

**COMMISSION ON STATE MANDATES**

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December 14, 2005

Harold T. Fujita  
City of Los Angeles  
Department of Recreation and Parks  
1200 W 7<sup>th</sup> Street, #310  
Los Angeles, CA 90017

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

**RE: Adopted Statement of Decision and Draft Parameters and Guidelines**  
*Local Recreational Areas: Background Screenings, 01-TC-11*  
City of Los Angeles - Department of Recreation and Parks, Claimant  
Statutes 2001, Chapter 777  
Public Resources Code, Section 5164; Subdivision (b)(1) and (b)(2)

Dear Mr. Fujita:

The Commission on State Mandates adopted the attached Statement of Decision on December 9, 2005. 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 of the Commission during the parameters and guidelines phase.

- **Draft Parameters and Guidelines.** Pursuant to California Code of Regulations, title 2, section 1183.12 (operative September 6, 2005), the Commission staff is expediting the parameters and guidelines process by enclosing draft parameters and guidelines to assist the claimant. The proposed reimbursable activities are limited to those approved in the Statement of Decision by the Commission.
- **Claimant's Review of Draft Parameters and Guidelines.** Pursuant to California Code of Regulations, title 2, section 1183.12, subdivisions (b) and (c), the successful test claimant may file modifications and/or comments on the proposal with Commission staff by **January 6, 2006**. The claimant may also propose a reasonable reimbursement methodology pursuant to Government Code section 17518.5 and California Code of Regulations, title 2, section 1183.13. The claimant is required to submit an original and two (2) copies of written responses to the Commission and to simultaneously serve copies on the state agencies and interested parties on the mailing list.
- **State Agencies and Interested Parties Comments.** State agencies and interested parties may submit recommendations and comments on staff's draft proposal and the claimant's modifications and/or comments within 15 days of service. State agencies and interested

parties are required to submit an original and two (2) copies of written responses or rebuttals to the Commission and to simultaneously serve copies on the test claimant, state agencies, and interested parties on the mailing list. 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 draft parameters and guidelines and all comments, Commission staff will recommend the adoption of an amended, modified, or supplemented version of staff's draft parameters and guidelines. (See Cal. Code Regs., tit. 2, § 1183.14.)

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

Sincerely,



PAULA HIGASHI  
Executive Director

Enclosures: Adopted Statement of Decision, Draft Parameters and Guidelines, and California Code of Regulations, title 2, sections 1183.12 and 1183.13 (operative September 6, 2005).

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Public Resources Code Section 5164,  
Subdivisions (b) (1) and (2); Statutes 2001,  
Chapter 777

Filed on February 8, 2002

By City of Los Angeles, Claimant

No. 01-TC-11

*Local Recreational Areas: Background  
Screenings*

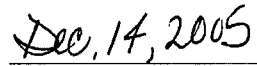
STATEMENT OF DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500 ET  
SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted on December 9, 2005)*

**STATEMENT OF DECISION**

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

  
\_\_\_\_\_  
PAULA HIGASHI, Executive Director

  
\_\_\_\_\_  
Date

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Public Resources Code Section 5164,  
Subdivisions (b) (1) and (2); Statutes 2001,  
Chapter 777

Filed on February 8, 2002

By City of Los Angeles, Claimant

No. 01-TC-11

*Local Recreational Areas: Background  
Screenings*

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 December 9, 2005)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on December 9, 2005. Harold T. Fujita appeared on behalf of claimant City of Los Angeles. Susan Geanacou appeared on behalf of the Department of Finance, and Alan Burdick appeared on behalf of the CSAC-SB90 Service.

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 approve the test claim at the hearing by a vote of 6-0.

**BACKGROUND**

Public Resources Code section 5164 was enacted in 1993 (Stats. 1993, ch. 972) to prohibit a city, county or special district from hiring a volunteer or employee for positions having supervisory or disciplinary authority over any minor at specified local agency recreational areas if the employee or volunteer has been convicted of specified crimes. Section 5164 was enacted because of a volunteer coach's 1992 conviction for kidnapping and molesting a boy who was coached at Hoover Recreation Center in Los Angeles County. The coach was a registered sex offender whose background had not been inquired about by the recreation center.<sup>1</sup> The Legislature's response was to enact section 5164.

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<sup>1</sup> Assembly Committee on Local Government, Analysis of Assembly Bill 1663, as amended April 12, 1993 (1993-1994 Reg. Sess.), page 2.

The test claim statute (Stats. 2001, ch. 777, Assem. Bill No. 351)<sup>2</sup> amended Public Resources Code section 5164 as follows (changes marked in ~~strikeout~~ and underline).

