities are required by the California Constitution to have a police department.[1] While special districts are authorized by statute to hire peace officers, the law does not require that they do so. Thus, the issue is whether the test claim statute constitutes a state-mandated program for special districts.

This issue is directly related to litigation pending in the Third District Court of Appeal (*Department of Finance v. Commission on State Mandates*, Case No. C056833 (*POBOR*)). Therefore, Commission staff is only proceeding with parameters and guidelines for eligible cities and counties for the *Racial Profiling: Law Enforcement Training* program. Once a final decision is issued in the *POBOR* case, the Commission will proceed with parameters and guidelines for special districts, and address the issue whether Penal Code section 13519.4 constitutes a state-mandated program for special districts. Staff revised the proposed parameters and guidelines to remove special districts.

III. Period of Reimbursement Was Revised to Add One Year

The claimant proposed a reimbursement period beginning January 1, 2002. The test claim statute became effective on January 1, 2001, and required one-time racial profiling training to begin by January 1, 2002. 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. Therefore, based on the test claim statute, the filing date for the test claim, and the effective date of the test claim statute, staff revised this section of the proposed parameters and guidelines to clarify that reimbursement begins on January 1, 2001.

Estimated Claims

Prior to February 16, 2008, claimants were authorized to file estimated reimbursement claims for the current fiscal year. Claimants were required to file a reimbursement claim showing actual costs for that fiscal year by the following February 15. On February 16, 2008, the Governor enacted ABX3 8 (Stats. 2008, ch. 6) in special session as part of an overall budget reduction package for the 2007-2008 fiscal year. ABX3 8 became effective immediately. The bill repealed the authority for claimants to file and be paid for estimated reimbursement claims. Therefore, staff removed any references to estimated reimbursement claims from this section of the proposed parameters and guidelines.

IV. Reimbursable Activities Were Narrowed

The claimant proposed that, based on the Statement of Decision, the reimbursable activities be eligible for reimbursement on a one-time basis for the period of January 1, 2002 through July 31, 2004. The Statement of Decision findings define under what circumstances a local agency may be reimbursed. The findings do not define or limit the period of reimbursement. The Commission found that the test claim statute requires 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. Thus, although not mandated, POST recommends the initial training be completed within a specified period of time. Therefore, staff removed claimant's proposed limitation that the activities are only eligible for reimbursement for the period of January 1, 2002 through July 31, 2004.

Training

Department of Finance recommends that reimbursement for time the in-house trainer spends in being trained by POST in a racial profiling train-the-trainer course be deleted because train-the-trainer courses are offered at no charge to local agencies. POST developed a five-hour approved curriculum to meet the

[1] Article XI, sections 1, 5.

initial training and it was designed to be presented in-house by a trained instructor within the law enforcement agency. That course is given on an ongoing basis by the Museum of Tolerance in Los Angeles at no cost to the law enforcement agency. However, there are costs for local agencies to pay officers' staff time to attend the training, and travel costs to send the officers to the training.

Under the Commission's regulations, the Commission may include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program." Staff finds that reimbursing certain officers' time to attend the training and their travel costs so that they can return and train other law enforcement officers is the most reasonable method of complying with the mandate. Therefore, staff did not remove this activity.

Set Up and Facilities Costs

Department of Finance also recommends that reimbursement for "set up and facilities costs" be deleted, because the test claim statute did not specifically require these costs, and set up and facilities costs would be appropriately recovered through indirect costs.

Costs for fixed assets and equipment may be recovered through indirect costs. However, "facilities" costs, such as additional training facility expenses, are not recovered through indirect costs. There is nothing in the record to show that facilities costs are reasonably necessary to carry out the mandate. Therefore, staff removed facilities costs from Section IV.

The test claim, signed under penalty of perjury, alleges "set up" costs as set up and prep time for the *trainer*. Staff finds that set up costs for the trainer is a reasonable method of complying with the mandate, because the trainer will have to spend employee time preparing for the training. Therefore, staff retained set up costs as a reimbursable activity.

VII. Offsetting Revenue and Other Reimbursements Were Revised to Offset Existing State Aid

Penal Code section 13523 provides authority for POST to allocate from the Peace Officers' Training Fund state aid to cities and counties that have applied and qualified for aid. Staff added language to this section to clarify that any funds a city or county receives pursuant to Penal Code section 13523 must be offset from claimed amounts.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 9.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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
10/26/06	Commission adopted Statement of Decision partially approving test claim
10/31/06	Commission issued Statement of Decision and notified claimant that proposed parameters and guidelines are due November 30, 2006
03/02/07	Claimant submitted proposed parameters and guidelines
03/07/07	Commission issued proposed parameters and guidelines for comment and informed claimant that pursuant to Government Code section 17557, since the proposed parameters and guidelines were not timely filed, the amount of reimbursement due the claimant for the first 12 months of incurred costs would be reduced by 20 percent
03/22/07	Department of Finance submitted comments on proposed parameters and guidelines
02/25/08	Commission staff issued the draft staff analysis on proposed parameters and guidelines and set hearing for March 28, 2008
03/11/08	Department of Finance submitted comments on the draft staff analysis and proposed parameters and guidelines.
03/12/08	State Controller's Office submitted comments on the draft staff analysis and proposed parameters and guidelines
03/13/08	Commission staff issues final staff analysis

Summary of the Mandate

This test claim addresses a statute 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). On October 26, 2006, the Commission on State Mandates (Commission) adopted the Statement of Decision

for the *Racial Profiling: Law Enforcement Training* program (01-TC-01).[2] The Commission found that the test claim statute constitutes a new program or higher level of service and imposes a 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 for incumbent law enforcement officers 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 found that Penal Code section 13519.5, subdivision (i), which requires 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."

