

Hearing Date: February 13, 2026

**ITEM 3**  
**TEST CLAIM**  
**PROPOSED DECISION**  
Vehicle Code Section 2806.5  
Statues 2022, Chapter 805, AB 2773  
*Stops: Notification by Peace Officers*

24-TC-03

County of Los Angeles, Claimant

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## Exhibit A

For CSM Use Only

Filing Date:

**RECEIVED**  
December 20, 2024  
*Commission on  
State Mandates*

TC #: 24-TC-03

**TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM** (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

### Section 1

Proposed Test Claim Title:

AB 2773 Stops: Notification by Peace Officers

### Section 2

Local Government (Local Agency/School District) Name:

County of Los Angeles

Name and Title of Claimant's Authorized Official pursuant to [CCR, tit.2, § 1183.1\(a\)\(1-5\)](#):

Oscar Valdez, Auditor-Controller

Street Address, City, State, and Zip:

500 West Temple Street, Room 525, Los Angeles, CA 90012

Telephone Number

(213) 974-8302

Email Address

ovaldez@auditor.lacounty.gov

**Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. ([CCR, tit.2, § 1183.1\(b\)\(1-5\)](#).)**

Name and Title of Claimant Representative:

Fernando Lemus, Principal Accountant-Auditor

Organization: County of Los Angeles, Department of Auditor-Controller

Street Address, City, State, Zip:

500 West Temple Street, Room 603, Los Angeles, CA 90012

Telephone Number

(213) 974-0324

Email Address

flemus@auditor.lacounty.gov

Section 4 – Identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to [Government Code section 17553](#) and check for amendments to the section or regulations adopted to implement it:

## Assembly Bill No. 2773 (2021-2022 Regular Session)

Statutes of 2022, Chapter 805, Section 5: Stops: Notification by Peace Officers, to add Section 2806.5 to the Vehicle Code

Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 12 / 20 / 2024

A: Which is not later than 12 months (365 days) following [insert effective date]   /  /  , the effective date of the statute(s) or executive order(s) pled; or

B: Which is within 12 months (365 days) of [insert the date costs were *first* incurred to implement the alleged mandate] 01 / 01 / 2024, which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

(Gov. Code § 17551(c); Cal. Code Regs., tit. 2, §§ 1183.1(c) and 1187.5.)

## Section 5 – Written Narrative:

- Includes a statement that actual or estimated costs exceed one thousand dollars (\$1,000). ([Gov. Code § 17564](#).)
- Includes all of the following elements for each statute or executive order alleged **pursuant to Government Code section 17553(b)(1)**:
- Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;
- Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;
- Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;
- Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

Following FY: 2024 - 2025      Total Costs: \$740,463.75

Identifies all dedicated funding sources for this program;

State: None

Federal: None

Local agency's general purpose funds: No dedicated funding source. (General funds are used to cover costs)

Other nonlocal agency funds: None

Fee authority to offset costs: None

Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: None

Identifies any legislatively determined mandates that are on, or that may be related to, the same statute or executive order: None

**Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to [Government Code Section 17553\(b\)\(2\)](#) and [California Code of Regulations, title 2, section 1187.5](#), as follows:**

Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to [Government Code section 17573](#), and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of [Government Code section 17574](#).

The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

**Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to [Government Code section 17553\(b\)\(3\)](#) and [California Code of Regulations, title 2, § 1187.5](#):**

The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate.  
Pages 8 to 14.

Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 118 to 121.

- Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 15 to 117.
- Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.* ([Cal. Code Regs., tit. 2, § 1187.5](#))  
Pages 6 to 7.

## Section 8 – TEST CLAIM CERTIFICATION Pursuant to [Government Code section 17553](#)

- The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

*Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to [California Code of Regulations, title 2, section 1183.1\(a\)\(1-5\)](#) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in [section 1183.1\(a\)\(1-5\)](#) of the Commission's regulations, and not by the representative.*

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of [article XIII B, section 6 of the California Constitution](#) and [Government Code section 17514](#). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations.

([Cal. Code Regs., tit.2, §§ 1183.1](#) and [1187.5](#).)

Oscar Valdez

Auditor-Controller

Name of Authorized Local Government Official  
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Print or Type Title



Signature of Authorized Local Government Official  
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

# Test Claim Form

Final Audit Report

2025-01-30

Created:	2025-01-29
By:	CSM Sign (csmsign@csm.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGyCegQFe-PIquS9N2cwQHm-h0S3U_kLp

## "Test Claim Form" History

-  Document created by CSM Sign (csmsign@csm.ca.gov)  
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2025-01-29 - 9:49:39 PM GMT
-  Email viewed by flemus@auditor.lacounty.gov  
2025-01-29 - 10:44:28 PM GMT
-  Signer flemus@auditor.lacounty.gov entered name at signing as Fernando Lemus  
2025-01-29 - 11:23:46 PM GMT
-  Form filled by Fernando Lemus (flemus@auditor.lacounty.gov)  
Form filling Date: 2025-01-29 - 11:23:48 PM GMT - Time Source: server
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2025-01-29 - 11:24:15 PM GMT
-  Signer rcabigas@auditor.lacounty.gov entered name at signing as Rica Mae Cabigas  
2025-01-29 - 11:27:19 PM GMT
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-  Document emailed to Oscar Valdez (ovaldez@auditor.lacounty.gov) for signature  
2025-01-29 - 11:39:36 PM GMT
-  Email viewed by Oscar Valdez (ovaldez@auditor.lacounty.gov)  
2025-01-30 - 0:53:18 AM GMT
-  Document e-signed by Oscar Valdez (ovaldez@auditor.lacounty.gov)  
Signature Date: 2025-01-30 - 0:53:42 AM GMT - Time Source: server
-  Agreement completed.  
2025-01-30 - 0:53:42 AM GMT

**COUNTY OF LOS ANGELES TEST CLAIM**

**ASSEMBLY BILL 2773: STOPS: NOTIFICATION BY PEACE OFFICERS**

**Statutes of 2022, Chapter 805, Section 5: Stops: Notification by Peace Officers**  
**Assembly Bill No. 2773 (2021-2022 Regular Session)**  
**to add Section 2806.5 to the Vehicle Code**

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## COUNTY OF LOS ANGELES TEST CLAIM

### ASSEMBLY BILL 2773: STOPS: NOTIFICATION BY PEACE OFFICERS

Statutes of 2022, Chapter 805, Section 5: Stops: Notification by Peace Officers  
Assembly Bill No. 2773 (2021-2022 Regular Session)  
to add Section 2806.5 to the Vehicle Code

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**SECTION 5: WRITTEN NARRATIVE**

**COUNTY OF LOS ANGELES TEST CLAIM**

**ASSEMBLY BILL 2773: STOPS: NOTIFICATION BY PEACE OFFICERS**

**Statutes of 2022, Chapter 805, Section 5: Stops: Notification by Peace Officers  
Assembly Bill No. 2773 (2021-2022 Regular Session)  
to add Section 2806.5 to the Vehicle Code**

**SECTION 5: WRITTEN NARRATIVE**  
**COUNTY OF LOS ANGELES TEST CLAIM**  
**Statutes of 2022, Chapter 805, Section 5: Stops: Notification by Peace Officers**  
**Assembly Bill No. 2773 (2021-2022 Regular Session)**  
**to add Section 2806.5 to the Vehicle Code**

**I. STATEMENT OF THE TEST CLAIM**

Assembly Bill (AB) 2773 added Vehicle Code (VC) § 2806.5 to require law enforcement officers to inform drivers and pedestrians of the reason for being stopped before questioning them on other matters. Further, VC § 2806.5(a) requires that law enforcement officers must document the reason for the stop on any citation or police report resulting from the stop.

**A. DESCRIPTION OF THE NEW MANDATED ACTIVITIES**

Commencing January 1, 2024, VC § 2806.5(a) requires a peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, to state the reason for the stop. Further, the officer shall document the reason for the stop on any citation or police report resulting from the stop.

**B. DESCRIPTION OF THE EXISTING ACTIVITIES AND COSTS MODIFIED BY THE MANDATE**

Prior to AB 2773, peace officers were not required to disclose to the person stopped the reason for the stop prior to questioning. Peace officers were not required to document the reason given on any citation or police report.

**C. ACTUAL INCREASED COSTS INCURRED BY THE CLAIMANT DURING THE FISCAL YEAR FOR WHICH THE TEST CLAIM WAS FILED TO IMPLEMENT THE ALLEGED MANDATE**

The Los Angeles County Sheriff's Department (Sheriff or Claimant), first incurred costs related to implementing the mandate in AB 2773 on January 1, 2024.<sup>1</sup> Claimant has incurred \$111,694.19 in Fiscal Year (FY) 2023-24 for their work related to implementing the mandate of AB 2773 as codified in VC § 2806.5(a)

**D. ACTUAL OR ESTIMATED ANNUAL COSTS THAT WILL BE INCURRED BY THE CLAIMANT TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE TEST CLAIM WAS FILED**

Claimant estimates incurring \$37,036.14 in costs related to implementing VC § 2806.5(a) for FY 2024-25.<sup>2</sup>

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<sup>1</sup> Declaration of Jason Lynn

<sup>2</sup> Declaration of Jason Lynn

**E. STATEWIDE COST ESTIMATE OF INCREASED COSTS THAT ALL LOCAL AGENCIES WILL INCUR TO IMPLEMENT THE MANDATE**

Claimant estimates an increased statewide cost of \$740,463.75 in FY 2024-25.<sup>3</sup>

**F. IDENTIFICATION OF ALL DEDICATED FUNDING SOURCES FOR THIS PROGRAM**

Claimant is not aware of, nor did it receive any State, federal, or other non-local agency funds available for this program and all the increased costs were paid and will be paid from the Claimant's General Fund appropriations.<sup>4</sup>

**G. IDENTIFICATION OF PRIOR MANDATED DETERMINATIONS MADE BY THE BOARD OF CONTROL OR COMMISSION ON STATE MANDATES**

The Claimant is not aware of any prior determination made by the Board of Control or the Commission on State Mandates related to this matter.

**H. IDENTIFICATION OF LEGISLATIVELY-DETERMINED MANDATES THAT ARE ON THE SAME STATUTE OR EXECUTIVE ORDER**

The Claimant is not aware of any legislatively-determined mandates related to AB 2773, Statutes of 2022, Chapter 805, pursuant to Government Code § 17573.

**II. MANDATE MEETS BOTH SUPREME COURT TESTS**

In *County of Los Angeles v. State of California*, 43 Cal.3d 46 (1987), the Supreme Court was called upon to interpret the phrase "new program or higher level of service", language that was approved by the voters when they passed Proposition 4 in 1979, which added article XIII B to the California Constitution. In reaching its decision, the Court held that:

"... the term 'higher level of service' . . . must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs'. But the term 'program' itself is not defined in Article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique

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<sup>3</sup> Declaration of Declaration of Jason Lynn

<sup>4</sup> Declaration of Declaration of Jason Lynn

requirements on local government and do not apply generally to all residents and entities in the state<sup>5</sup>."

A program can either carry out the governmental function of providing services to the public or be a law that implements State policy that imposes unique requirements on the local government that does not apply to the entire State. Only one part of this definition has to apply in order for the mandate to qualify as a program. The activities mandated by AB 2773 meet both prongs.<sup>6</sup>

### **III. MANDATE IS UNIQUE TO LOCAL GOVERNMENT**

The sections of the law alleged in this Test Claim (TC) are unique to the Claimant. The activities described in section A are provided by local government agencies.

### **IV. MANDATE CARRIES OUT STATE POLICY**

The new State statute, the subject of this TC, imposes a higher level of service by requiring local agencies to provide the mandated activities described in section A.

### **V. STATE MANDATE LAW**

Article XIII B § 6 requires the State to provide a subvention of funds to local government agencies any time the legislature or a state agency requires the local government agency to implement a new program or provide a higher level of service under an existing program. Section 6 states in relevant part:

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 such local governments for the cost of such program or increased level of service . . .

The purpose of § 6 "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>7</sup> The section was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.<sup>8</sup> In order to implement § 6, the Legislature enacted a comprehensive administrative scheme to define and pay mandate claims.<sup>9</sup> Under this scheme, the Legislature established the parameters regarding what constitutes a State-mandated cost, defining "costs mandated by the state" to include:

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<sup>5</sup> *County of Los Angeles v. State of California* (1987) 43 Cal. 3d 46, 56

<sup>6</sup> *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App. 3d 521, 537

<sup>7</sup> *County of San Diego v. State of California* (1997) 15 Cal. 4th 68, 81; *County of Fresno v. State of California* (1991) 53 Cal. 3d 482, 487

<sup>8</sup> *County of Fresno v. State of California* (1991) 53 Cal. 3d 482, 487; *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976-985

<sup>9</sup> Government Code § 17500, et seq.; *Kinlaw v. State of California* (1991) 54 Cal. 3d 326, 331, 333

...any increased costs which a local agency 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 § 6 of Article XIII B of the California Constitution.<sup>10</sup>

## **VI. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE**

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

1. The claim is submitted by a local agency or school district, which requests legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts, which result in no net costs to the local agencies or school districts or includes additional revenue that was specifically intended to fund costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposes duties, which were expressly included in a ballot measure approved by the voters in Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.<sup>11</sup>

None of the disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement apply to this TC.