- (a) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor if ~~the~~ that person has been convicted of any offense specified in paragraph (1) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code, or any offense specified in paragraph (3) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code. However, this section shall not apply to a misdemeanor conviction under paragraph (3) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code unless ~~the~~ that person has a total of three or more misdemeanor or felony convictions specified in Section 11105.3 of the Penal Code within the immediately preceding 10-year period.
- (b) (1) To give effect to this section, a county or city or city and county or special district ~~may~~ shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for ~~the~~ that person's criminal background.
- (b) (2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency,<sup>[3]</sup> and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to the subdivision.

Penal Code section 11105.3, subdivision (h)(3), (now Pub. Res. Code, § 5164 subd. (a)(2))<sup>4</sup> listed the crimes for which to screen prospective employees or volunteers who would have supervisory or disciplinary authority over minors as follows:

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<sup>2</sup> Section 5164 has been amended since the test claim filing by Statutes 2004, chapter 184, but the amendments are not part of this analysis.

<sup>3</sup> If the local agency takes the fingerprints, it may charge a fee not to exceed \$10 (Pen. Code, § 13300, subd. (e)). Other entities may charge more; see <<http://ag.ca.gov/fingerprints/publications/contact.htm>> [as of August 18, 2005].

<sup>4</sup> Former Penal Code section 11105.3, subdivision (h)(3), was amended by Statutes 2004, chapter 184, and moved to Public Resources Code section 5164, subdivision (a)(2).

- Assault with intent to commit rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or penetration of genitals or anus with a foreign object (Pen. Code, § 220)
- Unlawful sexual intercourse with a person under 18 (Pen. Code, § 261.5)
- Spousal rape (Pen. Code, § 262)
- Willful harm or injury to a child (Pen. Code, § 273a)
- Corporal punishment or injury of child (Pen. Code, § 273d)
- Willful infliction of corporal injury (Pen. Code, § 273.5)
- Sex offenses for which registration is required (Pen. Code, § 290) except the sexual battery offense in Penal Code 243.4, subdivision (d).
- Any felony or misdemeanor conviction within 10 years of the date of the employer's request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10-year period.<sup>5</sup>

Although Statutes 2004, chapter 184 amended the list of crimes for which to screen prospective employees or volunteers who would have supervisory or disciplinary authority over minors (see footnote 5), that amendment is not part of this test claim or this analysis.

### **Claimant's Position**

Claimant City of Los Angeles contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant requests reimbursement for the costs of screening employees in accordance with section 11105.3 of the Penal Code. According to claimant's test claim:

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<sup>5</sup> Statutes 2004, chapter 184, amended this provision as follows: "(B) Any felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request. (C) Any felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8 of part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years."

An individual can be screened by requesting the Department of Justice [DOJ] to furnish any criminal history record it has on a prospective employee or volunteer. Such a request necessitates taking the fingerprints of the individual and submitting the fingerprints to the DOJ for processing. The DOJ does not charge a fee to fulfill the request for the record of each prospective volunteer. The DOJ charges a fee of \$32.00 to fulfill the request for the record of each prospective employee. [¶]...[¶]

As of November 2001, the City of Los Angeles Department of Recreation and Parks has hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of \$3904.00. It is estimated that the City will incur a total cost of approximately \$32,000 to achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002).<sup>6</sup>

The claim includes a declaration certifying that the costs stated are true and correct. Claimant concurred with the draft staff analysis.

### **State Agency Positions**

The Department of Finance (DOF) and Department of Justice (DOJ) each filed comments on the test claim. DOF, in a letter received May 3, 2002, states that, "as a result of our review, we have concluded that the statute may have resulted in costs mandated by the state."

The DOJ, in a letter received March 11, 2002, states that the test claim statute "does not modify DOJ processing procedures. As such, the DOJ is submitting a statement of non-response to the Commission on State Mandates."

No state agency filed comments on the draft staff analysis.

## **COMMISSION FINDINGS**

The courts have found that article XIII B, section 6 of the California Constitution<sup>7</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>8</sup> "Its

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<sup>6</sup> A claimant must incur at least \$1000 in costs to file a test claim with the Commission or a reimbursement claim with the State Controller's Office (Gov. Code, § 17564, subd. (a)).

<sup>7</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in 2004) provides:

(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>8</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>9</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>10</sup>

In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.<sup>11</sup>

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>12</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>13</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>14</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>15</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>16</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an

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<sup>9</sup> *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

<sup>10</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>11</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

<sup>12</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

<sup>13</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>14</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>15</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

<sup>16</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.



“equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>17</sup>

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

The first issue is whether the test claim statute imposes state-mandated activities on local agencies. The Commission finds that it does.