Discussion

On March 22, 2007, DOF submitted comments on the claimant's proposal.[3] Staff reviewed the claimant's proposed parameters and guidelines and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive changes were made to the claimant's proposed parameters and guidelines, and Commission staff issued a draft staff analysis and the proposed parameters and guidelines, as modified by staff, for public comment on February 25, 2008.[4] Department of Finance filed comments on the draft staff analysis and proposed parameters and guidelines on March 11, 2008, concurring with the staff analysis.[5] On March 12, 2008, the State Controller's Office submitted comments recommending several nonsubstantive technical amendments to the proposed parameters and guidelines.[6] Staff made the recommended revisions. Staff also made the following substantive changes to the proposed parameters and guidelines:

II. Eligible Claimants

This statute imposes requirements upon the local agencies that employ law enforcement officers, by requiring every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002.[7] In the proposed parameters and guidelines, the claimant defines eligible claimants to include cities, counties, and special districts. The test claim for this

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[2] Exhibit A.

[3] Exhibit B.

[4] Exhibit D.

[5] Exhibit E.

[6] Exhibit F.

[7] Penal Code 13519.4.

program was filed by a county. Counties and cities are required by the California Constitution to have a police department.[8] While special districts are authorized by statute to hire peace officers, the law does not require that they do so. Thus, the issue is whether the test claim statute constitutes a state-mandated program for special districts.

This issue is directly related to litigation pending in the Third District Court of Appeal (*Department of Finance v. Commission on State Mandates*, Case No. C056833 (*POBOR*)). Therefore, Commission staff is only proceeding with parameters and guidelines for eligible cities and counties for the *Racial Profiling: Law Enforcement Training* program. Once a final decision is issued in *Department of Finance v. Commission on State Mandates (POBOR),* the Commission will proceed with parameters and guidelines for special districts, and address the issue whether Penal Code section 13519.4 constitutes a state-mandated program for special districts. Staff revised the proposed parameters and guidelines to remove special districts.

III. Period of Reimbursement

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed by the test claimant, County of Sacramento, on August 13, 2001, establishing eligibility for reimbursement period beginning in fiscal year 2000-2001. The test claim statute became effective on January 1, 2001, and required one-time racial profiling training to begin by January 1, 2002. In its Statement of Decision, the Commission found that 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.

Therefore, the period of reimbursement for this program begins on January 1 2001. Staff revised this section of the proposed parameters and guidelines to clarify that reimbursement begins on January 1, 2001.

Estimated Claims

Prior to February 16, 2008, claimants were authorized to file estimated reimbursement claims for the current fiscal year.[9] Claimants were required to file a reimbursement claim showing actual costs for that fiscal year by the following February 15. On February 16, 2008, the Governor enacted ABX3 8 (Stats. 2008, ch. 6) in special session, as part of an overall budget reduction package for the 2007-2008 fiscal year. ABX3 8 became effective immediately. The bill repealed the authority for claimants to file and be paid for estimated reimbursement claims. Therefore, staff removed any references to estimated reimbursement claims from this section of the proposed parameters and guidelines.

IV. Reimbursable Activities

The claimant proposed that the following activities be eligible for reimbursement on a one-time basis for the period of January 1, 2002 through July 31, 2004.

1. Time the in house trainer spends in being trained by POST in a racial profiling train-the-trainer course.
2. For those incumbent officers who had completed their twenty four hour Continuing education requirement, salaries and benefits, together with overtime for those officers who are paid overtime

[8] Article XI, sections 1, 5.

[9] Government Code sections 17522, 17560, and 17568.

for attending the course for the five hour racial profiling course which takes place between January 1, 2002 and July 31, 2004.

3. Set up and facilities costs.

The Statement of Decision states that reimbursement is provided for one-time training for up to five hours of initial racial profiling training if the training (1) is provided to incumbent law enforcement officers who completed basic training on or before January 1, 2004; (2) is certified by POST; (3) is attended during the officer's regular work hours or is attended outside the officer's regular work hours and there is an MOU existing on January 1, 2001 that requires local agencies pay for continuing education training, and (4) 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.

These Commission findings define under what circumstances a local agency may be reimbursed. The findings do not define or limit the period of reimbursement. In the Statement of Decision, the Commission found that the test claim statute requires 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. Thus, although not mandated, POST recommends the initial training be completed within a specified period of time.

Therefore, staff removed claimant's proposed limitation that the activities are only eligible for reimbursement for the period of January 1, 2002 through July 31, 2004. Staff also revised this section of the proposed parameters and guidelines to include the above findings so that the parameters and guidelines conform to the Statement of Decision.

Training

In its comments dated March 22, 2007, DOF recommended the deletion of activity 1: time the in-house trainer spends in being trained by POST in a racial profiling train-the -trainer course. Finance states that this activity should be deleted because train-the-trainer courses are offered at no charge to local agencies. Comments on the test claim draft staff analysis provided by POST on August 10, 2005, stated that 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]

Staff agrees that there is no cost to local agencies for the actual train-the-trainer training provided by the Museum of Intolerance. However, there are costs for local agencies to pay officers' staff time to attend the training, and travel costs to send the officers to the training.

Section 1183.1, subdivision (a)(4), of the Commission's regulations authorizes the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program."

Staff finds that reimbursing certain officers' time to attend the training and their travel costs so that they can return and train other law enforcement officers is the most reasonable method of complying with the mandate. Therefore, staff did not remove activity 1.

[10] Exhibit C.

