BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:	)	
	)	
County of Sacramento	)	No. CSM-4416
	)	Labor Code
Claimant	)	Section 3212.1
	)	Chapter 1171, Statutes of 1989
	)	Cancer Presumption-
	)	Peace Officers

DECISION

I, ROBERT W. EICH, declare:

I am the Executive Director of the Commission on State Mandates. In my capacity as Executive Director, I am the custodian of the records of the Commission on State Mandates.

Attached is a true and correct copy of the Proposed Statement of Decision that was adopted by the Commission on State Mandates on August 27, 1992, as its Decision in the above-entitled matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 2, 1992, at Sacramento, California.

ROBERT W. EICH

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment and business address is 1414 K Street, Suite 315, Sacramento, California 95814.

On September 2, 1992, I served the attached Statement of Decision regarding Cancer Presumption-Peace Officers by placing a true copy thereof in an envelope addressed to each of the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

(See the attached mailing list.)

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 September 2, 1992, at Sacramento, California.

Debra J. Oliver

Debra Oliver

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Hearing: August 27, 1992
File Number: CSM 4411
Staff: Michael Coleman
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STATEMENT OF DECISION
TEST CLAIM
APPROVED MANDATE
Labor Code Section 3212.1
Chapter 1171, Statutes of 1989
Cancer Presumption-Peace Officers

Executive Summary

The Commission on State Mandates, at its July 23, 1992 hearing, determined that a reimbursable state mandated program exists under the provisions of Labor Code section 3212.1

Member Creighton moved to adopt the staff recommendation to approve the test claim. Member Romero seconded the motion. Without objection, the motion carried.

Staff has prepared the attached proposed statement of decision which identifies the basis for the Commission's decision.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: County of Sacramento Claimant	)	No. CSM-4416 Labor Code Section 3212.1 Chapter 1171, Statutes of 1989 Cancer Presumption-Peace Officers

STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on July 23, 1992, in Sacramento, California, during a regularly scheduled hearing.

Mr. Allan Burdick, Mr. Ed Lambert, Ms. Linda Sera and Mr. Anthony Wright appeared on behalf of County of Sacramento. Mr. James Apps appeared on behalf of Department of Finance.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

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ISSUES

Do the provisions of Labor Code section 3212.1, as amended by Chapter 1171, Statutes of 1989, impose a new program or higher level of service in an existing program on local agencies, within the meaning of Government Code 17514 and section 6, article XIIIB of the California Constitution?

If SO, are local government agencies entitled to reimbursement pursuant to section 6 of article XIIIb?

BACKGROUND AND FINDINGS OF FACT

County of Sacramento (Sacramento) filed this test claim with the Commission on December 3, 1991.

The elements for filing a test claim, as specified in section 1183 of Title 2 of the California Code of Regulations, were satisfied.

Sacramento alleged that Chapter 1171, Statutes of 1989 (Chapter 1171/89), resulted in a reimbursable State mandate by amending Labor Code section 3212.1, to add cancer to the types of diseases/injuries which, when diagnosed in peace affixers is presumed to be a job related illness for workers' compensation purposes. Sacramento alleged that the pravisions of this statute are identical to the current reimbursable state mandate, Chapter 1568, statutes of 1982, (Chapter 1568/82) which made cancer a presumed workers' compensation injury for firefighters,

Sacramento alleged that prior to the amendment of Labor Code section 3212.1 by Chapter 1171/89, there was no cancer presumption for peace officers.

Labor Code 3212.1, as amended by Chapter 1171/89, states in pertinent part:

> "In the case of active firefighting members of fire departments of cities, counties, cities and counties, districts, ... <u>and peace officers as defined in Section 830.1 and subdivision (a) of Section 830.2 of the Penal Code who are primarily engaged in active law enforcement activities</u>, the term "injury" as used in this division includes cancer which develops or manifests itself during a period while the member is in the service of the department or unit <u>if</u> the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director, and that the carcinogen is reasonable linked to the disabling cancer.
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> "**********
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> "The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so

> controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity."
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> **(Amendments made by Chapter 1171/89 are underlined)**

The Commission noted that Labor Code 3212.1, as amended by Chapter 1171/89, extends the cancer presumption benefit to peace officers as specified in Penal Code sections 830.1 and 830.2 subdivision (a) which includes peace officers employed by noted state agencies as well as those employed by local agencies.