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<sup>10</sup> Government Code § 17514

<sup>11</sup> Government Code § 17556

The enactment of AB 2773 imposes new State-mandated activities and costs on the Claimant, and none of the exceptions in Government Code § 17556 excuse the State from reimbursing Claimant for the costs associated with implementing the required activities. AB 2773 therefore, represents a State mandate for which the Claimant is entitled to reimbursement pursuant to § 6 of the State Constitution.

## **VII. CONCLUSION**

AB 2773, Statutes of 2022, Chapter 805, imposes State-mandated activities and costs on the Claimant. Those State-mandated costs are not exempted from the subvention requirements of § 6 of the State Constitution. There are no funding sources, and the Claimant lacks authority to develop and impose fees to fund any of these new State-mandated activities. Therefore, Claimant respectfully requests that the Commission on State Mandates find that the mandated activities set forth in the Test Claim are State mandates that require subvention under the California Constitution § 6.

**SECTION 6: DECLARATIONS**

**COUNTY OF LOS ANGELES TEST CLAIM**

**ASSEMBLY BILL 2773: STOPS: NOTIFICATION BY PEACE OFFICERS**

## DECLARATION OF JASON LYMN

I, Jason Lynn, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am employed by the County of Los Angeles (County) Sheriff's Department and hold the title of Deputy Sheriff Generalist. I am assigned to the Risk Management Bureau, Field Operations Support Service (FOSS), under the Office of Constitutional Policing. FOSS is primarily responsible for managing projects and maintaining the databases, which host our policies, forms, and directives.
2. Assembly Bill (AB) 2773 added Vehicle Code (VC) § 2806.5, adding the requirement of “a peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, to state the reason for the stop.”<sup>1</sup> VC § 2806.5(a) mandates that the reason must be given to the person stopped at the time of the stop.
3. Prior to AB 2773, peace officers were not required to provide the reason for the stop at the time of the stop nor document the reason on any citation.
4. The Judicial Council of California updated the “notice to appear” citation form (TR-130) to comply with the changes from AB 2773, which requires that the reason for the stop be documented on the citation pursuant to VC § 2806.5(a). The new forms were updated to reflect the changes from AB 2773. The Sheriff’s Department has approximately 3,477 (out of about 9,000) sworn officers in 30-40 units of assignments (patrol stations/detective division units/courts and custody units) that use these new citation forms daily.
5. The Sheriff first incurred costs related to implementing the mandate in AB 2773 on January 1, 2024.
6. In Fiscal Year 2023-24, the Sheriff has incurred \$111,694.19 for work related to implementing the mandates of AB 2773, including \$13,618.75 for printing new versions of the citation form, \$84,412.87 for developing procedures, training officers, and briefing to officers about the duration of a stop, and \$13,662.57 for traffic stops.
7. The Sheriff estimates incurring costs of \$37,036.14 for FY 2024-25.
8. The Sheriff estimates an increased statewide cost of \$740,463.75 in FY 2024-25.<sup>2</sup>

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<sup>1</sup> California Vehicle Code § 2806.5

<sup>2</sup> There were 4,575,725 stops conducted in California from January 1, 2022, to December 31, 2022. Using Claimant’s calculated cost per stop of \$0.16185, the statewide cost estimate totals \$740,463.75 (4,575,725 x \$0.16185 = \$740,463.75). Source: <https://oag.ca.gov/news/press-releases/california-racial-and-identity-profiling-advisory-board-releases-report-2022>

9. The Sheriff has not received any local, State, or federal funding and does not have a fee authority to offset its increased direct and indirect costs associated with the implementation of AB 2773.
10. The Sheriff is not aware of any prior determinations by the Board of Control or the Commission on State Mandates related to this matter. The County is not aware of any legislatively-determined mandates related to AB 2773.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this December 16, 2024, in Los Angeles, California.

*Jason Lynn*  
\_\_\_\_\_  
Jason Lynn  
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**SECTION 7: SUPPORTING DOCUMENTS**  
**COUNTY OF LOS ANGELES TEST CLAIM**  
**ASSEMBLY BILL 2773: STOPS: NOTIFICATION BY PEACE OFFICERS**

**STATE AND SENATE BILL**  
**COMMITTEES AND RULES**  
**CASELAW AND CODES**

## Assembly Bill No. 2773

### CHAPTER 805

An act to amend, repeal, and add Section 12525.5 of the Government Code, and to amend, repeal, and add Section 1656.3 of, and to add Section 2806.5 to, the Vehicle Code, relating to law enforcement.

[Approved by Governor September 29, 2022. Filed with  
Secretary of State September 29, 2022.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2773, Holden. Stops: notification by peace officers.

Existing law requires each state and local agency that employs peace officers to annually report to the Attorney General data on all stops conducted by the agency's peace officers, and requires that data to include specified information, including the time, date, and location of the stop, and the reason for the stop.

This bill would, beginning on January 1, 2024, require each state and local agency to include in its annual report the reason given to the person stopped at the time of the stop. By imposing new duties on local agencies, the bill would impose a state-mandated local program.

Existing law authorizes specified peace officers, including agents of the Department of the California Highway Patrol, county sheriffs, and city police officers, to require a driver to stop and submit to an inspection in specified circumstances. Existing law requires the Department of Motor Vehicles to publish a synopsis or summary of the laws regulating the operation of vehicles and the use of the highways, known as the California Driver's Handbook, and requires the department to include specified information in the handbook, including a person's civil rights during a traffic stop.

This bill would, beginning on January 1, 2024, require a peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, to state the reason for the stop, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat. The bill would, beginning on January 1, 2024, require the officer to document the reason for the stop on any citation or police report resulting from the stop. By requiring a higher level of service from local law enforcement, this bill would impose a state-mandated local program.

The bill would, beginning on January 1, 2024, require the department to include information regarding the duty of a peace officer to state the reason for the stop in the handbook at the earliest opportunity when the handbook is otherwise revised or reprinted.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

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

SECTION 1. Section 12525.5 of the Government Code, as amended by Section 175 of Chapter 615 of the Statutes of 2021, is amended to read:

12525.5. (a) (1) Each state and local agency that employs peace officers shall annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year.

(2) Each agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019. Each agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020. Each agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022. Each agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.

(b) The reporting shall include, at a minimum, the following information for each stop:

(1) The time, date, and location of the stop.

(2) The reason for the stop.

(3) The result of the stop, such as, no action, warning, citation, property seizure, or arrest.

(4) If a warning or citation was issued, the warning provided or violation cited.

(5) If an arrest was made, the offense charged.

(6) The perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped. For motor vehicle stops, this paragraph only applies to the driver, unless any actions specified under paragraph (7) apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for that passenger.

(7) Actions taken by the peace officer during the stop, including, but not limited to, the following:

(A) Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided.

(B) Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any.

(C) Whether the peace officer seized any property and, if so, the type of property that was seized and the basis for seizing the property.

(c) If more than one peace officer performs a stop, only one officer is required to collect and report to the officer's agency the information specified under subdivision (b).

(d) State and local law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying information of persons stopped, searched, or subjected to a property seizure, for purposes of this section. Notwithstanding any other law, the data reported shall be available to the public, except for the badge number or other unique identifying information of the peace officer involved. Law enforcement agencies are solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure pursuant to this section is not transmitted to the Attorney General in an open text field.

(e) Not later than January 1, 2018, the Attorney General, in consultation with stakeholders, including the Racial and Identity Profiling Advisory Board (RIPA) established pursuant to paragraph (1) of subdivision (j) of Section 13519.4 of the Penal Code, federal, state, and local law enforcement agencies and community, professional, academic, research, and civil and human rights organizations, shall issue regulations for the collection and reporting of data required under subdivision (b). The regulations shall specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies. To the best extent possible, the regulations should be compatible with any similar federal data collection or reporting program.

(f) All data and reports made pursuant to this section are public records within the meaning of Section 7920.530 and are open to public inspection pursuant to Sections 7922.500 to 7922.545, inclusive, 7923.000, and 7923.005.

(g) (1) For purposes of this section, "peace officer," as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, is limited to members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions. "Peace officer," as used in this section, does not include probation officers and officers in a custodial setting.

(2) For purposes of this section, "stop" means any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control.

(h) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 2. Section 12525.5 is added to the Government Code, to read:

12525.5. (a) (1) Each state and local agency that employs peace officers shall annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year.

(2) Each agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019. Each agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020. Each agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022. Each agency that employs 1 or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.

(b) The reporting shall include, at a minimum, the following information for each pedestrian, traffic, or any other type of stop:

- (1) The time, date, and location of the stop.
- (2) The reason for the stop.
- (3) The reason given to the person stopped at the time of the stop.
- (4) The result of the stop, such as, no action, warning, citation, property seizure, or arrest.
- (5) If a warning or citation was issued, the warning provided or violation cited.
- (6) If an arrest was made, the offense charged.

(7) The perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped. For motor vehicle stops, this paragraph only applies to the driver, unless any actions specified under paragraph (8) apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for that passenger.

(8) Actions taken by the peace officer during the stop, including, but not limited to, the following:

- (A) Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided.
- (B) Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any.
- (C) Whether the peace officer seized any property and, if so, the type of property that was seized and the basis for seizing the property.

(c) If more than one peace officer performs a stop, only one officer is required to collect and report to the officer's agency the information specified under subdivision (b).

(d) State and local law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying

information of persons stopped, searched, or subjected to a property seizure, for purposes of this section. Notwithstanding any other law, the data reported shall be available to the public, except for the badge number or other unique identifying information of the peace officer involved. Law enforcement agencies are solely responsible for ensuring that personally identifiable information of the individual stopped or any other information that is exempt from disclosure pursuant to this section is not transmitted to the Attorney General in an open text field.

(e) Not later than January 1, 2018, the Attorney General, in consultation with stakeholders, including the Racial and Identity Profiling Advisory Board (RIPA) established pursuant to paragraph (1) of subdivision (j) of Section 13519.4 of the Penal Code, federal, state, and local law enforcement agencies and community, professional, academic, research, and civil and human rights organizations, shall issue regulations for the collection and reporting of data required under subdivision (b). The regulations shall specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices across all reporting agencies. To the best extent possible, the regulations should be compatible with any similar federal data collection or reporting program.

(f) All data and reports made pursuant to this section are public records within the meaning of Section 7920.530 and are open to public inspection pursuant to Sections 7922.500 to 7922.545, inclusive, 7923.000, and 7923.005.

(g) (1) For purposes of this section, “peace officer,” as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, is limited to members of the California Highway Patrol, a city or county law enforcement agency, and California state or university educational institutions. “Peace officer,” as used in this section, does not include probation officers and officers in a custodial setting.

(2) For purposes of this section, “stop” means any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person’s body or property in the person’s possession or control.

(h) This section shall become operative on January 1, 2024.

SEC. 3. Section 1656.3 of the Vehicle Code is amended to read:

1656.3. (a) The department shall include within the California Driver’s Handbook, as specified in subdivision (b) of Section 1656, information regarding each of the following:

(1) Rail transit safety.

(2) Abandonment or dumping of any animal on a highway.

(3) The importance of respecting the right-of-way of others, particularly pedestrians, bicycle riders, and motorcycle riders.

(4) Information regarding a person’s civil rights during a traffic stop. The information shall address the extent and limitations of a peace officer’s authority during a traffic stop and the legal rights of drivers and passengers, including, but not limited to, the right to file complaints against a peace officer. The information to be included in the handbook shall be developed

by the civil rights section of the Department of Justice in consultation with the Department of Motor Vehicles, the Department of the California Highway Patrol, the Commission on Peace Officer Standards and Training, and civil rights organizations, including community-based organizations.

(b) In order to minimize costs, the information referred to in paragraph (4) of subdivision (a) shall be initially included at the earliest opportunity when the handbook is otherwise revised or reprinted.

(c) This section shall remain in effect until January 1, 2024, and as of that date is repealed.

SEC. 4. Section 1656.3 is added to the Vehicle Code, to read:

1656.3. (a) The department shall include within the California Driver's Handbook, as specified in Section 1656, information regarding each of the following:

(1) Rail transit safety.

(2) Abandonment or dumping of any animal on a highway.

(3) The importance of respecting the right-of-way of others, particularly pedestrians, bicycle riders, and motorcycle riders.

(4) A person's civil rights during a traffic stop. The information shall address the extent and limitations of a peace officer's authority during a traffic stop and the legal rights of drivers and passengers, including, but not limited to, the right to file complaints against a peace officer. The information to be included in the handbook shall be developed by the civil rights section of the Department of Justice in consultation with the Department of Motor Vehicles, the Department of the California Highway Patrol, the Commission on Peace Officer Standards and Training, and civil rights organizations, including community-based organizations.

(5) The requirement that a peace officer disclose the reason for a traffic or pedestrian stop before engaging in questioning related to a criminal investigation or traffic violation, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, and the requirement for the officer to document the reason for the stop on any citation or police report resulting from the stop.

(b) In order to minimize costs, the information referred to in paragraphs (4) and (5) of subdivision (a) shall be initially included at the earliest opportunity when the handbook is otherwise revised or reprinted.

(c) This section shall become operative on January 1, 2024.

SEC. 5. Section 2806.5 is added to the Vehicle Code, to read:

2806.5. (a) A peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, shall state the reason for the stop. The officer shall document the reason for the stop on any citation or police report resulting from the stop.