Set Up and Facilities Costs

Department of Finance also requested the deletion of activity 3: set up and facilities costs, because the test claim statute did not specifically require these costs, and set up and facilities costs would be appropriately recovered through indirect costs.

Costs for fixed assets and equipment may be recovered through indirect costs. However, "facilities" costs, such as additional training facility expenses, are not recovered through indirect costs. There is nothing in the record to show that facilities costs are reasonably necessary to carry out the mandate. Therefore, staff removed facilities costs from Section IV.

The test claim, signed under penalty of perjury, alleges "set up" costs as set up and prep time for the *trainer.* Staff finds that set up costs for the trainer is a reasonable method of complying with the mandate, because the trainer will have to spend employee time preparing for the training. Therefore, staff retained set up costs as a reimbursable activity.

VII. Offsetting Revenue and Other Reimbursements

Penal Code section 13523 provides authority for POST to allocate from the Peace Officers' Training Fund state aid to cities, counties that have applied and qualified for aid. Staff added language to this section to clarify that any funds a city or county receives pursuant to Penal Code section 13523 must be offset from claimed amounts.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 9.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

PROPOSED DRAFT PARAMETERS AND GUIDELINES

Penal Code Section 13519.4

Statutes 2000, Chapter 624

Racial Profiling: Law Enforcement Training
01-TC-01
~~Penal Code, Section 13519.4~~
County of Sacramento, Claimant

I. SUMMARY OF THE MANDATE

~~Chapter 684, statutes of 2000 enacted Penal Code, Section 13519.4, which required every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002. The training was to be prescribed and certified by POST, in collaboration with a five person panel appointed by the Governor, Senate Rules Committee and the Speaker of the Assembly. POST developed a five hour approved curriculum to meet the initial training requirement. This curriculum designed to be presented in house by a trained instructor within the law enforcement agency who had completed a racial Profiling Train the Trainer Course prior to facilitating the training.~~

~~On October 26, 2006, the Commission on State Mandates approved the test claim as a partially reimbursable mandate only to the extent that attending the initial five hour racial profiling training course caused an officer to exceed his or her 24 hour continuing education cycle, when the two year cycle that included the initial five hour training course occurred between January 1, 2002 and July 2004, and the continuing education for that cycle was attended prior to the initial racial profiling course.~~

This test claim addresses a statute 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). On October 26, 2006, the Commission made the following findings and approved the following activities:

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 and is not reimbursable 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.

II. ELIGIBLE CLAIMANTS

Any city, county, ~~city,~~ or city and county, ~~or special district~~ that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The County of Sacramento filed the test claim for this mandate ~~was filed by the test claimant, County of Sacramento,~~ on August 13, 2001, establishing eligibility for reimbursement beginning in fiscal year 2000-2001. The test claim statute became effective on January 1, 2001. Therefore, costs incurred for compliance with this mandate are reimbursable on or after ~~the period of reimbursement begins~~ January 1, 2001~~2, the operative date~~.

Actual costs for one fiscal year shall be included in each claim. ~~Estimated costs of the subsequent year may be included on the same claim, if applicable.~~ Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564, subdivision (a).

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the

reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, ~~calendars,~~ and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities are eligible for reimbursement on a one-time basis per eligible employee as described below ~~for the period of January 1, 2002 through July 31, 2004 as follows~~:

Trainer Activities

1. Time the in-house trainer spends in being trained by POST in a Racial Profiling Train-the-Trainer Course, and traveling to the training course.

~~2. For those incumbent officers who had completed their twenty-four hour continuing education requirement, salaries and benefits, together with overtime for those officers who are paid overtime for attending the course, for the five-hour racial profiling course which takes place between January 1, 2002 and July 31, 2004.~~

2. Set up costs to prepare to conduct training.

Trainee Activities

~~3~~2. Up *to five hours* of initial racial profiling training for incumbent law enforcement officers under the following conditions:

- the training is provided to incumbent law enforcement officers who completed basic training on or before January 1, 2004;
- the training is certified by POST;
- 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

- 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.

~~3. Set-up and Facilities Costs~~

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each ~~the~~ reimbursable activity ~~activities~~ identified in section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services were ~~are~~ also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[1] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES ~~SAVINGS~~ AND REIMBURSEMENTS

Any offsetting revenues ~~savings~~ the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds,

[1] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

including funds allocated to cities, counties, or cities and counties pursuant to Penal Code section 13523, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b~~e~~), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the parameters and guidelines from the Commission, to assist local agencies in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guideline adopted by the Commission.

Pursuant to Government code section 17561, subdivision (d)(1~~2~~), issuance of the claiming instructions shall constitute a notice of the right of local agencies to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

~~VIII.~~ IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

~~IX.~~ X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

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STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
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EXHIBIT A

October 31, 2006

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

And Affected State Agencies and Interested Parties (see attached mailing list)

RE: **Adopted Statement of Decision**
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 Commission on State Mandates adopted the attached Statement of Decision on October 26, 2006. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq., the claimant is responsible for submitting proposed parameters and guidelines by **November 30, 2006.** See Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq. for guidance in preparing and filing a timely submission. Also, the claimant may propose a "reasonable reimbursement methodology," a formula for reimbursing local agency costs mandated by the state. (See Gov. Code, § 17518.5 and Cal. Code Regs., tit.2, 1183.13.)

- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. Any recipient may propose a "reasonable reimbursement methodology" pursuant to Government Code section 17518.5. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 15 days of service. The claimant and other interested parties may submit written rebuttals. (See Cal. Code Regs., tit. 2, § 1183.11.)