The test claim statute states that the local agency “shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a).”<sup>18</sup> The offenses inquired after include assault with intent to commit specified sexual acts upon a child (Pen. Code, § 220), unlawful sexual intercourse with a person under 18 (Pen. Code, § 261.5), spousal rape (Pen. Code, § 262), willful harm or injury to a child (Pen. Code, § 273a), corporal punishment or injury of child (Pen. Code, § 273d), willful infliction of corporal injury (Pen. Code, § 273.5), sex offenses for which registration is required (Pen. Code, § 290) except the sexual battery offense in Penal Code 243.4, subdivision (d), or any felony or misdemeanor conviction within 10 years of the date of the employer’s request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10-year period.

The test claim statute also states that the local agency “shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for that person’s criminal background.”<sup>19</sup>

Both of these activities are mandatory because the statutory language uses the word “shall.”<sup>20</sup> “[The local agency] *shall* require each prospective employee or volunteer to complete an application ... [The local agency] *shall* screen ... any such prospective employee or volunteer....” [Emphasis added.] Therefore, the Commission finds that the test claim statute imposes state-mandated activities on local agencies to: (1) require prospective employees or volunteers to complete an application that inquires into their criminal histories, and (2) effect criminal background screenings, pursuant to Penal Code section 11105.3, for prospective employees or volunteers having supervisory or disciplinary authority over minors.

Subdivision (b)(2) of section 5164, which preceded the test claim statute, states that the local agency, when requesting DOJ records, “shall include the prospective employee’s or volunteer’s fingerprints, ... and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice.”<sup>21</sup> Even though this provision was in preexisting law, the test claim statute amendment to subdivision (b)(1), which required local agencies to screen potential employees and volunteers, makes the (b)(2) screening procedures a

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<sup>17</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>18</sup> Public Resources Code section 5164, subdivision (b)(1).

<sup>19</sup> *Ibid.*

<sup>20</sup> Public Resources Code section 15 states, “‘Shall’ is mandatory and ‘may’ is permissive.”

<sup>21</sup> Public Resources Code section 5164, subdivision (b)(2).

requirement. Therefore, the screening procedure (except for taking fingerprints) in subdivision (b)(2) also imposes a state-mandated activity on local agencies.

Although the test claim statute requires the local agency to submit fingerprints to DOJ, the local agency is not required to take them. Subdivision (b)(2) of the test claim statute requires the local agency to submit the fingerprints, but states that they “may be taken by the local agency.” If the local agency takes the fingerprints, it may charge a fee not to exceed \$10, and other entities may charge more.<sup>22</sup> Since whether the local agency takes the fingerprints is permissive, and the prints may be taken by the local agency or another entity at the expense of the prospective employee or volunteer, the Commission finds that taking fingerprints is not a state-mandated activity and therefore, not subject to article XIII B, section 6.

The second issue is whether the test claim legislation constitutes a program within the meaning of article XIII B, section 6. The Commission finds that it does.

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, it must constitute a “program,” defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>23</sup> Only one of these findings is necessary to trigger article XIII B, section 6.<sup>24</sup>

The test claim statute requires local agencies to require prospective employees or volunteers who would have supervisory or disciplinary authority over minors to complete an application that inquires as to their criminal histories, and requires screening specified employees or volunteers in order to protect the public from those convicted of specified crimes. These activities are peculiarly governmental public safety, crime prevention functions administered by local agencies as a service to the public. The primary purpose of these activities is to protect children who participate in youth recreational programs. Moreover, the test claim legislation imposes unique requirements on local agencies that do not apply generally to all residents and entities of the state. Therefore, the Commission finds the test claim statutes constitute a “program” within the meaning of article XIII B, section 6.

**Issue 2: Does the test claim legislation 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?**

To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before enacting the test claim legislation.<sup>25</sup> Each activity is discussed separately.

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<sup>22</sup> Penal code section 13300, subdivision (e). As to other entities’ ability to charge more, see <<http://ag.ca.gov/fingerprints/publications/contact.htm>> [as of August 18, 2005].

<sup>23</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

<sup>24</sup> *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

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

**Application:** Subdivision (b)(1) of the test claim statute states that the local agency shall require each prospective employee or volunteer “to complete an application that inquires as to whether or not the individual has been convicted of any offense specified ....”

Prior law prohibited a local agency from hiring an individual convicted of an offense specified in Penal Code section 11105.3 subdivision (h)(1) and (h)(3).<sup>26</sup> There was no previous requirement, however, for prospective employees or volunteers to complete an application that inquires after their criminal histories. Therefore, the Commission finds that requiring prospective employees or volunteers to complete an application that inquires after their criminal histories is a new program or higher level of service.