(b) Subdivision (a) does not apply when the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including, but not limited to, cases of terrorism or kidnapping.

(c) This section shall become operative on January 1, 2024.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

 KeyCite Yellow Flag - Negative Treatment

Declined to Follow by [Connell v. Superior Court](#), Cal.App. 3 Dist., November 20, 1997

190 Cal.App.3d 521, 234 Cal.Rptr. 795

CARMEL VALLEY FIRE PROTECTION  
DISTRICT et al., Plaintiffs and Respondents,  
v.

THE STATE OF CALIFORNIA  
et al., Defendants and Appellants.

RINCON DEL DIABLO MUNICIPAL WATER  
DISTRICT et al., Plaintiffs and Respondents,  
v.

THE STATE OF CALIFORNIA  
et al., Defendants and Appellants.  
COUNTY OF LOS ANGELES,  
Plaintiff and Respondent,

v.

THE STATE OF CALIFORNIA  
et al., Defendants and Appellants.

No. B006078., No. B011941., No. B011942.

Court of Appeal, Second District, Division 5, California.

Feb 19, 1987.

No. C514623 and No. C515319, Jack T. Ryburn, Judge.)

\*522

In a consolidated appeal, the Court of Appeal affirmed with certain modifications. It held that, by failing to seek judicial review of the board's decision, the state had waived its right to contest the board's finding that the counties' expenditures were state mandated. Similarly, it held that the state was collaterally estopped from attacking the board's findings. It also held that the executive orders requiring the expenditures constituted the type of "program" that is subject to the constitutional imperative of subvention under [Cal. Const., art. XIII B, § 6](#). The court also held that the trial courts had not ordered an appropriation in violation of the separation of powers doctrine, and that the trial courts correctly determined that certain legislative disclaimers, findings, and budget control language did not exonerate the state from its constitutionally and statutorily imposed obligation to reimburse the counties' state-mandated costs. Further, the court held that the trial courts properly authorized the counties to satisfy their claims by offsetting fines and forfeitures due to the state, and that the counties were entitled to interest. (Opinion by Eagleson, J., with Ashby, Acting P. J., and Hastings, J., concurring.)

## HEADNOTES

### Classified to California Digest of Official Reports

(1a, 1b)

Estoppel and Waiver § 23--Waiver--Trial and Appeal--Failure to Seek Judicial Review of Administrative Decision--Waiver of Right to Contest Findings.

In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state waived its right to contest findings made by the State Board of Control in a previous proceeding. The board found that the costs were state-mandated and that the county was entitled to reimbursement. The state failed to seek judicial review of the board's decision, and the statute of limitations applicable to such review had passed. Moreover, the state, through its agents, had acquiesced in the board's findings by seeking an appropriation to satisfy the validated claims, which, however, was rebuffed by the Legislature.

(2)

Estoppel and Waiver § 19--Waiver--Requisites.

Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable \*523 belief that it has been waived. A right that is waived is lost forever. The doctrine of waiver applies to rights and privileges afforded by statute.

[See [Cal.Jur.3d, Estoppel and Waiver § 21](#); [Am.Jur.2d, Estoppel and Waiver § 154](#).]

[\(3a, 3b, 3c, 3d\)](#)

Judgments § 81--Res Judicata--Collateral Estoppel--County's Action for Reimbursement of State-mandated Costs--Findings of State Board of Control.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state was collaterally estopped from attacking the findings made, in a previous proceeding, by the State Board of Control that the costs were state-mandated and that the county was entitled to reimbursement. The issues were fully litigated before the board. Similarly, although the state was not a party to the board hearings, it was in privity with those state agencies which did participate. Moreover, a determination of conclusiveness would not work an injustice.

[\(4\)](#)

Judgments § 81--Res Judicata--Collateral Estoppel--Elements.

In order for the doctrine of collateral estoppel to apply, the issues in the two proceedings must be the same, the prior proceeding must have resulted in a final judgment on the merits, and the parties or their privies must be involved.

[\(5\)](#)

Judgments § 84--Res Judicata--Collateral Estoppel--Identity of Parties--Privity--Governmental Agents.

The agents of the same government are in privity with each other for purposes of collateral estoppel, since they represent not their own rights but the right of the government.

[\(6\)](#)

Judgments § 96--Res Judicata--Collateral Estoppel--Matters Concluded-- Questions of Law.

A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice.

[\(7\)](#)

State of California § 11--Fiscal Matters--Reimbursement to County for State-mandated Costs--New Programs.

A "new program," for purposes of determining whether the program is subject to the constitutional imperative of subvention under [Cal. Const., art. XIII B, § 6](#), is one which carries out the governmental function of providing services \*524 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.

[\(8\)](#)

State of California § 7--Actions--Reimbursement of County Funds for State-mandated Costs--New Programs.

In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with state executive orders to provide protective clothing and equipment to county fire fighters, the trial court properly determined that the executive orders constituted the type of "new program" that was subject to the constitutional imperative of subvention under [Cal. Const., art. XIII B, § 6](#). Fire protection is a peculiarly governmental function. Also, the executive orders manifest a state policy to provide updated equipment to all fire fighters, impose unique requirements on local governments, and do not apply generally to all residents and entities in the state, but only to those involved in fire fighting.

[\(9\)](#)

Constitutional Law § 37--Doctrine of Separation of Powers--Violations of Doctrine--Judicial Order of Appropriation.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court's judgment granting the writ was not in violation of the separation of powers doctrine. The court order did not directly compel the Legislature to appropriate funds or to pay funds not yet appropriated, but merely affected an existing appropriation.

(10)

Constitutional Law § 40--Distribution of Governmental Powers--Between Branches of Government--Judicial Power and Its Limits--Order Directing Treasurer to Pay on Already Appropriated Funds.

Once funds have been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures from such funds. Thus, a judgment which ordered the State Controller to draw warrants and directed the State Treasurer to pay on already-appropriated funds permissibly compelled performance of a ministerial duty.

(11)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to County for State-mandated Costs.

Appropriations affected by a court order need not specifically refer to the particular expenditure in question in order to be available. Thus, in a proceeding brought by a county for a writ of mandate to compel reimbursement \*525 by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds appropriated for the Department of Industrial Relations for the prevention of industrial injuries and deaths of state workers were available for reimbursement, despite the fact that the funds were not specifically appropriated for reimbursement. The funds were generally related to the nature of costs incurred by the county.

(12a, 12b)

Fires and Fire Districts § 2--Statutes and Ordinances--County Compliance With State Executive Order to Provide Protective Equipment--Federal Mandate.

A county's purchase of protective clothing and equipment for its fire fighters was not the result of a federally mandated program so as to relieve the state of its obligation (Cal. Const., art. XIII B, § 6) to reimburse the county for the cost of the purchases. The county had made the purchase in compliance with a state executive order. The federal government does not have jurisdiction over local fire departments and there are no applicable federal standards for local government structural fire fighting clothing and equipment. Hence, the county's obedience to the state executive orders was not federally mandated.

(13)

Statutes § 20--Construction--Judicial Function--Legislative Declarations.

The interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility.

(14a, 14b)

Statutes § 10--Title and Subject Matter--Single Subject Rule. In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters (Cal. Admin. Code, tit.

8, §§ 3401-3409), the trial court properly invalidated, as violating the single subject rule, the budget control language of Stats. 1981, ch. 1090, § 3. The express purpose of ch. 1090 was to increase funds available for reimbursing certain claims. The budget control language, on the other hand, purported to make the reimbursement provisions of Rev. & Tax. Code, § 2207, and former Rev. & Tax. Code, § 2231, unavailable to the county. Because the budget control language did not reasonably relate to the bill's stated purpose, it was invalid.

(15)

Statutes § 10--Title and Subject Matter--Single Subject Rule. The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in a statute's \*526 title. The rule's primary purpose is to prevent "logrolling" in the enactment of laws, which occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which might otherwise not have passed had the legislative mind been directed to them. However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose.

(16)

Statutes § 5--Operation and Effect--Retroactivity--Reimbursement to County for State-mandated Costs.

The budget control language of Stats. 1981, ch. 1090, § 3, which purported to make the reimbursement provisions of

¶ [Rev. & Tax. Code, § 2207](#) and former Rev. & Tax. Code, § 2231, unavailable to a county seeking reimbursement ([Cal. Const., art. XIII B, § 6](#)) for expenditures made in purchasing state-required protective clothing and equipment for county

fire fighters ([Cal. Admin. Code, tit. 8, §§ 3401-3409](#)), was invalid as a retroactive disclaimer of the county's right to reimbursement for debts incurred in prior years.

(17)

State of California § 13--Fiscal Matters--Limitations on Disposal-- Reimbursement to Counties for State-mandated Costs.

The budget control language of § 28.40 of the 1981 Budget Act and § 26.00 of the 1983 and 1984 Budget Acts did not exonerate the state from its constitutional and statutory obligations to reimburse a county for the expenses incurred in complying with a state mandate to purchase protective clothing and equipment for county fire fighters. The language was invalid in that it violated the single subject rule, attempted to amend existing statutory law, and was unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget.

(18)

Constitutional Law § 4--Legislative Power to Create Workers' Compensation System--Effect on County's Right to Reimbursement.

¶ [Cal. Const., art. XIV, § 4](#), which vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system, does not affect a county's right to state reimbursement for costs incurred in complying with state-mandated safety orders.

(19)

Constitutional Law § 7--Mandatory, Directory, and Self-executing Provisions--Subvention Provisions--County Reimbursement for State-mandated Costs.

The subvention provisions of [Cal. Const., art. XIII B, § 6](#), operate so as to require the state to reimburse counties for \*527 state-mandated costs incurred between January 1, 1975, and June 30, 1980. The amendment, which became effective on July 1, 1980, provided that the Legislature "may, but need not," provide reimbursement for mandates enacted before January 1, 1975. Nevertheless, the Legislature must reimburse mandates passed after that date, even though the

state did not have to begin reimbursement until the effective date of the amendment.

(20)

Mandamus and Prohibition § 5--Mandamus--Conditions Affecting Issuance--Exhaustion of Administrative Remedies--County Reimbursement for State-mandated Costs.

A county's right of action in traditional mandamus to compel reimbursement for state-mandated costs did not accrue until the county had exhausted its administrative remedies. The exhaustion of remedies occurred when it became unmistakably clear that the legislative process was complete and that the state had breached its duty to reimburse the county.

(21)

Mandamus and Prohibition § 13--Mandamus--Conditions Affecting Issuance--Existence and Adequacy of Other Remedy.

A party seeking relief by mandamus is not required to exhaust a remedy that was not in existence at the time the action was filed.

(22a, 22b)

State of California § 7--Actions--Reimbursement to County for State-mandated Costs--County's Right to Offset Fines and Forfeitures Due to State.

In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment for county fire fighters, the trial court did not err in authorizing the county to satisfy its claims by offsetting fines and forfeitures due to the state. The order did not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters.

(23)

Equity § 5--Scope and Types of Relief--Offset.

The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike or balance, holding himself owing or entitled only to the net difference. Although this doctrine exists independent of statute, its governing principle has been partially codified in [Code Civ. Proc., § 431.70](#) (limited to cross-demands for money).

(24)

State of California § 7--Actions--Reimbursement to County for State-mandated Costs--State's Use of Statutory Offset Authority.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state \*528 order to provide protective clothing and equipment to county fire fighters, the trial court did not err in enjoining the exercise of the state's statutory offset authority (Gov. Code, § 12419.5) until the county was fully reimbursed. In view of the state's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating the county's collection efforts from occurring.

(25)

State of California § 7--Actions--Reimbursement to County for State-mandated Costs--State's Right to Revert or Dissipate Undistributed Appropriations.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court properly enjoined, and was not precluded by Gov. Code, § 16304.1, from enjoining, the state from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy the court's judgment in favor of the county.

(26)

Parties § 2--Indispensable Parties--County Auditor Controller--County Action to Collect Reimbursement From State.

In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the county auditor-controller was not an indispensable party whose absence would result in a loss of the trial court's jurisdiction. The auditor-controller was an officer of the county and was subject to the direction and control of the county board of supervisors. He was indirectly represented in the proceedings because his principal, the county, was the party litigant. Additionally, he claimed no personal interest in the action and his pro forma absence in no way impeded complete relief

(27)

Parties § 2--Indispensable Parties--Fines and Forfeitures--County Action to Collect Reimbursement From State.

In an action brought by a county for a writ of mandate to compel reimbursement by the state for costs expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds created by the collected fines and forfeitures which the county was allowed to offset to satisfy its claims against the state were not "indispensable parties" to the litigation. The action was not an in rem proceeding, and the ownership of a particular stake was not in dispute. Complete relief could be afforded without including the specified funds as a party.

(28)

Interest § 4--Interest on Judgments--County Action for Reimbursement of State-mandated Costs--State Reliance on Invalid Statute.

An \*529 invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest on damages under  Civ. Code, § 3287, subd. (a). Thus, in an action brought by a county for writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state could not avoid its obligation to pay interest on the funds by relying on invalid budget control language which purported to restrict payment on reimbursement claims.

(29)

Appellate Review § 127--Review--Scope and Extent--Interpretation of Statutes.

An appellate court is not limited by the interpretation of statutes given by the trial court.

(30)

Appellate Review § 162--Determination of Disposition of Cause-- Modification--Action Against State--Appropriation.

In an action against the state, an appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts.