- **Adoption of Parameters and Guidelines.** After review of the proposed parameters and guidelines and all comments, Commission staff will recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's original submission. (See Cal. Code Regs., tit. 2, § 1183.12.)

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure: Adopted Statement of Decision

\sodadopttr.doc

MAILED: FAXED:
DATE: 10/31/06 INITIAL: LD
CHRON: FILE:
WORKING BINDER:

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

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

(Adopted on October 26, 2006)

STATEMENT OF DECISION

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

Paula Higashi
PAULA HIGASHI, Executive Director

October 31, 2006
Date

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

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

(Adopted on October 26, 2006)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 26, 2006. Nancy Gust appeared on behalf of the County of Sacramento, claimant. Carla Castaneda, Donna Ferebee, and Susan Geanacou appeared on behalf of the Department of Finance.

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 the staff analysis to partially approve this test claim at the hearing by a vote of 7-0.

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.[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)*. 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.

[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

[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)

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[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, 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."[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. 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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[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.

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.[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.

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.[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, 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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[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"). 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.[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.

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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 the Commission therefore makes no finding on it.

[40] *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.[41]

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[41] 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.[42] 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.

[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, 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.[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, 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.[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.

[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, 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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[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, 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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[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), 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.[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.

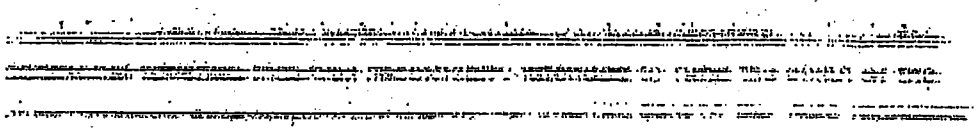
Based on the foregoing, the Commission finds that Penal Code section 13519.4, subdivision (i), does not impose "costs mandated by the state."

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."



Original List Date: 8/13/2001 Mailing Information: Notice of adopted SOD
Last Updated: 8/31/2006
List Print Date: 10/31/2006
Claim Number: 01-TC-01
Issue: Racial Profiling: Law Enforcement Training

Mailing List

Related Matter(s)

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

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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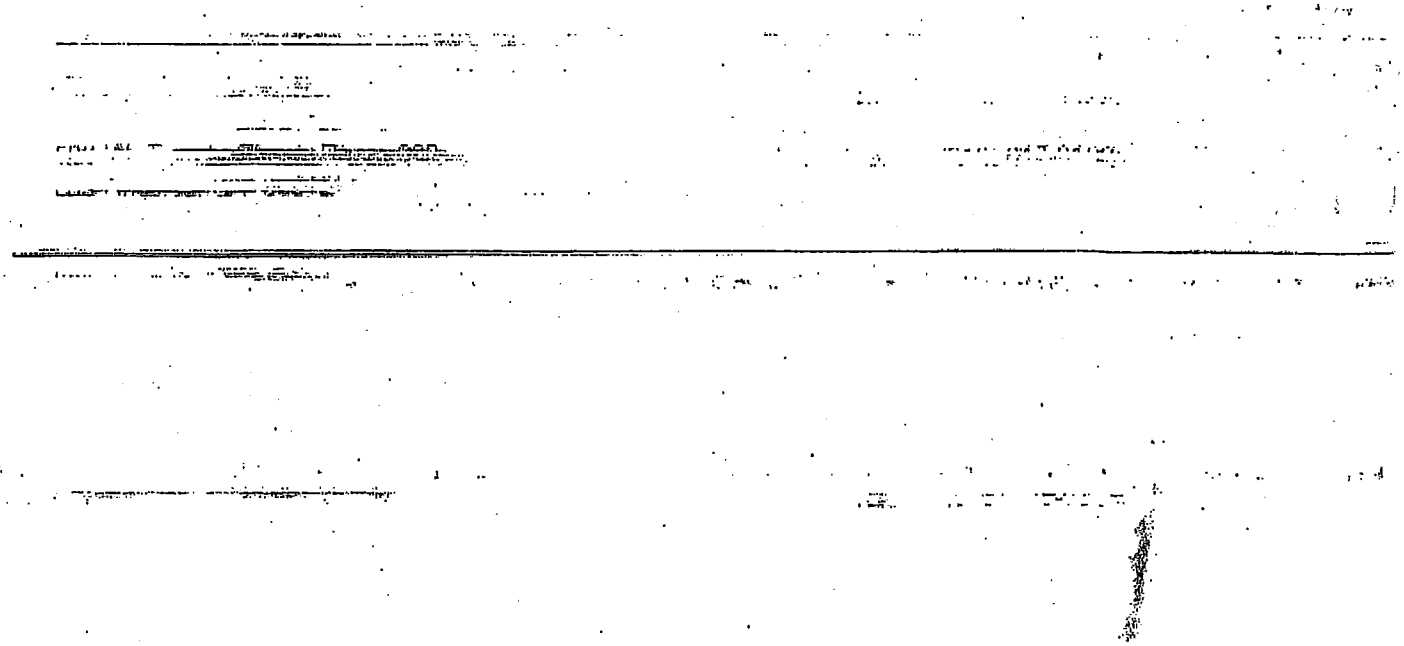

DEPARTMENT OF FINANCE
ARNOLD SCHWARZENEGGER, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

March 22, 2007

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

Dear Ms. Higashi:

As requested in your letter of March 7, 2007, the Department of Finance has reviewed the Proposed Parameters and Guidelines for Claim No. CSM-01-TC-01 "Racial Profiling: Law Enforcement Training."

As the result of the review, Finance recommends the following modifications to section IV.