**Screening employees:** Subdivision (b)(1) of the test claim statute states, “The [local agency] ... shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for that person’s criminal background.” The screening procedure of section 11105.3 is stated in subdivision (b) as follows:

Any request for records under subdivision (a) shall include the applicant’s fingerprints, which may be taken by the requester, and any other data specified by the department [DOJ]. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged to a nonprofit organization. ...<sup>27</sup>

As to the DOJ fee, the test claim statute states that no fee is required for a prospective volunteer.<sup>28</sup>

Likewise, subdivision (b)(2) of the test claim statute states, “Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee’s or volunteer’s fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice.”

Subdivision (b)(2) predates the test claim statute, so if the local agency elected to screen a prospective employee or volunteer, the local agency was required to comply with the procedure in (b)(2). As discussed above, however, enactment of the test claim statute made the screening mandatory for local agencies. Therefore, as a new requirement, the Commission finds that local agency screening of employees or volunteers for positions having supervisory or disciplinary authority over minors is a new program or higher level of service. The screening procedure outlined in Penal Code section 11105.3 and subdivision (b)(2) of the test claim statute requires forwarding to DOJ the following: (1) the prospective employee’s or volunteer’s fingerprints,

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<sup>26</sup> The offenses are now listed in Public Resources Code section 5164 subdivision (a)(2).

<sup>27</sup> Penal Code section 11105.3, subdivision (b). The current DOJ fee is \$32. See <<http://www.ag.ca.gov/fingerprints/forms/fees.pdf>> as of October 3, 2005.

<sup>28</sup> Public Resources Code section 5164, subdivision (b)(2).

(2) any other data specified by DOJ on a DOJ form, and (3) DOJ's fingerprint processing fee<sup>29</sup> (except that no fee is required for a prospective volunteer).<sup>30</sup>

**Issue 3: Does the test claim statute impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

In order for the test claim statute's activities to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the activities must impose increased costs mandated by the state.<sup>31</sup> In addition, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

In its test claim, claimant states that it "hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of \$3904.00. It is estimated that the City will incur a total cost of approximately \$32,000 to achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002)." Therefore, the claimant has shown costs sufficient to state a claim.<sup>32</sup>

The final issue is whether the test claim statute imposes costs mandated by the state within the meaning of Government Code sections 17556 and 17514.

The test claim statute requires local agencies to:

- Require each prospective employee or volunteer who would have disciplinary or supervisory over minors "to complete an application that inquires as to whether or not the individual has been convicted of any offense specified ...."
- Screen, pursuant to Penal Code section 11105.3, prospective employees or volunteers who would have supervisory or disciplinary authority over minors. Penal Code section 11105.3 outlines the screening procedure: "The request [for fingerprint processing] shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request." As stated above, the screening procedure consists of forwarding to DOJ the following:
  1. the prospective employee's or volunteer's fingerprints;

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<sup>29</sup> Penal Code section 11105.3, subdivision (b).

<sup>30</sup> Public Resources Code section 5164, subdivision (b)(2).

<sup>31</sup> *Kern High School Dist.*, *supra*, 30 Cal. 4th 727, 736; *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

<sup>32</sup> The claimant must incur a minimum of \$1000 to file a claim. Government Code section 17564, subdivision (a).

2. any other data specified by DOJ on a DOJ form, and;
- For prospective employees only, paying DOJ's fingerprint processing fee<sup>33</sup> (no fee is required for a prospective volunteer).<sup>34</sup>

**Applications:** Requiring local agencies to require each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a),<sup>35</sup> is a new state-mandated activity, and none of the exceptions in Government Code section 17556 to finding costs mandated by the state apply to it. In order to comply, local agencies must revise and print job applications that inquire as to the applicants' criminal history. This would be a one-time activity. Therefore, the Commission finds that this one-time activity imposes "costs mandated by the state" within the meaning of Government Code sections 17514.

**Screening Employees:** The issue is whether local agencies that request the background screenings from DOJ have the authority to charge a fee to prospective employees within the meaning of Government Code section 17556, subdivision (d), or have offsetting savings within the meaning of Government Code section 17556, subdivision (e).

In interpreting a statute, the Commission, like a court, focuses on its plain meaning.

[W]e look to the intent of the Legislature in enacting the law, being careful to give the statute's words their plain, commonsense meaning. If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.<sup>36</sup>

Public Resources Code section 5164 states that the local agency "shall screen, pursuant to Section 11105.3 of the Penal Code, any ... prospective employee or volunteer ... ." According to Penal Code section 11105.3, DOJ's fee for screening may be paid by "the employer, human resource agency, or applicant for the actual cost of processing the request."<sup>37</sup> The fee authority in 11105.3 is authority for a fingerprint-processing fee granted to DOJ.