COUNSEL

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Hunter, Deputy Attorneys General, for Defendants and Appellants.

De Witt Clinton, County Counsel, Amanda F. Susskind, Deputy County Counsel, Ross & Scott, William D. Ross and Diana P. Scott, for Plaintiffs and Respondents.

EAGLESON, J.

These consolidated appeals arise from three separate trial court proceedings concerning the heretofore unsuccessful efforts of various local agencies to secure reimbursement of state-mandated costs.

Case No. 2d Civ. B006078 (Carmel Valley et al. case) was the first matter decided by the trial court. The memorandum of decision in that case was judicially noticed by the trial court which heard the consolidated matters in 2d Civ. B011941 (Rincon et al. case) and 2d Civ. B011942 (County of Los Angeles case). Issues common to all three cases will be discussed together **\*530** under the County of Los Angeles appeal, while issues unique to the other two appeals will be considered separately.

We identify the parties to the various proceedings in footnote 1.<sup>1</sup> For literary convenience, however, we will refer to all appellants as the State and all respondents as the County unless otherwise indicated.

#### Appeal In Case No. 2 Civil B011942

##### (County of Los Angeles Case)

##### Facts and Procedural History

County employs fire fighters for whom it purchased protective clothing and equipment, as required by [title 8, California Administrative Code, sections 3401-3409](#), enacted in 1978 (executive orders). County argues that it is entitled to State reimbursement for these expenditures because they constitute a state-mandated "new program" or "higher level of service." County relies on [Revenue and Taxation Code section 2207](#)<sup>2</sup> and former **\*531** section 2231,<sup>3</sup> and [California Constitution, article XIII B, section 6](#)<sup>4</sup> to support its claim.

County filed a test claim with the State Board of Control (Board) for these costs incurred during fiscal years 1978-1979 and 1979-1980.<sup>5</sup> After hearings were held on the matter, the Board determined on November 20, 1979, that there was a

state mandate and that County should be reimbursed. State did not seek judicial review of this quasi-judicial decision of the Board.

Thereafter, a local government claims bill, Senate Bill Number 1261 (Stats. 1981, ch. 1090, p. 4191) (S.B. 1261) was introduced to provide appropriations to pay some of County's claims for these state-mandated costs. This bill was amended by the Legislature to delete all appropriations for the payment of these claims. Other claims of County not provided for in S.B. 1261 were contained in another local government claims bill, Assembly Bill Number 171 (Stats. 1982, ch. 28, p. 51) (A.B. 171). The appropriations in this bill were deleted by the Governor. Both pieces of legislation, sans appropriations, were enacted into law.<sup>6</sup>

On September 21, 1984, following these legislative rebuffs, County sought reimbursement by filing a petition for writ of mandate ([Code Civ. Proc., § 1085](#)) and complaint for declaratory relief. After appropriate responses were filed and a hearing was held, the court executed a judgment on February 6, 1985, granting a peremptory writ of mandate. A writ of mandate was issued and other findings and orders made. It is from this judgment of **\*532** February 6, 1985, that State appeals. The relevant portions of the judgment are set forth verbatim below.<sup>7</sup> **\*533**

#### Contentions

State advances two basic contentions. It first asserts that the costs incurred by County are not state mandated because they are not the result of a "new program," and do not provide a "higher level of service." Either or both of these requirements are the sine qua non of reimbursement. Second, assuming a "new program" or "higher level of service" exists, portions of the trial court order aimed at assisting the reimbursement process were made in excess of the court's jurisdiction.

These contentions are without merit. We modify and affirm all three judgments.

#### Discussion

##### I

##### Issue of State Mandate

The threshold question is whether County's expenditures are state mandated. The right to reimbursement is triggered when the local agency incurs "costs mandated by the state"

in either complying with a “new program” or providing “an increased level of service of an existing program.”<sup>8</sup> State advances many theories as to why the Board erred in concluding that these expenditures are state-mandated costs. One of these arguments is whether the executive orders are a “new program” as that phrase has been recently defined by

our Supreme Court in [County of Los Angeles v. State of California \(1987\) 43 Cal.3d 46 \[233 Cal.Rptr. 38, 729 P.2d 202\].](#) \*534

As we shall explain, State has waived its right to challenge the Board's findings and is also collaterally estopped from doing so. Additionally, although State is not similarly precluded from raising issues presented by the *State of California* case, we conclude that the executive orders are a “new program” within the meaning of [article XIII B, section 6.](#)

#### A. Waiver

(1a) We initially conclude that State has waived its right to contest the Board's findings. ( 2) Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived.

( [Medico-Dental etc. Co. v. Horton & Converse \(1942\) 21 Cal.2d 411, 432 \[132 P.2d 457\]; Loughan v. Harger-Haldeman \(1960\) 184 Cal.App.2d 495, 502-503 \[7 Cal.Rptr. 581\].](#)) A right that is waived is lost forever. ( [L.A. City Sch. Dist. v. Landier Inv. Co. \(1960\) 177 Cal.App.2d 744, 752 \[2 Cal.Rptr. 662\].](#)) The doctrine of waiver applies to rights and privileges afforded by statute. ( [People v. Murphy \(1962\) 207 Cal.App.2d 885, 888 \[24 Cal.Rptr. 803\].](#))

(1b) State now contends to be an aggrieved party and seeks to dispute the Board's findings. However it failed to seek judicial review of that November 20, 1979 decision ( [Code Civ. Proc., § 1094.5](#)) as authorized by former Revenue and Taxation Code section 2253.5. The three-year statute of limitations applicable to such review has long since passed. ( [Green v. Obledo \(1981\) 29 Cal.3d 126, 141, fn. 10 \[172 Cal.Rptr. 206, 624 P.2d 256\]; Code Civ. Proc., § 338, subd. 1.](#))

In addition, State, through its agents, acquiesced in the Board's findings by seeking an appropriation to satisfy the validated claims. (Former Rev. & Tax. Code, § 2255, subd. (a.)) On September 30, 1981, S.B. 1261 became law. On

February 12, 1982, A.B. 171 was enacted. Appropriations had been stripped from each bill. State did not then seek review of the Board determinations even though time remained before the three-year statutory period expired. This inaction is clearly inconsistent with any intent to contest the validity of the Board's decision and results in a waiver.

#### B. Administrative Collateral Estoppel

(3a) We next conclude that State is collaterally estopped from attacking the Board's findings. ( 4) Traditionally, collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. In order for the doctrine to apply, the issues in the two proceedings must \*535 be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved. ( [People v. Sims \(1982\) 32 Cal.3d 468, 484 \[186 Cal.Rptr. 77, 651 P.2d 321\].](#))

The doctrine was extended in *Sims* to apply to a final adjudication of an administrative agency of statutory creation so as to preclude relitigation of the same issues in a subsequent criminal case. Our Supreme Court held that collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims. ( [Id. at p. 479.](#)) All of the elements of administrative collateral estoppel are present here.

(3b) The Board was created by the state Legislature to exercise quasi-judicial powers in adjudging the validity of claims against the State. ( [County of Sacramento v. Loeb \(1984\) 160 Cal.App.3d 446, 452 \[206 Cal.Rptr. 626\].](#)) At the time of the hearings, the Board proceedings were the sole administrative remedy available to local agencies seeking reimbursement for state-mandated costs. (Former Rev. & Tax. Code, § 2250.) Board examiners had the power to administer oaths, examine witnesses, issue subpoenas, and receive evidence. ( [Gov. Code, § 13911.](#)) The hearings were adversarial in nature and allowed for the presentation of evidence by the claimant, the Department of Finance, and any other affected agency. (Former Rev. & Tax. Code, § 2252.)

The record indicates that the state mandate issues in this case were fully litigated before the Board. A representative

of the state Division of Occupational Safety and Health and the Department of Industrial Relations testified as to why County's costs were not state mandated. Representatives of the various claimant fire districts in turn offered testimony contradicting that view. The proceedings culminated in a verbatim transcript and a written statement of the basis for the Board's decision.

State complains, however, that some of the traditional elements of the collateral estoppel doctrine are missing. In particular, State argues that it was not a party to the Board hearings and was not in privity with those state agencies which did participate.

(5) “[T]he courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government. [Fn. omitted.]” (Flag *Lerner v. Los Angeles City Board of Education*

(1963) 59 Cal.2d 382, 398 [Flag 29 Cal.Rptr. 657, 380 P.2d 97].) As we stated in our introduction of the parties in this case, the party \*536 known as “State” is merely a shorthand reference to the various state agencies and officials named as defendants below. Each of these defendants is an agent of the State of California and had a mutual interest in the Board proceedings. They are thus in privity with those state agencies which did participate below (e.g., Occupational Safety and Health Division).

It is also clear that even though the question of whether a cost is state mandated is one of law (Flag *City of Merced v. State of*

*California* (1984) 153 Cal.App.3d 777, 781 [Flag 200 Cal.Rptr. 642]), subsequent litigation on that issue is foreclosed here.

(6) A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice. (Flag *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 230

[Flag 123 Cal.Rptr. 1, 537 P.2d 1250]; Flag *Beverly Hills Nat. Bank v. Glynn* (1971) 16 Cal.App.3d 274, 286-287 [Flag 93 Cal.Rptr. 907]; Rest.2d Judgments, § 28, p. 273.)<sup>9</sup>

(3d) Here, the basic issues of state mandate and the amount of reimbursement arose out of County's required compliance with the executive orders. In either forum—Board or court—

the claims and the evidentiary and legal determination of their validity would be considered in similar fashion.

Furthermore, a determination of conclusiveness would not work an injustice. As we have noted, the Board was statutorily created to consider the validity of the various claims now being litigated. Processing of reimbursement claims in this manner was the only administrative remedy available to County. If we were to grant State's request and review the Board's determination de novo, we would, in any event, adhere to the well-settled principle of affording “great weight” to “the contemporaneous administrative construction of the enactment by those charged with its enforcement ....” (

Flag *Coca-Cola Co. v. State Bd. of Equalization* (1945) 25 Cal.2d 918, 921 [Flag 156 P.2d 1].)

There is no policy reason to limit the application of the collateral estoppel doctrine to successive court proceedings.

In Flag *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 679 [Flag 159 Cal.Rptr. 56], the doctrine was applied to bar relitigation in a subsequent civil proceeding of a zoning issue previously decided by a city board of permit appeals. We similarly hold that the questions of law decided by the Board are binding in all of the subsequent civil proceedings presented here. State therefore is collaterally \*537 estopped to raise the issues of state mandate and amount of reimbursement in this appeal.

### C. Executive Orders—A “New Program”

#### Under Article XIII B, Section 6

(7) The recent decision by our Supreme Court in Flag *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at p. 49 presents a new issue not previously considered by the Board or the trial court. That question is whether the executive orders constitute the type of “program” that is subject to the constitutional imperative of subvention under article XIII B, section 6.<sup>10</sup> We conclude that they are.

In *State of California*, the Court concluded that the term “program” has two alternative meanings: “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” (Flag *Id.* at p. 56, italics added.) Although only one of these findings is necessary to trigger reimbursement, both are present here.

(8)First, fire protection is a peculiarly governmental function.

( *County of Sacramento v. Superior Court* (1972) 8 Cal.3d

479, 481 [ 105 Cal.Rptr. 374, 503 P.2d 1382].) “Police and fire protection are two of the most essential and basic functions of local government.” (*Verreos v. City and County of San Francisco* (1976) 63 Cal.App.3d 86, 107 [133 Cal.Rptr. 649].) This classification is not weakened by State's assertion that there are private sector fire fighters who are also subject to the executive orders. Our record on this point is incomplete because the issue was not presented below. Nonetheless, we have no difficulty in concluding as a matter of judicial notice that the overwhelming number of fire fighters discharge a classical governmental function.<sup>11</sup> \*538

The second, and alternative, prong of the *State of California* definition is also satisfied. The executive orders manifest a state policy to provide updated equipment to all fire fighters. Indeed, compliance with the executive orders is compulsory. The requirements imposed on local governments are also unique because fire fighting is overwhelmingly engaged in by local agencies. Finally, the orders do not apply generally to all residents and entities in the State but only to those involved in fire fighting.

These facts are distinguishable from those presented in *State of California*. There, the court held that a state-mandated increase in workers' compensation benefits did not require state subvention because the costs incurred by local agencies were only an incidental impact of laws that applied generally to all state residents and entities (i.e., to all workers and all governmental and nongovernmental employers). Governmental employers in that setting were indistinguishable from private employers who were obligated through insurance or direct payment to pay the statutory increases.

*State of California* only defined the scope of the word “program” as used in *California Constitution, article XIII B, section 6*. We apply the same interpretation to former Revenue and Taxation Code section 2231 even though the statute was enacted much earlier. The pertinent language in the statute is identical to that found in the constitutional provision and no reason has been advanced to suggest that it should be construed differently. In any event, a different interpretation must fall before a constitutional provision of similar import. (

 *County of Los Angeles v. Payne* (1937) 8 Cal.2d 563, 574 [ 66 P.2d 658].)