For each eligible claimant, the following activities are eligible for reimbursement on a one-time basis for the period of January 1, 2002 through July 31, 2004 as follows:

1. ~~Time the in-house trainer spends in being trained by POST in a Racial Profiling Train-the-Trainer Course.~~
2. Up to five hours~~For those incumbent officers who had completed their twenty-four hour Continuing education requirement~~, salaries and benefits, together with overtime for those officers who are paid overtime for attending the course, if an obligation imposed by an MOU existed on January 1, 2001, for the ~~five hour~~ racial profiling course which takes place between January 1, 2002 and July 31, 2004.
3. ~~Set up and facilities costs.~~

Finance recommends the deletion of activities one and three because Train-the-Trainer courses were offered at no charge to the local agency and Chapter 684, Statutes of 2000, did not specifically require set up and facilities costs. Set up and facilities costs would be appropriately recovered through indirect costs.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list, which accompanied your March 7, 2007 letter, have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Thomas E. Dithridge
Program Budget Manager

Attachments

Attachment A

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

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

March 22, 2007
at Sacramento, CA

Carla Castaneda
Carla Castaneda

ICC: DITHRIDGE, LYNN, GEANACOU, CASTAÑEDA, MCGINN, FILE
I:\MANDATES\Racial Profiling - Law Enforcement Training\3-20-07 Comments DPG Racial Profiling Training .doc

PROOF OF SERVICE

Test Claim Name: Racial Profiling: Law Enforcement Training
Test Claim Number: CSM-01-TC-01

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On March 22, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

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

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

Mr. Dan Metzler
Sacramento Co. Sheriff's Department
711 G Street
Sacramento, CA 95814

Mr. Allan Burdick
MAXIMUS
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Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

B-08
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B-08
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3301 C Street, Suite 500
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E-24
Mr. Dan Rabovsky
Assembly Budget Committee
California State Assembly
State Capitol, Rm 6026
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 22, 2007 at Sacramento, California.

Ann Slaughter

Exhibit C

STATE OF CALIFORNIA

August 10, 2005

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

Dear Ms. Higashi:

In response to SB 1102, the Commission on POST assembled subject matter experts from throughout the State and worked in concert with the Governor's Panel on Racial Profiling to design the *Racial Profiling: Issues and Impact* curriculum.

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.

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 video covers additional instructional information and contains three scenarios that the students watch and then discuss among themselves with the instructor as a facilitator. 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 agency. At 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.

The racial profiling course, as well as the two-hour update, can be certified by POST which would allow agencies to apply the training hours towards the 24-hour Continuing Professional Training requirement.

Feel free to contact me or Special Consultant Jill Taylor, Training Program Services Bureau, at (916) 227-0471 if you have additional questions regarding this most worthwhile program.

Sincerely,

KENNETH J. O'BRIEN
Executive Director

KJO:rb:dar

Exhibit D

ITEM __

DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Penal Code Section 13519.4

Statutes 2000, Chapter 684

Racial Profiling: Law Enforcement Training
01-TC-01

County of Sacramento, Claimant

EXECUTIVE SUMMARY

This test claim addresses a statute 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). On October 26, 2006, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *Racial Profiling: Law Enforcement Training* program (01-TC-01). The Commission found that the test claim statute constitutes a new program or higher level of service and imposes a 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 for incumbent law enforcement officers 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 found that Penal Code section 13519.5, subdivision (i), which requires 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."

Discussion

The claimant submitted the proposed parameters and guidelines and Department of Finance filed comments on the proposal. Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines.

II. Eligible Claimants Were Revised to Remove Special Districts

The claimant defines eligible claimants for this program to include cities, counties, and special districts. The test claim was filed by a county. Counties and cities are required by the California Constitution to have a police department.[1] While special districts are authorized by statute to hire peace officers, the law does not require that they do so. Thus, the issue is whether the test claim statute constitutes a state-mandated program for special districts.

This issue is directly related to litigation pending in the Third District Court of Appeal (*Department of Finance v. Commission on State Mandates*, Case No. C056833 (*POBOR*)). Therefore, Commission staff is only proceeding with parameters and guidelines for eligible cities and counties for the *Racial Profiling: Law Enforcement Training* program. Once a final decision is issued in the *POBOR* case, the issue whether Penal Code section 13519.4 constitutes a state-mandated program for special districts will be addressed by the Commission under a separate agenda item for this claim. Staff revised the proposed parameters and guidelines to remove special districts.

III. Period of Reimbursement Was Revised to Add One Year

The claimant proposed a reimbursement period beginning January 1, 2002. The test claim statute became effective on January 1, 2001, and required one-time racial profiling training to begin by January 1, 2002. 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. Therefore, based on the test claim statute, the filing date for the test claim, and the effective date of the test claim statute, staff revised this section of the proposed parameters and guidelines to clarify that reimbursement begins on January 1, 2001.

Estimated Claims

Prior to February 16, 2008, claimants were authorized to file estimated reimbursement claims for the current fiscal year. Claimants were required to file a reimbursement claim showing actual costs for that fiscal year by the following February 15. On February 16, 2008, the Governor enacted ABX3 8 (Stats. 2008, ch. 6) in special session as part of an overall budget reduction package for the 2007-2008 fiscal year. ABX3 8 became effective immediately. The bill repealed the authority for claimants to file and be paid for estimated reimbursement claims. Therefore, staff removed any references to estimated reimbursement claims from this section of the proposed parameters and guidelines.