The plain meaning of section 11105.3, however, does not grant the local agency fee authority for this screening, nor does it expressly grant the local agency authority to pass on the cost of the DOJ- screening to a prospective employee.

The legislative history of Public Resources Code section 5164 indicates that when section 5164 was enacted (Stats. 1993, ch. 972), the Legislature intended that local agencies have fee authority

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<sup>33</sup> Penal Code section 11105.3, subdivision (b).

<sup>34</sup> Public Resources Code section 5164, subdivision (b)(2).

<sup>35</sup> These offenses were listed in former Penal Code section 11105.3 prior to Statutes 2004, chapter 184.

<sup>36</sup> *In re Jennings* (2004) 34 Cal. 4th 254, 263.

<sup>37</sup> Penal Code section 11105.3, subdivision (b), as amended by Statutes 1992, chapter 1227. Prior to this amendment, section 11105.3 stated that DOJ may charge a fee to be paid by "the requester."

for the background screening,<sup>38</sup> even though this original statute made the screening provision permissive (and prohibited hiring an employee or volunteer who had been convicted of specified crimes). However, neither the plain meaning of section 5164, nor section 11105.3 of the Penal Code support this stated legislative intention.

Therefore, the Commission finds that the test claim statute imposes “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556 for the activity of screening prospective employees by submitting to DOJ the required fingerprints, form(s), and fee paid by the local agency. Reimbursement would not be required if the DOJ fingerprint processing fee were paid by the applicant rather than the local agency because the local agency would not incur the cost.

Local agencies do not incur costs for submitting fingerprints of prospective volunteers to DOJ because Public Resources Code section 5164, subdivision (b)(2) precludes the DOJ fee for volunteers. Thus, as to prospective volunteers that must be screened, the Commission finds that the local agencies do not incur DOJ-imposed fingerprint processing costs, and therefore are not subject to costs mandated by the state for screening prospective volunteers.

## CONCLUSION

The Commission finds that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). (Pub. Res. Code, § 5164, subd. (b)(1)). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants’ criminal history.
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to DOJ: (1) the prospective employee’s or volunteer’s fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ’s fingerprint processing fee (no fee is required for a prospective volunteer).<sup>39</sup> (Pub. Res. Code, § 5164, subds. (b)(1) & (b)(2)).

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<sup>38</sup> Senate Committee on Appropriations, Analysis of Assembly Bill No. 1663, as amended August 18, 1993 (1993-1994 Reg. Sess.) page 1.

<sup>39</sup> Public Resources Code section 5164, subdivision (b)(2).

## **DRAFT PARAMETERS AND GUIDELINES**

Public Resources Code Section 5164, Subdivisions (b)(1) and (b)(2)

Statutes 2001, Chapter 777

*Local Recreational Areas: Background Screenings (01-TC-11)*

City of Los Angeles, Claimant

### **I. SUMMARY OF THE MANDATE**

On December 9, 2005, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Public Resources Code section 5164, subdivisions (b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). (Pub. Res. Code, § 5164, subd. (b)(1)). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to DOJ: (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).<sup>1</sup> (Pub. Res. Code, § 5164, subds. (b)(1) & (b)(2)).

### **II. ELIGIBLE CLAIMANTS**

Any city, county, and city and county 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, subdivision (c), as amended by Statutes 1998, chapter 681, states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The City of Los Angeles filed the test claim on February 8, 2002, establishing eligibility for fiscal year 2000-2001. However, the operative date of Public Resources Code section 5164, subdivisions (b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, is January 1, 2002. Therefore, costs incurred pursuant to Public Resources Code section 5164, subdivisions (b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, are reimbursable on or after January 1, 2002.

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<sup>1</sup> Public Resources Code section 5164, subdivision (b)(2).

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 fiscal 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, 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.

For each eligible claimant, the following activities are reimbursable:

1. Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). (Pub. Res. Code, § 5164, subd. (b)(1)). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.
2. Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to the Department of Justice (DOJ): (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).<sup>2</sup> (Pub. Res. Code, § 5164, subs. (b)(1) & (b)(2)).

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<sup>2</sup> Public Resources Code section 5164, subdivision (b)(2).



## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity 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 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.

## 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 distribution 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<sup>3</sup> 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

<sup>3</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 SAVINGS AND REIMBURSEMENTS**

Any offsetting 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, shall be identified and deducted from this claim.

#### **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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

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

#### **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.

#### **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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