## II

### Issue of Whether Court Orders Exceeded Its Jurisdiction

#### A. The Court Has Not Ordered an Appropriation in Violation of the Separation of Powers Doctrine

(9)State begins its general attack on the judgment by citing the longstanding principle that a court order which directly compels the Legislature to appropriate funds or to pay funds not yet appropriated violates the separation of powers doctrine. (*Cal. Const.*, art. III, § 3; art. XVI, § 7;  *Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [ 174 Cal.Rptr. 841, 629 P.2d 935].)<sup>12</sup>

State \*539 observes (and correctly so) that the relevant constitutional (art. XIII B, § 6) and statutory

( *Rev. & Tax. Code*, § 2207 & former § 2231) provisions are not appropriations measures. (See *City of Sacramento v. California State Legislature* (1986) 187 Cal.App.3d 393, 398 [231 Cal.Rptr. 686].) Since State otherwise discerns no manifest legislative intent to appropriate funds to pay County's claims (*City & County of S. F. v. Kuchel* (1948) 32 Cal.2d 364, 366 [196 P.2d 545]), it concludes that the judgment unconstitutionally compels performance of a legislative act.

State further argues that the judiciary's ability to reach an existing agency-support appropriation (State Department of Industrial Relations) (fn. 7, ¶ 1, *ante*) has been approved in only two contexts. First, the court can order payment from an existing appropriation, the expenditure of which has been legislatively prohibited by an unconstitutional or unlawful restriction. (*Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. 475].) Second, once an adjudication has finally determined the rights of the parties, the court may compel satisfaction of the judgment from a current unexpended, unencumbered appropriation which administrative agencies routinely have used for the purpose in question. ( *Mandel v. Myers, supra.*, 29 Cal.3d at p. 544.) State insists that these facts are not present here.

County rejoins that a writ of traditional mandate (*Code Civ. Proc.*, § 1085) is the correct method of compelling State to

perform a clear and present ministerial legal obligation. (

¶ *County of Sacramento v. Loeb, supra.*, 160 Cal.App.3d at pp. 451-452.) The ministerial obligation here is contained in California Constitution, article XIII B, section 6 and in

¶ Revenue and Taxation Code section 2207 and former section 2231. These provisions require State to reimburse local agencies for state-mandated costs.

We reject State's general characterization of the judgment by noting that it only affects an existing appropriation. It declares (fn. 7, ¶ 1, *ante*) that only funds already "appropriated by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund" shall be spent for reimbursement of County's state-mandated costs. (Italics added.) There is absolutely no language purporting to require the Legislature to enact appropriations or perform any other act that might violate separation of powers principles. (10)By simply ordering the State Controller to draw warrants and directing the State Treasurer to pay on already appropriated funds (fn. 7, ¶ 2, *ante*), the judgment permissibly compels performance of a ministerial duty: "[O]nce funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures \*540 from such funds. [Citations.]" ( *Mandel v. Myers, supra.*, 29 Cal.3d at p. 540.)

As we will discuss in further detail below, the subject funds (fn. 7, ¶ 1, *ante*) were saddled with an unconstitutional restriction (fn. 7, ¶ 7, *ante*). However, *Mandel* establishes that such a restriction does not necessarily infect the entire appropriation. There, the Legislature had improperly prohibited the use of budget funds to pay a court-ordered and administratively approved attorney's fees award. The court reasoned that as long as appropriated funds were "reasonably available for the expenditures in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds." ( *Id.* at p. 542.) The court went on to find that money in a general "operating expenses and equipment" fund was, by both the Budget Act's terms and prior administrative practice, reasonably available to pay the attorney's fees award.

Contrary to State's argument, *Mandel* does not require that past administrative practice support a judgment for reimbursement from an otherwise available appropriation.

Although there was evidence of a prior administrative practice of paying counsel fees from funds in the "operating expenses and equipment" budget, this fact was not the main predicate of the court's holding. Rather, the decisive factor was that the budget item in question functioned as a "catchall" appropriation in which funds were still reasonably available to satisfy the State's adjudicated debt. ( *Id.* at pp. 543-544.)

Another illustration of this principle is found in ¶ *Serrano*

*v. Priest* (1982) 131 Cal.App.3d 188 ¶ 182 Cal.Rptr. 387].

Plaintiffs in that case secured a judgment against the State of California for \$800,000 in attorney's fees. The judgment was not paid, and subsequent proceedings were brought against State to satisfy the judgment. The trial court directed the State Controller to pay the \$800,000 award, plus interest, from funds appropriated by the Legislature for "operating expenses and equipment" of the Department of Education, Superintendent of Public Instruction and State Board of

Education. ¶ ( *Id.* at p. 192.) This court affirmed that order even though there was no evidence that the agencies involved had ever paid court-ordered attorney's fees from that portion of the budget. Relying on *Mandel*, we concluded that funds were reasonably available from appropriations enacted in the Budget Act in effect at the time of the court's order, as well as from similar appropriations in subsequent budget acts.

(11)State also incorrectly asserts that the appropriations affected by the court's order must specifically refer to the particular expenditure in question in order to be available. This notion was summarily dismissed in *Mandel v. Myers, supra.*, 29 Cal.3d at pp. 543-544. Likewise, in *Committee to Defend \*541 Reproductive Rights v. Cory, supra.*, 132 Cal.App.3d at pp. 857-858, the court decreed that payments for Medi-Cal abortions could properly be ordered from monies appropriated for other Medi-Cal services, even though this use had been specifically prohibited by the Legislature.

Applying these various principles here, we note that the judgment (fn. 7, ¶ 2, *ante*) identified funds in account numbers 8350-001-001, 8350-001-452, 8350-001-453 and 8350-001-890 as being available for reimbursement. Within these 1984-1985 account appropriations for the Department of Industrial Relations were monies for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers. The evidence clearly showed that the remaining balances on hand would cover the cost of reimbursement. Since it is conceded that the fire fighting protective clothing and equipment in this case was purchased to

prevent deaths and injuries to fire fighters, these funds, although not specifically appropriated for the reimbursement in question, were generally related to the nature of costs incurred by County and are therefore reasonably available for reimbursement.

**B. Legislative Disclaimers, Findings and Budget Control Language Are No Defense to Reimbursement**

As a general defense against the order to reimburse, State insists that the Legislature has itself concluded that the claimed costs are not reimbursable. This determination took the combined form of disclaimers, findings and budget control language. State interprets this self-serving legislation, as well as the legislative and gubernatorial deletions, as forever sweeping away State's obligation to reimburse the state-mandated costs at issue. Consequently, any order that ignores these restrictions on payment would amount to a court-ordered appropriation. As we shall conclude, these efforts are merely transparent attempts to do indirectly that which cannot lawfully be done directly.

The seminal legislation that gave rise to the 1978 executive orders was enacted by Statutes 1973, chapter 993, and is labeled the California Occupational Safety and Health Act (Cal/OSHA). It is modeled after federal law and is designed to assure safe working conditions for all California workers. A legislative disclaimer appearing in section 106 of that bill reads: "No appropriation is made by this act ... for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on ...." The stated reason for this decision not to appropriate was that the cost of implementing the act was "minimal on a statewide basis in relation to the effect on local tax rates." (Stats. 1973, ch. 993, § 106, p. 1954.)

\*542

Again, in 1974, the Legislature stated: "Notwithstanding ¶ Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section, nor shall there be an appropriation made by this act, because the Legislature finds that this act and any executive regulations or safety orders issued pursuant thereto merely implement federal law and regulations." (Stats. 1974, ch. 1284, § 106, p. 2787.) This statute amended section 106 of Statutes 1973, chapter 993, and was a post facto change in the stated legislative rationale for not providing reimbursement.

Presumably because of the large number of reimbursement claims being filed, the Legislature subsequently used budget control language to confirm that compliance with the executive orders should not trigger reimbursement. Some of this legislation was effective September 30, 1981, as part of a local agency and school district reimbursement bill. The control language provided that "[t]he Board of Control shall not accept, or submit to the Legislature, any more claims pursuant to ... Sections 3401 to ¶ 3409, inclusive, of Title 8 of the California Administrative Code." (Stats. 1981, ch. 1090, § 3, p. 4193.)<sup>13</sup>

Further control language was inserted in the 1981, 1983 and 1984 Budget Acts. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This language prohibits encumbering appropriations to reimburse costs incurred under the executive orders, except under certain limited circumstances.

(12a)State first challenges the trial court's finding that expenditures mandated by the executive orders were not the result of a federally mandated program (fn. 7, ¶ 8, *ante*), despite the legislative finding in Statutes 1974, chapter 1284, section 106. We agree with the court's decision that there was no federal mandate.

The significance of this no-federal-mandate finding is revealed by examining past changes in the statutory definition of state-mandated costs. As thoroughly discussed in ¶ *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182, 196-197 ¶ 203 Cal.Rptr. 258] disapproved on other grounds in *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at p. 58, fn. 10, the concept of federally mandated costs has provided local agencies with a financial escape valve ever since passage of the "Property Tax Relief Act of 1972." (Stats. 1972, ch. 1406, § 1, p. 2931.) That act limited local governments' power to levy property taxes, while requiring that they be reimbursed by the State for providing compulsory increased levels of service or \*543 new programs. However, under *Revenue and Taxation Code section 2271*, "costs mandated by the federal government" were not subject to reimbursement and local governments were permitted to levy taxes in addition to the maximum property tax rate to pay such costs.

On November 6, 1979, the limitation on local government's ability to raise property taxes, and the duty of the State to reimburse for state-mandated costs, became a part of the

California Constitution through the initiative process. Article XIII B, section 6, enacted at that time, directs state subvention similar in nature to that required by the preexisting provisions of  Revenue and Taxation Code section 2207 and former section 2231. As a defense against this duty to reimburse local agencies, the Legislature began to insert disclaimers in bills which mandated costs on local agencies. It also amended Revenue and Taxation Code section 2206 to expand the definition of nonreimbursable “costs mandated by the federal government” to include the following: “costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state.”

In applying this definition here, State offers nothing more than the bare legislative finding contained in Statutes 1974, chapter 1284, section 106. State contends that a federally mandated cost cannot, by definition, be a state-mandated cost. Therefore, if the cost is federally mandated, local agency reimbursement is not required. (13)(See fn. 14.) Although State's argument is correct in the abstract, neither the facts nor federal law supports the underlying assumption that there is a federal mandate.<sup>14</sup>

(12b) Both the Board and the court had in evidence a letter from a responsible official of the federal Occupational Safety and Health Administration (OSHA). The letter emphasizes the independence of state and federal OSHA standards: “OSHA does not have jurisdiction over the fire departments of any political subdivision of a state whether the state has elected to have its own state plan under the OSHA act or not .... [¶] More specifically, in 1978, the State of California promulgated standards applicable to fire departments in California. Therefore, California standards, rather than \*544 federal OSHA standards, are applicable to fire departments in that state ....” This theme is also reflected in a section of OSHA which expressly disclaims jurisdiction over local agencies such as County. ( 29 U.S.C. § 652(5).) Accordingly, as a matter of law, there are no federal standards for local government structural fire fighting clothing and equipment.

In short, while the Legislature's enactment of Cal/OSHA to comply with federal OSHA standards is commendable, it certainly was not compelled. Consequently, County's

obedience to the 1978 executive orders is not federally mandated.

(14a) The trial court also properly invalidated the budget control language in Statutes 1981, chapter 1090, section 3 (fn. 7, ¶ 7, *ante*) because it violated the single subject rule.<sup>15</sup> This legislative restriction purported to make the reimbursement provisions of  Revenue and Taxation Code section 2207 and former section 2231 unavailable to County.

(15) The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in the statute's title. The rule's primary purpose is to prevent “log-rolling” in the enactment of laws. This disfavored practice occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which otherwise might not have passed had the legislative mind been directed to them. ( *Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1196 [ 219 Cal.Rptr. 664].) However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose. ( *Metropolitan Water Dist. v. Marquardt* (1963) 59 Cal.2d 159, 172-173 [ 28 Cal.Rptr. 724, 379 P.2d 28].)

(14b) The stated purpose of chapter 1090 is to increase funds available for reimbursing certain claims. It describes itself as an “act making an appropriation to pay claims of local agencies and school districts for additional reimbursement for specified state-mandated local costs, awarded by the State Board of Control, and declaring the urgency thereof, to take effect immediately.” (Stats. 1981, ch. 1090, p. 4191.) There is nothing in this introduction \*545 alerting the reader to the fact that the bill prohibits the Board from entertaining claims pursuant to the Cal/OSHA executive orders. The control language does not modify or repeal these orders, nor does it abrogate the necessity for County's continuing compliance therewith. It simply places County's claims reimbursement process in limbo.

This special appropriations bill is similar in kind to appropriations in an annual budget act. Observations that have

been made in connection with the enactment of a budget bill are appropriate here. “[T]he annual budget bill is particularly susceptible to abuse of [the single subject] rule. ‘History tells us that the general appropriation bill presents a special temptation for the attachment of riders. It is a necessary and often popular bill which is certain of passage. If a rider can be attached to it, the rider can be adopted on the merits of the general appropriation bill without having to depend on its own merits for adoption.’ [Citation.]” (  *Planned Parenthood Affiliates v. Swoap, supra.*, 173 Cal.App.3d at p. 1198.)

Therefore, the annual budget bill must only concern the subject of appropriations to support the annual budget and may not constitutionally be used to substantively amend or change existing statutory law. (  *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 394 [  211 Cal.Rptr. 758, 696 P.2d 150].)

We see no reason to apply a less stringent standard to a special appropriations bill. Because the language in chapter 1090 prohibiting the Board from processing claims does not reasonably relate to the bill’s stated purpose, it is invalid.