IV. Reimbursable Activities Were Narrowed

The claimant proposed that, based on the Statement of Decision, the reimbursable activities be eligible for reimbursement on a one-time basis for the period of January 1, 2002 through July 31, 2004. The Statement of Decision findings define under what circumstances a local agency may be reimbursed. The findings do not define or limit the period of reimbursement. The Commission found that the test claim statute requires 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. Thus, although not mandated, POST recommends the initial training be completed within a specified period of time. Therefore, staff removed claimant's proposed limitation that the activities are only eligible for reimbursement for the period of January 1, 2002 through July 31, 2004.

Training

Department of Finance recommends that reimbursement for time the in-house trainer spends in being trained by POST in a racial profiling train-the-trainer course be deleted because train-the-trainer courses are offered at no charge to local agencies. POST developed a five-hour approved curriculum to meet the

[1] Article XI, sections 1, 5.

initial training and it was designed to be presented in-house by a trained instructor within the law enforcement agency. That course is given on an ongoing basis by the Museum of Tolerance in Los Angeles at no cost to the law enforcement agency. However, there are costs for local agencies to pay officers' staff time to attend the training, and travel costs to send the officers to the training.

Under the Commission's regulations, the Commission may include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program." Staff finds that reimbursing certain officers' time to attend the training and their travel costs so that they can return and train other law enforcement officers is the most reasonable method of complying with the mandate. Therefore, staff did not remove this activity.

Set Up and Facilities Costs

Department of Finance also recommends that reimbursement for "set up and facilities costs" be deleted, because the test claim statute did not specifically require these costs, and set up and facilities costs would be appropriately recovered through indirect costs.

Costs for fixed assets and equipment may be recovered through indirect costs. However, "facilities" costs, such as additional training facility expenses, are not recovered through indirect costs. There is nothing in the record to support facilities costs. Therefore, staff removed facilities costs from Section IV.

The test claim, signed under penalty of perjury, alleges "set up" costs as set up and prep time for the *trainer*. Staff finds that set up costs for the trainer is a reasonable method of complying with the mandate, because the trainer will have to spend employee time preparing for the training. Therefore, staff retained set up costs as a reimbursable activity.

VII. Offsetting Revenue and Other Reimbursements Were Revised to Offset Existing State Aid

Penal Code section 13523 provides authority for POST to allocate from the Peace Officers' Training Fund state aid to cities and counties that have applied and qualified for aid. Staff added language to this section to clarify that any funds a city or county receives pursuant to Penal Code section 13523 must be offset from claimed amounts.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 9.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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
10/26/06	Commission adopted Statement of Decision partially approving test claim
10/31/06	Commission issued Statement of Decision and notified claimant that proposed parameters and guidelines are due November 30, 2006
03/02/07	Claimant submitted proposed parameters and guidelines
03/07/07	Commission issued proposed parameters and guidelines for comment and informed claimant that pursuant to Government Code section 17557, since the proposed parameters and guidelines were not timely filed, the amount of reimbursement due the claimant for the first 12 months of incurred costs would be reduced by 20 percent
03/22/07	Department of Finance submitted comments on proposed parameters and guidelines
02/--/08	Commission staff issued the draft staff analysis on proposed parameters and guidelines and set hearing for March 28, 2008

Summary of the Mandate

This test claim addresses a statute 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). On October 26, 2006, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *Racial Profiling: Law Enforcement Training* program (01-TC-01).[2] The Commission found that the test claim statute constitutes a new program or higher level of service and imposes a 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 for incumbent law enforcement officers under the following conditions:

[2] Exhibit A.

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 found that Penal Code section 13519.5, subdivision (i), which requires 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."

Discussion

On March 22, 2007, DOF submitted comments on the claimant's proposal.[3] Staff reviewed the claimant's proposed parameters and guidelines and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines.

II. Eligible Claimants

This statute imposes requirements upon the local agencies that employ law enforcement officers, by requiring every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002.[4] In the proposed parameters and guidelines, the claimant defines eligible claimants to include cities, counties, and special districts. The test claim for this program was filed by a county. Counties and cities are required by the California Constitution to have a police department.[5] While special districts are authorized by statute to hire peace officers, the law does not require that they do so. Thus, the issue is whether the test claim statute constitutes a state-mandated program for special districts.

This issue is directly related to litigation pending in the Third District Court of Appeal (*Department of Finance v. Commission on State Mandates*, Case No. C056833 (*POBOR*)). Therefore, Commission staff is only proceeding with parameters and guidelines for eligible cities and counties for the *Racial Profiling: Law Enforcement Training* program. Once a final decision is issued in *Department of Finance v. Commission on State Mandates (POBOR),* the issue whether Penal Code section 13519.4 constitutes a state-mandated program for special districts will be addressed by the Commission under a separate agenda item for this claim. Staff revised the proposed parameters and guidelines to remove special districts.

III. Period of Reimbursement

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this

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[3] Exhibit B.

[4] Penal Code 13519.4.

[5] Article XI, sections 1, 5.

mandate was filed by the test claimant, County of Sacramento, on August 31, 2001, establishing eligibility for reimbursement period beginning in fiscal year 2000-2001. The test claim statute became effective on January 1, 2001, and required one-time racial profiling training to begin by January 1, 2002. In its Statement of Decision, the Commission found that 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.

Therefore, the period of reimbursement for this program begins on January 1 2001. Staff revised this section of the proposed parameters and guidelines to clarify that reimbursement begins on January 1, 2001.

Estimated Claims

Prior to February 16, 2008, claimants were authorized to file estimated reimbursement claims for the current fiscal year.[6] Claimants were required to file a reimbursement claim showing actual costs for that fiscal year by the following February 15. On February 16, 2008, the Governor enacted ABX3 8 (Stats. 2008, ch. 6) in special session, as part of an overall budget reduction package for the 2007-2008 fiscal year. ABX3 8 became effective immediately. The bill repealed the authority for claimants to file and be paid for estimated reimbursement claims. Therefore, staff removed any references to estimated reimbursement claims from this section of the proposed parameters and guidelines.