The Commission found that prior to the amendment of Labor Code section 3212.1, there was no presumption regarding workers' compensation cancer claims made by peace officers. Peace officers' cancer claims were subject to the same conditions as that of most other employees. That is, in order to receive workers' compensation for cancer claims, the burden of proof rested with the peace officer to show:

1) an employment relationship
2) an injury occurred in the course of that relationship
3) that the cancer was psoximately caused by the employment.

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In short, the Commission noted that Chapter 1171/89, amended Labor Code section 3212.1, to provide an additional benefit to peace officers by removing the burden of proof on the employee to provide evidence that the cancer was proximately caused by the employment. Instead, the cancer is presumed to be caused by the employment, provided that the peace officer can show exposure to a recognized carcinogen while employed as a peace officer and establish a reasonable link between the carcinogen and the cancer.

The Commission also noted that since the February 23, 1984, Board of Control decision on Chapter 1568/82, the California Supreme Court issued its decision in County of Los Angeles v. State of California (1987) 43 Cal.3d 46. In that case, the court determined that providing workers' compensation benefits by local agencies is not subject to reimbursement as a state mandated program. However, the cancer presumption benefit extended to peace officers and firefighters is distinctive and is a reimbursable state mandated program because it requires local governments to implement a state policy of providing an additional benefit to select employees that carry out the governmental function of providing public safety.

The Commission found that by amending Labor Code section 3212.1 to extend the cancer presumption benefit to peace officers, the Legislature intended to provide peace officers with an additional benefit not available to most other workers. The Commission observed the Zipton v. Workers' Compensation Appeals Board case (1990) 218 Cal.App.3d 980, where the court noted that:

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"The foremost purpose of the presumptions of industrial causation found in Labor Code [section 3212 et seq.] is to provide additional benefits to certain public employees who provide vital. and hazardous services, by easing the burden of proof of industrial causation* "

The Commissisn observed that the County of Los Angeles court decision also went on to define the term "program" for purposes of costs mandated by the state. On page 56 of its decision, the court determined the following:

> ". . . . We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term-programs that carry out the governmental function of providing services to the public, or laws which, to implement state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."

The Commission found that Labor Code section 3212.1 meets the first part of the County of Los Angeles definition of the term program, for the purposes of costs mandated by the state, since both firefighters and peace officers carry out the governmental function

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of providing public safety. The Commission noted the Carmel Valley Fire Protection District v. State of California (1987) 190 Cal.App.3d 521, where the court stated on page 537:

> "First, fire protection is a peculiarly governmental function.... 'Police and fire protection are two of the most essential and basic functions of local government'".

The Commission found that Labor Code section 3212.1 also meets the second part of the County of Los Angeles definition of the term program for the purposes of cost mandated by the state since it imposes unique requirements on local governments by requiring them to implement a state policy of providing cancer presumption as an additional benefit to peace officers and firefighters.

The Commission found that Chapter 1171/89 requires local governments to implement a state policy by providing cancer presumption as an additional benefit to peace officers.

APPLICABLE LAW RELEVANT TO THE DETERMINATION OF A REIMBURSABLE STATE MANDATED PROGRAM

Government Code section 17500 and following, and section 6, article XIIIB of the California Constitution and related case law.

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CONCLUSION

The Commission determines that it has the authority to decide this claim under the provisions of Government Code sections 17500 and 17551, subdivision (a).

The Commission concludes that the provisions of Labor Code section 3212.1, as amended by Chapter 1171/89, impose a new program or higher level of service in an existing program on local agencies, within the meaning of Government Code 17514 and section 6, article XIIIB of the California Constitution.

The foregoing determination pertaining to Labor Code section 3212.1, is subject to the following conditions:

> The determination of a reimbursable state mandated program does not mean that all increased costs claimed will be reimbursed. Specifically, reimbursement shall be limited to the additional workers' compensation costs directly attributable to the cancer presumption benefit. 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.

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If the statewide cost estimate for this mandate does not exceed one million dollars ($1,000,000) during the first twelve (12) month period following the operative date of the mandate, the Commission shall certify such estimated amount to the State Controller's Office, and the State Controller shall receive, review, and pay claims from the State Mandates Claims Fund as claims are received. (Government Code section 17610.)

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