(16)The budget control language in chapter 1090 is also invalid as a retroactive disclaimer of County’s right to reimbursement for debts incurred in prior years. This legislative technique was condemned in  *County of Sacramento v. Loeb, supra.*, 160 Cal.App.3d at p. 446. There, the Legislature had enacted a Government Code section which prohibited using appropriations for any purpose which had been denied by any formal action of the Legislature. The State attempted to use this code section to uphold a special appropriations bill which had deleted County’s Board-approved claims for costs which were incurred prior to the enactment of the code section. The court held that the code section did not apply retroactively to defeat County’s claims: “A retroactive statute is one which relates back to a previous transaction and gives that transaction a legal effect different from that which it had under the law when it occurred ... ‘Absent some clear policy requiring the contrary, statutes modifying liability in civil cases are not to be construed retroactively.’” (  *Id.* at p. 459, quoting

 *Robinson v. Pediatric Affiliates Medical Group, Inc.* (1979) 98 Cal.App.3d 907, 912 [  159 Cal.Rptr. 791].) Similarly, the control language in chapter 1090 does not apply retroactively to County’s prior, Board-approved claims. \*546

(17)Finally, the control language in section 28.40 of the 1981 Budget Act and section 26.00<sup>16</sup> of the 1983 and 1984 Budget Acts does not work to defeat County’s claims. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This section is comprised of both substantive and procedural provisions. We are concerned primarily with those portions that purport to exonerate State from its constitutionally and statutorily imposed obligation to reimburse County’s state-mandated costs.

The writ of mandate directed compliance with the procedural provisions of these sections and is not a point of dispute on appeal. Subsection (a) affords the Legislature one last opportunity to appropriate funds which are to be encumbered for the purpose of paying state-mandated costs, an invitation repeatedly rejected. Subsection (b) directs that the Department of Finance notify the chairpersons of the appropriate committees in each house and chairperson of the Joint Legislative Budget Committee of the need to encumber funds. Presumably, the objective of this procedure is to give the Legislature another opportunity to amend or repeal substantive legislation requiring local agencies to incur state-mandated costs. Again, the Legislature declined to act. Legislative action pursuant to subsection (b) could arguably ameliorate the plight of local agencies prospectively, but would be of no practical assistance to a local agency creditor seeking reimbursement for costs already incurred.

The first portion of each section, however, imposes a budgetary restriction on encumbering appropriated funds to reimburse for state-mandated costs arising out of compliance with the executive orders, absent a specific appropriation pursuant to subparagraph (b). For the reasons stated above, this substantive language is invalid under the single subject rule. It attempts to amend existing statutory law and is unrelated to the Budget Acts’ main purpose of appropriating funds to support the annual budget. (  *Association for Retarded Citizens v. Department of Developmental Services, supra.*, 38 Cal.3d at p. 394.) Now unfettered by invalid restrictions, the appropriations involved in this case are reasonably available for reimbursement. \*547

### C. The Legislature’s Plenary Power to Regulate Worker Safety Does Not Affect the Right to Reimbursement

(18)State contends that  Article XIV, section 4 of the California Constitution vests the Legislature with unlimited plenary power to create and enforce a complete workers’

compensation system. It postulates that the Legislature may determine that the interest in worker safety and health is furthered by requiring local agencies to bear the costs of safety devices. This non sequitur is advanced without citation of authority.

Article XIV, section 4 concerns the power to enact workers' compensation statutes and regulations. It does not focus on the issue of reimbursement for state-mandated costs, which is covered by Revenue and Taxation Code section 2207 and former section 2231, and article XIII B, section 6. Since these latter provisions do not effect a pro tanto repeal of the Legislature's plenary power over workers' compensation law (see *County of Los Angeles v. State of California, supra.*, 43 Cal.3d 46), they do not conflict with article XIV, section 4.

Moreover, even though the reimbursement issue has come before the Legislature repeatedly since 1972, no law has been enacted to exempt compliance with workers' compensation executive orders from the mandatory reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231. Likewise, article XIII B, section 6 does not provide an exception to the obligation to reimburse local agencies for compliance with these safety orders.

#### D. Pre-1980 Claims Are Reimbursable Under Article XIII B, Section 6, Effective July 1, 1980

(19)State further argues that to the extent County's claims for fiscal years 1978-1979 and 1979-1980 are predicated on the subvention provisions of article XIII B, section 6, they fall within a "window period" of nonreimbursement. This assertion emanates from section 6, subdivision (c), which states that the Legislature "[m]ay, but need not," provide reimbursement for mandates enacted before January 1, 1975. State reasons that because the constitutional amendment did not become effective until July 1, 1980, claims for costs incurred between January 1, 1975 and June 30, 1980, need not be reimbursed.

This notion was rejected in *City of Sacramento v. State of California, supra.*, 156 Cal.App.3d at p. 182 on behalf of local agencies seeking reimbursement of unemployment insurance costs mandated by a 1978 statute. Basing its decision on well-settled principles of constitutional interpretation \*548 and upon a prior published opinion of the Attorney General,

the court interpreted section 6, subdivision (c) as follows: "[T]he Legislature *may* reimburse mandates enacted prior to January 1, 1975, and *must* reimburse mandates passed after that date, but does not have to begin such reimbursement until the effective date of article XIII B (July 1, 1980)." ( *Id.* at p. 191, italics in original.) In other words, the amendment operates on "window period" mandates even though the reimbursement process may not actually commence until later.

We agree with this reasoning and find costs incurred by County under the 1978 executive orders subject to reimbursement under the Constitution.

#### E. Claims Under Revenue and Taxation Code Section 2207 and Former Section 2231 Are Not Time-barred

(20)State collaterally asserts that to the extent County bases its claims on Revenue and Taxation Code section 2207 and former section 2231, they are barred by Code of Civil Procedure sections 335 and 338, subdivision 1. This omnibus challenge to the order directing payment has no merit.

Code of Civil Procedure section 335 is a general introductory section to the statute of limitations for all matters except recovery of real property. Code of Civil Procedure section 338, subdivision 1 requires "[a]n action upon a liability created by statute" to be commenced within three years.

A claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete. ( *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 77 [ 222 Cal.Rptr. 750].) Here, County pursued its remedy before the Board and prevailed. Thereafter, as required by law, appropriate legislation was introduced. Both the Board hearings and the subsequent efforts to secure legislative appropriations were part of the legislative process. (Former Rev. & Tax. Code, § 2255, subd. (a).) It was not until the legislation was enacted sans appropriations on September 30, 1981 (S.B. 1261) and February 12, 1982 (A.B. 171) that it became unmistakably clear that this process had ended and State had breached its duty to reimburse. At these respective moments of breach, County's right of action in traditional mandamus accrued. County's petition was filed on September 21, 1984, within the three-year statutory period.<sup>17</sup> ( *Lerner v. Los Angeles City Board of Education, supra.*, 59 Cal.2d at p. 398.) \*549

**F. Government Code Section 17612's Remedy for Unfunded Mandates Does Not Supplant the Court's Order**

State continues its general attack on the order directing payment by arguing that the Legislature has “defined” the remedy available to a local agency if a mandate is unfunded. That remedy is found in [Government Code section 17612, subdivision \(b\)](#) and reads: “If the Legislature deletes from a local government claims bill funding for a mandate, the local agency ... *may* file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement.” (Italics added.) (See also former Rev. & Tax. Code, § 2255, subd. (c), eff. Oct. 1, 1982.)

State hints that this procedure is the only remedy available to a local agency if funding is not provided. At oral argument, State admitted that this declaration of enforceability and injunction against enforcement would be prospective only. This remedy would provide no relief to local agencies which have complied with the executive orders.

We conclude that [Government Code section 17612, subdivision \(b\)](#) is inapplicable here because it did not become operative until January 1, 1985. It was not in place when the Board rendered its decision on November 20, 1979; when funding was deleted from S.B. 1261 (Sept. 30, 1981) and A.B. 171 (Feb. 12, 1982); or when this litigation commenced on September 21, 1984. (21)A party is not required to exhaust a remedy that was not in existence at the time the action was filed. ( [Ross v. Superior Court \(1977\) 19 Cal.3d 899, 912, fn. 9](#) [ [141 Cal.Rptr. 133, 569 P.2d 727](#)].) To abide by this post facto legislation now would condone legislative interference in a specific controversy already assigned to the judicial branch for resolution. ( [Serrano v. Priest, supra., 131 Cal.App.3d at p. 201](#).)

Also, this remedy is purely a discretionary course of action. By using the permissive word “may,” the Legislature did not intend to override [article XIII B, section 6](#) and [Revenue and Taxation Code section 2207](#) and former section 2231. These constitutional and statutory imprimaturs each impose upon the State an obligation to reimburse for state-mandated costs. Once that determination is finally made, the State is under a clear and present ministerial duty to reimburse. In the absence of compliance, traditional mandamus lies. ([Code Civ. Proc., § 1085](#).)<sup>18</sup> \*550

**G. The Court's Order Properly Allows County the Right of Offset**

(22a)As the first in a series of objections to portions of the judgment which assist in the reimbursement process, State argues that the court has improperly authorized County to satisfy its claims by offsetting fines and forfeitures due to State. (Fn. 7, ¶ 5, *ante.ante.*) The fines and forfeitures are those found in [Penal Code sections 1463.02, 1463.03, 1463.5a](#) and [1464](#); [Government Code sections 13967, 26822.3](#) and [72056](#); [Fish and Game Code section 13100](#); [Health and Safety Code section 11502](#); and [Vehicle Code sections 1660.7, 42004](#) and [41103.5](#).<sup>19</sup>

Broadly speaking, these statutes require County to periodically transfer all or part of the fines and forfeitures collected by it for specified law violations to the State Treasury. They are to be held there “to the credit” of various state agencies, or for payment into specific funds. State contends that since these statutes require mandatory, regular transfers and do not expressly permit diversion for other purposes, the court had no power to allow County to offset. State cites no authority for this contention.

(23)The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike a balance, holding himself owing or entitled only to the net difference. ( [Kruger v. Wells Fargo Bank \(1974\) 11 Cal.3d 352, 362](#) [ [113 Cal.Rptr. 449, 521 P.2d 441, 65 A.L.R.3d 1266](#)].) Although this doctrine exists independent of statute, its governing principle has been partially codified ([Code Civ. Proc., § 431.70](#)) (limited to cross-demands for money).

The doctrine has been applied in favor of a local agency against the State. In [County of Sacramento v. Lackner \(1979\) 97 Cal.App.3d 576](#) [159 Cal.Rptr.1], for example, the court of appeal upheld a trial court's decision to grant a writ of mandate that ordered funds awarded the County under a favorable judgment to be offset against its current liabilities to the State under the Medi-Cal program. The court stated that such an order does not interfere with the “Legislature's control over the 'submission, approval and enforcement of

budgets...." (  *Id.* at p. 592, quoting Cal. Const., art. IV, § 12, subd. (e).)

(22b) The order herein likewise does not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters. The identified \*551 fines and forfeitures are collected by the County for statutory law violations. Some of these funds remain with the County, while others are transferred to the State. State's portions are uncertain as to amount and date of transfer. State does not come into actual possession of these funds until they are transferred. State's holding of these funds "to the credit" of a particular agency, or for payment to a specific fund, does not commence until their receipt. Until that time, they are unencumbered, unrestricted and subject to offset.

#### H. State's Use of its Statutory Offset Authority Was Properly Enjoined

(24) State further contends that the trial court exceeded its jurisdiction by enjoining the exercise of State's statutory offset authority until County is fully reimbursed. (Fn. 7, ¶ 11, *ante*.)<sup>20</sup> This order complemented that portion of the order discussed, *infra*, which allowed County to temporarily offset fines and forfeitures as an aid in the reimbursement process.

State correctly observes that it has not unlawfully used its offset authority during the course of this dispute. However, State has not needed to do so because it has adopted other means of avoiding payment on County's claims. In view of State's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating County's collection efforts from occurring. (See *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568 [200 Cal.Rptr. 394].)

#### I. The Injunction Against Reversion or Dissipation of Undisbursed Appropriations Is Proper

(25) State continues that the order (fn. 7, ¶ 4, *ante*) enjoining it from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy this court's judgment, violates Government Code section 16304.1.<sup>21</sup> This section reverts undisbursed \*552 balances in any appropriation to the fund from which the appropriation was made. No

authority is cited for State's proposition. To the contrary, *County of Sacramento v. Loeb, supra*, 160 Cal.App.3d at pp. 456-457 expressly confirms this type of ancillary remedy as a legitimate exercise of the court's authority to assist in collecting on an adjudicated debt, the payment of which has been delayed all too long.

That portion of the order restraining reversion is particularly innocuous because it only affects undisbursed balances in an appropriation. At the time of reversion, it is crystal clear that these remaining funds are unneeded for the primary purpose for which appropriated; otherwise, they would not exist. Moreover, that portion of the order restraining dissipation of the reimbursement award sum in a manner that would make it unavailable to satisfy a court's judgment is similarly a proper exercise of the court's authority. By not reimbursing County for the state-mandated costs, State would be contravening its constitutional and statutory obligations to subvent. To the extent it is not reimbursed, County would be compelled, contrary to law, to bear the cost of complying with a state-imposed obligation.