IV. Reimbursable Activities

The claimant proposed that the following activities be eligible for reimbursement on a one-time basis for the period of January 1, 2002 through July 31, 2004.

1. Time the in house trainer spends in being trained by POST in a racial profiling train-the-trainer course.
2. For those incumbent officers who had completed their twenty four hour Continuing education requirement, salaries and benefits, together with overtime for those officers who are paid overtime for attending the course for the five hour racial profiling course which takes place between January 1, 2002 and July 31, 2004.
3. Set up and facilities costs.

The Statement of Decision states that reimbursement is provided for one-time training for up to five hours of initial racial profiling training if the training (1) is provided to incumbent law enforcement officers who completed basic training on or before January 1, 2004; (2) is certified by POST; (3) is attended during the officer's regular work hours or is attended outside the officer's regular work hours and there is an MOU existing on January 1, 2001 that requires local agencies pay for continuing education training, and (4) 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.

These Commission findings define under what circumstances a local agency may be reimbursed. The findings do not define or limit the period of reimbursement. In the Statement of Decision, the Commission found that the test claim statute requires 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

[6] Government Code sections 17522, 17560, and 17568.

incumbent officers complete the initial racial profiling course by July 2004. Thus, although not mandated, POST recommends the initial training be completed within a specified period of time.

Therefore, staff removed claimant's proposed limitation that the activities are only eligible for reimbursement for the period of January 1, 2002 through July 31, 2004. Staff also revised this section of the proposed parameters and guidelines to include the above findings so that the parameters and guidelines conform to the Statement of Decision.

Training

In its comments dated March 22, 2007, DOF recommended the deletion of activity 1: time the in-house trainer spends in being trained by POST in a racial profiling train-the -trainer course. Finance states that this activity should be deleted because train-the-trainer courses are offered at no charge to local agencies. Comments on the test claim draft staff analysis provided by POST on August 10, 2005, stated that 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.[7]

Staff agrees that there is no cost to local agencies for the actual train-the-trainer training provided by the Museum of Intolerance. However, there are costs for local agencies to pay officers' staff time to attend the training, and travel costs to send the officers to the training.

Section 1183.1, subdivision (a)(4), of the Commission's regulations authorizes the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program."

Staff finds that reimbursing certain officers' time to attend the training and their travel costs so that they can return and train other law enforcement officers is the most reasonable method of complying with the mandate. Therefore, staff did not remove activity 1.

Set Up and Facilities Costs

Department of Finance also requested the deletion of activity 3: set up and facilities costs, because the test claim statute did not specifically require these costs, and set up and facilities costs would be appropriately recovered through indirect costs.

Costs for fixed assets and equipment may be recovered through indirect costs. However, "facilities" costs, such as additional training facility expenses, are not recovered through indirect costs. There is nothing in the record to support facilities costs. Therefore, staff removed facilities costs from Section IV.

The test claim, signed under penalty of perjury, alleges "set up" costs as set up and prep time for the *trainer*. Staff finds that set up costs for the trainer is a reasonable method of complying with the mandate, because the trainer will have to spend employee time preparing for the training. Therefore, staff retained set up costs as a reimbursable activity.

VII. Offsetting Revenue and Other Reimbursements

Penal Code section 13523 provides authority for POST to allocate from the Peace Officers' Training Fund state aid to cities, counties that have applied and qualified for aid. Staff added language to this section to clarify that any funds a city or county receives pursuant to Penal Code section 13523 must be offset from claimed amounts.

---

[7] Exhibit C.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 9.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

PROPOSED DRAFT PARAMETERS AND GUIDELINES

Penal Code Section 13519.4

Statutes 2000, Chapter 624

Racial Profiling: Law Enforcement Training

01-TC-01

~~Penal Code, Section 13519.4~~

County of Sacramento, Claimant

I. SUMMARY OF THE MANDATE

~~Chapter 684, statutes of 2000 enacted Penal Code, Section 13519.4, which required every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002. The training was to be prescribed and certified by POST, in collaboration with a five person panel appointed by the Governor, Senate Rules Committee and the Speaker of the Assembly. POST developed a five hour approved curriculum to meet the initial training requirement. This curriculum designed to be presented in house by a trained instructor within the law enforcement agency who had completed a racial Profiling Train the Trainer Course prior to facilitating the training.~~

~~On October 26, 2006, the Commission on State Mandates approved the test claim as a partially reimbursable mandate only to the extent that attending the initial five hour racial profiling training course caused an officer to exceed his or her 24 hour continuing education cycle, when the two year cycle that included the initial five hour training course occurred between January 1, 2002 and July 2004, and the continuing education for that cycle was attended prior to the initial racial profiling course.~~

This test claim addresses a statute 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). On October 26, 2006, the Commission made the following findings and approved the following activities:

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 and is not reimbursable 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.

II. ELIGIBLE CLAIMANTS

Any city, county, ~~city,~~ or city and county, ~~or special district~~ that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The County of Sacramento filed the test claim for this mandate ~~was filed by the test claimant, County of Sacramento,~~ on August 31, 2001, establishing eligibility for reimbursement beginning in fiscal year 2000-2001. The test claim statute became effective on January 1, 2001. Therefore, costs incurred for compliance with this mandate are reimbursable on or after ~~the period of reimbursement begins.~~ January 1, 2001~~2, the operative date~~.

Actual costs for one fiscal year shall be included in each claim. ~~Estimated costs of the subsequent year may be included on the same claim, if applicable~~. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same

time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, ~~calendars,~~ and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities are eligible for reimbursement on a one-time basis per eligible employee as described below ~~for the period of January 1, 2002 through July 31, 2004 as follows~~:

Trainer Activities

1. Time the in-house trainer spends in being trained by POST in a Racial Profiling Train-the-Trainer Course, and traveling to the training course.

~~2. For those incumbent officers who had completed their twenty-four hour continuing education requirement, salaries and benefits, together with overtime for those officers who are paid overtime for attending the course, for the five-hour racial profiling course which takes place between January 1, 2002 and July 31, 2004.~~

2. Set up costs to prepare to conduct training.

Trainee Activities

~~3~~2. Up *to five hours* of initial racial profiling training for incumbent law enforcement officers under the following conditions:

- the training is provided to incumbent law enforcement officers who completed basic training on or before January 1, 2004;
- the training is certified by POST;
- 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

- 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.

~~3. Set up and Facilities Costs~~

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each ~~the~~ reimbursable activity ~~activities~~ identified in section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services were ~~are~~ also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only

the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[1] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES ~~SAVINGS~~ AND REIMBURSEMENTS

Any offsetting revenues ~~savings~~ the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, including funds allocated to cities, counties, or cities and counties pursuant to Penal Code section 13523, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the parameters and guidelines from the Commission, to assist local

[1] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

agencies in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guideline adopted by the Commission.

Pursuant to Government code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute a notice of the right of local agencies to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

~~VIII.~~ IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

~~IX.~~ X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Exhibit E

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

March 11, 2008

RECEIVED
MAR 12 2008
COMMISSION ON
STATE MANDATES

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

Dear Ms. Higashi:

As requested in your letter of February 25, 2008, the Department of Finance (Finance) has reviewed the proposed parameters and guidelines for Claim No. CSM-01-TC-01 "Racial Profiling: Law Enforcement Training."

As a result of our review, Finance concurs with the staff recommendation on the proposed parameters and guidelines. Finance finds that the staff recommendation to allow the time and travel of the in-house trainer and set up costs as reimbursable trainer activities, and to clarify the reimbursable activities of the trainee, have adequately addressed our prior concerns in compliance with the Commission's authority to determine the most reasonable methods of complying with the mandate.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your February 25, 2008 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castaneda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay
Program Budget Manager

Enclosure

Attachment A

DECLARATION OF CARLA CASTAÑEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

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

March 11, 2008
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Racial Profiling: Law Enforcement Training
Test Claim Number: 01-TC-01

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On March 11, 2008, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Ms. Jean Kinney Hurst
California Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Mr. Dan Metzler
Sacramento County Sheriff's Department
711 G Street
Sacramento, CA 95814

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
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Los Angeles, CA 90012

Ms. Annette Chinn
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Mr. Allan Burdick
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Ms. Nancy Gust
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Mr. Dick Reed
Peace Officer Standards and Training
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Sacramento, CA 95816-7083

Mr. J. Bradley Burgess
Public Resource Management Group
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A-15
Ms. Carla Castaneda
Department of Finance
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A-15
Ms. Donna Ferebee
Department of Finance
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B-29
Ms. Marianne O'Malley
Legislative Analyst's Office
925 L Street, Suite 1000
Sacramento, CA 95814

E-24
Mr. Dan Rabovsky
Assembly Budget Committee
California State Assembly
State Capitol, Room 6026
Sacramento, CA 95814

B-08
Ms. Ginny Brummels
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

On I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 11, 2008, at Sacramento, California.

Kelly Montelongo

Kelly Montelongo

Exhibit F

JOHN CHIANG
California State Controller
Division of Accounting and Reporting

March 11, 2008

Ms. Nancy Patton
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Proposed Draft Parameters and Guidelines (P's & G's)
Racial Profiling: Law Enforcement Training, 01-TC-01
Penal Code Section 13519.4; Chapter 684, Statutes 2000

Dear Ms. Patton:

The State Controller's Office has reviewed the proposed draft P's & G's submitted by the County of Sacramento for the above subject matter. We recommend the Commission on State Mandates review the proposed draft P's & G's to ensure that all reimbursable activities and offsetting savings issues are in accordance with the adopted Statement of Decision and that the documentation language is consistent with recently adopted P's & G's. In addition, listed below are some suggested amendments: additions are bold, deletions have strike-throughs.

III. PERIOD OF REIMBURSEMENT

If the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564 **(a)**.

- Government Code (GC) section 17564(a) was listed as GC section 17564.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision ~~(c)~~ **(b)**, the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the parameters and guidelines from the Commission, to assist local agencies in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guideline adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d) ~~(2)~~**(1)**, issuance of the following instructions shall constitute a notice of the right of local agencies to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250
STREET ADDRESS 3301 C Street, Suite 500, Sacramento, CA 95816

- GC section 17558 subdivision (b) was listed as GC section 17558 subdivision (c).
- In addition, GC section 17561 subdivision (d)(1) was listed as GC section 17561 subdivision (d)(2).

If you have any questions, please contact Ginny Brummels, Manager of the Local Reimbursements Section, at (916) 324-0256.

Sincerely,

Michael J. Havey

MICHAEL J. HAVEY
Acting Chief
Division of Accounting and Reporting

Commission on State Mandates

Original List Date: 8/13/2001
Last Updated: 4/26/2007
List Print Date: 03/05/2008
Claim Number: 01-TC-01
Issue: Racial Profiling: Law Enforcement Training

Mailing Information: Final Staff Analysis

Mailing List

Related Matter(s)

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

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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