#### J. The Auditor Controller and the Specified Funds Are Not Indispensable Parties

(26, 27) State next contends that the Auditor Controller of Los Angeles County and the "specified" fines and forfeitures County was allowed to offset are indispensable parties. Failure to join them in the action or to serve them with process purportedly renders the trial court's order void as in excess of its jurisdiction.<sup>22</sup> State cites only the general statutory definition of an indispensable party (Code Civ. Proc., § 389) to support this assertion.

The Auditor Controller is an officer of the County and is subject to the \*553 direction and control of the County board of supervisors. (Gov. Code, § 24000, subds. (d), (e), 26880; L.A. County Code, § 2.10.010.) He is indirectly represented in these proceedings because his principal, the County, is the party litigant. Additionally, he claims no personal interest in the fines and forfeitures and his pro forma absence in no way impedes complete relief.

The funds created by the collected fines and forfeitures also are not indispensable parties. This is not an in rem proceeding, and the ownership of a particular stake is not in dispute. Rather, this is an action to compel a ministerial obligation imposed by law. Complete relief may be afforded without including the specified funds as a party.

*K. County is Entitled to Interest*

(28)State insists that an award of interest to County unfairly penalizes State for not paying claims which it was prohibited by law from paying under Statutes 1981, chapter 1090, section 3. This argument is unavailing.

 Civil Code section 3287, subdivision (a) allows interest to any person “entitled to recover damages certain, or capable of being made certain by calculation....” Interest begins on the day that the right to recover vests in the claimant. By its own terms, this section applies to any judgment debtor, “including the state...or any political subdivision of the state.”

The judgment orders interest at the legal rate from September 30, 1981, for reimbursement funds originally contained in S.B. 1261, and from February 12, 1982, for the funds originally contained in A.B. 171. These are the respective dates that the bills were enacted without appropriations. As we concluded earlier, County's cause of action did not arise and its right to recover did not vest until this legislative process was complete. County offers no authority to suggest that any other vesting date is appropriate.

Furthermore, State cannot avoid its obligation to pay interest by relying on the invalid budget control language in Statutes 1981, chapter 1090, section 3. “An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest under  Civil Code section 3287, subdivision (a).” ( *Olson v. Cory* (1983) 35 Cal.3d 390, 404 [ 197 Cal.Rptr. 843, 673 P.2d 720].)

**Appeal in Case No. 2 Civil B011941**

**(Rincon et al. Case)**

The procedural history and legal issues raised in the *Rincon et al.* appeal are essentially similar to those discussed in the County of Los Angeles matter. \*554

County, although not a party to this underlying trial court proceeding, filed a test claim with the Board. All parties agree that County represented the interests of the named respondents here.

The Board action resulted in a finding of state-mandated costs. It further found that Rincon et al. were entitled

to reimbursement in the amount of \$39,432. After the Legislature and the Governor, respectively, deleted the funding from the two appropriations bills, S.B. 1261 and A.B. 171, Rincon et al. filed a petition for writ of mandate and declaratory relief. This action was consolidated for hearing in the trial court with the action in B011942 (County of Los Angeles matter). The within judgment was also signed, filed and entered on February 6, 1985. The reimbursement order was directed against the 1984-1985 budget appropriations. State appeals from that judgment.

The court here included a judicial determination that the Board, or its successors, hear and approve the claims of certain other respondents for costs incurred in connection with the state-mandated program. (Fn. 7, ¶ 9, *ante*.) This special directive was necessary because the claims of these respondents (petitioners below) have not yet been determined.<sup>23</sup> Since we have ruled that State is barred by the doctrines of waiver and administrative collateral estoppel from raising the state mandate issue, the validity of these claims becomes a question of law susceptible to but one conclusion, and mandamus properly lies. (*County of Sacramento v. Loeb, supra*, 160 Cal.App.3d at p. 453.) This portion of the order also underscores, for the Board's edification, the determination that the statutory restriction on the Board authority to proceed is invalid.<sup>24</sup>

Once again, our determinations and conclusions in the County of Los Angeles matter are equally applicable here.

**Appeal in Case No. 2 Civil B006078**

**(Carmel Valley et al.)**

Again, the procedural history and legal issues raised in this appeal are essentially similar to those discussed in the County of Los Angeles matter.

County filed a test claim with the Board. All parties agree that the County represented the interests of the named respondents here. \*555

On December 17, 1980, the Board found that a state mandate existed and that specific amounts of reimbursement were due several respondents totalling \$159,663.80. Following the refusal of the Legislature to appropriate funds for reimbursement, Carmel Valley et al. filed a petition for writ of mandate and declaratory relief on January 3, 1983. Judgment

was entered on May 23, 1984. The reimbursement order was directed against 1983-1984 budget appropriations.

The judgment differs from the other two because it does not decree a specific reimbursement amount. The trial court determined that even though the Board had approved the claims, the State was not precluded from contesting that determination. The court's reasons were that the State, in its answer, had denied that the money claimed was actually spent, and that Board approval had not been implemented by subsequent legislation. The court concluded that the reimbursement process, of which the Board action was an intrinsic part, was "aborted."

We disagree with this portion of the court's analysis. The moment S.B. 1261 and A.B. 171 were enacted into law without appropriations, Carmel Valley et al. had exhausted their administrative remedies and were entitled to seek a writ of mandate. At the time of trial, State was barred by the doctrines of waiver and administrative collateral estoppel from contesting the state mandate issue or the amount of reimbursement. The trial court therefore should have rendered a judgment for the amount of reimbursement. Having failed to do so, this fact-finding responsibility falls upon this court. Although we ordinarily are not equipped to handle this function, the writ of mandate in this case identifies the amount of the approved claims as \$159,663.80. We accordingly will amend the judgment to reflect that amount.

The trial court also predicated its judgment for Carmel Valley et al. solely on the basis of  Revenue and Taxation Code section 2207 and former section 2231. In doing so, the court did not have the benefit of the decision in  *City of Sacramento v. State of California, supra.*, 156 Cal.App.3d at p. 182.<sup>25</sup> That case held that mandates passed after January 1, 1975, must be reimbursed pursuant to article XIII B, section 6 of the California Constitution, but that reimbursement need not commence until July 1, 1980. In light of this rule, we conclude that the trial court's decision ordering reimbursement is also supported by article XIII B, section 6.

\*556

State raises another point specific to this particular appeal. In its answer to the writ petition, State admitted that the local agency expenditures were state mandated. Consequently, the issue was not contested at the trial court level. However, State vigorously contends here that it is not bound by its trial

court admissions because the state mandate issue is purely a question of law.

(29)State is correct in contending that an appellate court is not limited by the interpretation of statutes given by the trial court. ( *City of Merced v. State of California, supra.*, 153 Cal.App.3d at p. 781.) However, State's victory on this point is Pyrrhic. Regardless of how the issue is characterized, State is precluded from contesting the Board findings on appeal because of the independent application of the doctrines of waiver and administrative collateral estoppel. These doctrines would also have applied at the trial court level if State's answer had raised the issue of state mandate in the first instance.

We also reject State's argument, advanced for the first time on appeal, that the executive orders of 1978 initially implement legislation enacted prior to January 1, 1975, and that state reimbursement is therefore discretionary. (Cal. Const., art. XIII B, § 6, subd. (c).) Again, State is barred by the doctrines of waiver and administrative collateral estoppel from arguing that costs incurred under the executive orders are not subject to reimbursement.

State continues that the *Carmel Valley* judgment against the Department of Industrial Relations is erroneous. Since the department was never made a party in the suit, nor served with process, the resulting judgment reflects a denial of due process and is in excess of the court's jurisdiction. (See *Code Civ. Proc.*, § 389; fn. 22, *ante*.)

This assertion is but a variant of the same argument advanced in the County of Los Angeles case, *supra*, which we rejected as meritless. The department is part of the State of California. (*Lab. Code*, § 50.) State extensively argued the department's position and even offered into evidence a declaration from the chief of fiscal accounting of the department. As stated earlier, agents of the same government are in privity with each other.

( *People v. Sims, supra.*, 32 Cal.3d at p. 487.)

 *Ross v. Superior Court, supra.*, 19 Cal.3d at p. 899 demonstrates how, through the notion of privity, a government agent can be held in contempt for knowingly violating a court order issued against another agent of the same government. There, a court in an earlier proceeding had decided that defendant Department of Health and Welfare must pay unlawfully withheld welfare benefits to qualified recipients. The County Board of Supervisors, \*557 who

were not parties to this action, knew about the court's order but refused to comply. The Supreme Court affirmed a trial court decision holding the Board in contempt for violating the order directing payment. The court reasoned that, as an agent of the Department of Health and Welfare, the Board did not collectively or individually need to be named as a party in order to be bound by a court order of which they had actual knowledge.

The determinations and conclusions in the County of Los Angeles case are likewise applicable here.

#### Modification of Judgments in All Three Appeals

The trial court judgments ordering reimbursement from specific account appropriations were entered many months ago. We will affirm these judgments and thereby validate the trial courts' determination that funds already appropriated for the State Department of Industrial Relations were reasonably available for payment at the time of the courts' orders.

Account Numbers	1985-1986 Budget Act	1986-1987 Budget Act
8350-001-001	\$94,673,000	\$106,153,000
8350-001-452	2,295,000	2,514,000
8350-001-453	2,859,000	2,935,000
8350-001-890	16,753,000	17,864,000

(30) An appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts. (*Serrano v. Priest, supra.*, 131 Cal.App.3d at pp. 198, 201.) We do so here with respect to all three judgments. \*558

#### Disposition

2d Civ. B011942 (County of Los Angeles Case)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The words "Fish and Game Code Section 13100" are deleted from paragraph 5.

Due to the passage of time, we requested State at oral argument to confirm whether the appropriations designated in the respective judgments are still available for encumbrance. State's counsel responded by rearguing that the weight of the evidence did not support the trial courts' findings that specific funds were reasonably available for reimbursement. Counsel further hinted that the funds may not actually be available.

We hope that counsel for the State is mistaken. But in order to emphasize our strong and unequivocal determination that the local agency petitioners be promptly reimbursed, we will take judicial notice of the enactment of the 1985-1986 Budget Act (Stats. 1985, ch. 111) and the 1986-1987 Budget Act (Stats. 1986, ch. 186). (  *Serrano v. Priest, supra.*, 131 Cal.App.3d at p. 197.) Both acts appropriate money for the State Department of Industrial Relations and fund the identical account numbers referred to in the trial courts' judgments. They are:

Account Numbers	1985-1986 Budget Act	1986-1987 Budget Act
8350-001-001	\$94,673,000	\$106,153,000
8350-001-452	2,295,000	2,514,000
8350-001-453	2,859,000	2,935,000
8350-001-890	16,753,000	17,864,000

(3) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

#### 2d Civ. B011941 (Rincon et al. Case)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same

account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

**2d Civ. B006078 (Carmel Valley et al. Case)**

The judgment is modified as follows: **\*559**

(1) The following sentences are added to paragraph 2: "The reimbursement amounts total \$159,663.80. If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

Ashby, Acting P. J., and Hastings, J., concurred.

A petition for a rehearing was denied March 17, 1987, and appellant's petition for review by the Supreme Court was denied May 14, 1987. Eagleson, J., did not participate therein.

**\*560**

## **Footnotes**

1    *2d Civ. B006078*: The petitioners below and respondents on appeal are Carmel Valley Fire Protection District, City of Anaheim, Aptos Fire Protection District, Citrus Heights Fire Protection District, Fair Haven Fire Protection District, City of Glendale, City of San Luis Obispo, County of Santa Barbara and Ventura County Fire Protection District.

The respondents below and appellants here are State of California, Kenneth Cory and Jesse Marvin Unruh.

*2d Civ. B011941*: The petitioners below and respondents on appeal are Rincon Del Diablo Municipal Water District, Twenty-Nine Palms Water District, Alpine Fire Protection District, Bonita-Sunnyside Fire Protection District, Encinitas Fire Protection District, Fallbrook Fire Protection District, City of San Luis Obispo, Montgomery Fire Protection District, San Marcos Fire Protection District, Spring Valley Fire Protection District, Vista Fire Protection District and City of Coronado.

Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, State Board of Control, Kenneth Cory, State Controller, Jesse Marvin Unruh, State Treasurer, and Mark H. Bloodgood, Auditor-Controller, County of Los Angeles.

*2d Civ. B011942*: The County of Los Angeles is the petitioner below and respondent on appeal. Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, Kenneth Cory, and Jesse Marvin Unruh.

All respondents on appeal are conceded to be "local agencies," as defined in [Revenue and Taxation Code section 2211](#).

2    The pertinent parts of  [Revenue and Taxation Code section 2207](#) provide: " 'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following" [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program; [¶] (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute

and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973 ...“

- 3 The pertinent parts of former Revenue and Taxation Code section 2231, subdivision (a) provide: "The state shall reimburse each local agency for all 'costs mandated by the state', as defined in [ ] [Section 2207](#)." This section was repealed (Stats. 1986, ch. 879, § 23), and replaced by [Government Code section 17561](#). We will refer to the earlier code section.
- 4 The pertinent parts of [section 6, article XIII B of the California Constitution](#), enacted by initiative measure, provide: "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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." This constitutional amendment became effective July 1, 1980.
- 5 County filed its test claim pursuant to former Revenue and Taxation Code section 2218, which was repealed by Statutes 1986, chapter 879, section 19.

Additionally, the Board is no longer in existence. The Commission on State Mandates has succeeded to these functions. ([Gov. Code, §§ 17525, 17630](#).)

- 6 The final legislation did include appropriations for other local agencies on other types of approved claims.
- 7 "1. The Court adjudges and declares that funds appropriated by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund may properly be and should be spent for the reimbursement of state-mandated costs incurred by Petitioner as established in this action.

"2. A peremptory writ of mandamus shall issue under the seal of this Court, commanding Respondent State of California, through its Department of Finance, to give notification in writing as specified in Section 26.00 of the Budget Act of 1984 (Chapter 258, Statutes of 1984) of the necessity to encumber funds in conformity [with ]this order and, unless the Legislature approves a bill that would enact a general law, within 30 days of said notification that would obviate the necessity of such payment, Respondent Kenn[e]th Cory, the State Controller of the State of California, or his successors in office, if any, shall draw warrants on funds appropriated for the State Department of Industrial Relations for the 1984-85 Budget Year in account numbers 8350-001-001, 8350-001-452, 8350-001-453, and 8350-001-890 as implemented in Chapter 258 Statutes of 1984, sufficient to satisfy the claims of Petitioner, plus interest, as set forth in the motion and accompanying writ of mandamus. Said writ shall also issue against Jessie [sic] Marvin Unruh, the State Treasurer of the State of California, and his successors in office, if any, commanding him to make payment on the warrants drawn by Respondent Kenneth Cory.

"3. Pending the final disposition of this proceeding, or the payment of the applicable reimbursement claims and interest as set forth herein, Respondents, and each of of [sic] them, their successors in office, agents, servants and employees and all persons acting in concert [or] participation with them, are hereby enjoined and restrained from directly or indirectly expending from the 1984-85 General Fund Budget of the State Department of Industrial Relations as is more particularly described in paragraph number 2 hereinabove, any sums greater than that which would leave in said budget at the conclusion of the 1984-85 fiscal year an amount less than the reimbursement amounts on the aggregate amount of \$307,685 in this case, together

with interest at the legal rate through payment of said reimbursement amounts. Said amounts are hereinafter referred to collectively as the 'reimbursement award sum'.

"4. Pending the final disposition of this proceeding or the payment of the reimbursement award sum at issue herein, Respondents, and each of them, their successors in office, agents, servants and employees, and all persons acting in concert or participation with them, are hereby enjoined and restrained from directly or indirectly reverting the reimbursement award sum from the General Fund line-item accounts of the Department of Industrial Relations to the General Funds of the State of California and from otherwise dissipating the reimbursement award sum in a manner that would make it unavailable to satisfy this Court's judgment.

"5. In addition to the foregoing relief, Petitioner is entitled to offset amounts sufficient to satisfy the claims of Petitioner, plus interest, against funds held by Petitioner as fines and forfeitures which are collected by the local Courts, transferred to the Petitioner and remitted to Respondents on a monthly basis. Those fines and forfeitures are levied, and their distribution provided, as set forth in [Penal Code Sections 1463.02](#),  [1463.03](#), [14\[6\] 3.5\[a\]](#), and [1464](#);  [Government Code Sections 13967](#),  [26822.3](#) and [72056](#), [Fish and Game Code Section 13100](#); [Health and Safety Code Section 11502](#) and  [Vehicle Code Sections 1660.7, 42004](#), and  [41103.5](#).

"6. The Court adjudges and declares that the State has a continuing obligation to reimburse Petitioner for costs incurred in fiscal years subsequent to its claim for expenditures in the 1978-79 and 1979-80 fiscal years as set forth in the petition and the accompanying motion for the issuance of a writ of mandate.

"7. The Court adjudges and declares that deletion of funding and prohibition against accepting claims for expenditures incurred as a result of the state-mandated program of [Title 8, California Administrative Code Sections 3401](#) through  [3409](#) as contained in Section 3 of Chapter 109[0], Statutes of 1981 were invalid and unconstitutional.

"8. The Court adjudges and declares that the expenditures incurred by Petitioner as a result of the state-mandated program of [Title 8, California Administrative Code Sections 3401](#) through  [3409](#) were not the result of any federally mandated program.

"9. A peremptory writ of mandamus shall issue under the seal of this Court commanding Respondent State Board of Control, or its successor-in-interest, to hear and approve the claims of Petitioner for costs incurred in complying with the state-mandated program of [Title 8, California Administrative Code Sections 3401](#) through  [3409](#) subsequent to fiscal year 1979-80.

....."

"11. The Court adju[d]ges and declares that the State Respondents are prohibited from offsetting, or attempting to implement an offset against moneys due and owing Petitioner until Petitioner is completely reimbursed for all of its costs in complying with the state mandate of [Title 8, California Administrative Code Sections 3401](#) through  [3409](#)."

8 This language is taken from  [Revenue and Taxation Code section 2207](#) and former section 2231. [Article XIII B, section 6](#) refers to "higher" level of service rather than "increased" level of service. We perceive the intent of the two provisions to be identical. The parties also use these words interchangeably.

9 As it happened, the entire Board determination involved a question of law since the dollar amount of the claimed reimbursement was not disputed.

10 State is not precluded from raising this new issue on appeal. Questions of law decided by an administrative agency invoke the collateral estoppel doctrine only when a determination of conclusiveness will not work an injustice. Likewise, the doctrine of waiver is inapplicable if a litigant has no actual or constructive knowledge of his rights. Since the *State of California* rule had not been announced at the time of the Board or trial court proceedings herein, the doctrines of waiver and collateral estoppel are inapplicable to State on this particular issue. Both parties have been afforded additional time to brief the matter.

11 County suggests that to the extent private fire brigades exist, they are customarily part-time individuals who perform the function on a part-time basis. As such, they are excluded by the balance of the definitional term in [title 8, California Administrative Code section 3402](#), which provides, in pertinent part: "... The term [fire fighter] does not apply to emergency pick-up labor or other persons who may perform first-aid fire extinguishment as collateral to their regular duties."

12 [Article III, section 3 of the California Constitution](#) provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

[Article XVI, section 7 of the California Constitution](#) provides: "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant."

13 When Governor Brown deleted the appropriations from A.B. 171, he stated that he was relying on the pronouncements in Statutes 1974, chapter 1284 and Statutes 1981, chapter 1090.

14 We address this subject only because the trial court found that the costs were not federally mandated. Actually, State cannot raise this issue on appeal because of the waiver and administrative collateral estoppel doctrines. We note, however, where there is a quasi-judicial finding that a cost is state mandated, there is an implied finding that the cost is not federally mandated; the two concepts are mutually exclusive.

Moreover, our task is aided by the fact that interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility. (  [City of Sacramento v. State of California, supra., 156 Cal.App.3d at pp. 196-197.](#) )

15 [Article IV, section 9 of the California Constitution](#) reads: "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended."

16 Each of these sections contains the following language: "No funds appropriated by this act shall be encumbered for the purpose of funding any increased state costs or local governmental costs, or both such costs, arising from the issuance of an executive order as defined in [section 2209 of the Revenue and Taxation Code](#) or subject to the provisions of  [section 2231 of the Revenue and Taxation Code](#), unless (a) such funds to be encumbered are appropriated for such purpose, or (b) notification in writing of the necessity of the encumbrance of funds available to the state agency, department, board, bureau, office, or commission is given by the Department of Finance, at least 30 days before such encumbrance is made, to the chairperson of the committee in each house which considers appropriations and the Chairperson of the

Joint Legislative Budget Committee, or such lesser time as the chairperson of the committee, or his or her designee, determines."

17 Technically, Statute has waived the statute of limitations defense because it was not raised in its answer. (  *Ventura County Employees' Retirement Association v. Pope* (1978) 87 Cal.App.3d 938, 956 [  151 Cal.Rptr. 695].)

18 We leave undecided the question of whether this type of legislation could ever be held to override [California Constitution, article XIII B, section 6](#). The Constitution of the State is supreme. Any statute in conflict therewith is invalid. (  *County of Los Angeles v. Payne, supra.*, 8 Cal.2d at p. 574.)

Similarly, former Revenue and Taxation Code section 2255, subdivision (c) cannot abrogate the constitutional directive to reimburse.

19 At oral argument, County conceded that the order authorizing offset of [Fish and Game Code section 13100](#) fines and forfeitures is inappropriate. These collected funds must be spent exclusively for protection, conservation, propagation or preservation of fish, game, mollusks, or crustaceans, and for administration and enforcement of laws relating thereto, or for any such purpose. ([Cal. Const., art. XVI, § 9](#); 20 Ops. Cal. Atty. Gen. 110 (1952).)

20 [Government Code section 12419.5](#) provides: "The Controller may, in his discretion, offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The Controller may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant.... The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided." (See also *Tyler v. State of California* (1982) 134 Cal.App.3d 973, 975-976 [185 Cal.Rptr. 49].)

21 [Government Code section 16304.1](#) provides: "Disbursements in liquidation of encumbrances may be made before or during the two years following the last day an appropriation is available for encumbrance.... Whenever, during [such two-year period], the Director of Finance determines that the project for which the appropriation was made is completed and that a portion of the appropriation is not necessary for disbursements, such portion shall, upon order of the Director of Finance, revert to and become a part of the fund from which the appropriation was made. Upon the expiration of two years...following the last day of the period of its availability, the undisbursed balance in any appropriation shall revert to and become a part of the fund from which the appropriation was made...."

22 [Code of Civil Procedure section 389, subdivision \(a\)](#) provides: "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party."

23 Responding to the budget control language directing it to refuse to process these claims, the Board declined to hear these matters.

24 Because certain claims have not yet been processed, we assume that the issue of the amount of reimbursement may still be at large. Our record is not clear on this point.

25 The decision in *City of Sacramento, supra.*, was filed just one day before the trial court signed the written order in this case. The Revenue and Taxation Code sections on which the court relied were operational before the costs claimed in this case were incurred.

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43 Cal.3d 46, 729 P.2d 202, 233 Cal.Rptr. 38

Supreme Court of California

COUNTY OF LOS ANGELES

et al., Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA et

al., Defendants and Respondents.

CITY OF SONOMA et al., Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA

et al., Defendants and Respondents

L.A. No. 32106.

Jan 2, 1987.

## SUMMARY

The trial court denied a petition for writ of mandate to compel the State Board of Control to approve reimbursement claims of local government entities, for costs incurred in providing an increased level of service mandated by the state for workers' compensation benefits. The trial court found that [Cal. Const., art. XIII B, § 6](#), requiring reimbursement when the state mandates a new program or a higher level of service, is subject to an implied exception for the rate of inflation. In another action, the trial court, on similar claims, granted partial relief and ordered the board to set aside its ruling denying the claims. The trial court, in this second action, found that reimbursement was not required if the increases in benefits were only cost of living increases not imposing a higher or increased level of service on an existing program. Thus, the second matter was remanded due to insubstantial evidence and legally inadequate findings. (Superior Court of Los Angeles County, Nos. C 424301 and C 464829, Leon Savitch and John L. Cole, Judges.) The Court of Appeal, Second Dist., Div. Five, Nos. B001713 and B003561 affirmed the first action; the second action was reversed and remanded to the State Board of Control for further and adequate findings.

The Supreme Court reversed the judgment of the Court of Appeal, holding that the petitions lacked merit and

should have been denied by the trial court without the necessity of further proceedings before the board. The court held that when the voters adopted [art. XIII B, § 6](#), their intent was not to require the state to provide subvention whenever a newly enacted statute results incidentally in some cost to local agencies, but only to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. Thus, the court held, reimbursement was not required by [art. XIII B, § 6](#). Finally,

the court held that no pro tanto repeal of  [Cal. Const., art. XIV, § 4](#) (workers' compensation), was intended or made necessary by \*47 the adoption of [art. XIII B, § 6](#). (Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.)

## HEADNOTES

### Classified to California Digest of Official Reports

(1)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Costs to Be Reimbursed.

When the voters adopted [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.

(2)

Statutes § 18--Repeal--Effect--"Increased Level of Service." The statutory definition of the phrase "increased level of service," within the meaning of  [Rev. & Tax. Code, § 2207, subd. \(a\)](#) (programs resulting in increased costs which local agency is required to incur), did not continue after it was specifically repealed, even though the Legislature, in enacting the statute, explained that the definition was declaratory of existing law. It is ordinarily presumed that the Legislature,

by deleting an express provision of a statute, intended a substantial change in the law.

[See **Am.Jur.2d**, Statutes, § 384.]

(3)

Constitutional Law § 13--Construction of Constitutions--Language of Enactment.

In construing the meaning of an initiative constitutional provision, a reviewing court's inquiry is focused on what the voters meant when they adopted the provision. To determine this intent, courts must look to the language of the provision itself.

(4)

Constitutional Law § 13--Construction of Constitutions--Language of Enactment--"Program."

The word "program," as used in [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), refers to programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on \*48 local governments and do not apply generally to all residents and entities in the state.

(5)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Increases in Workers' Compensation Benefits.

The provisions of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), have no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of [art. XIII B, § 6](#). Accordingly, the State Board of Control properly denied reimbursement to local governmental entities for costs incurred in providing state-mandated increases in workers' compensation benefits.

(Disapproving  [City of Sacramento v. State of California](#) (1984) 156 Cal.App.3d 182  203 Cal.Rptr. 258], to the extent it reached a different conclusion with respect to

expenses incurred by local entities as the result of a newly enacted law requiring that all public employees be covered by unemployment insurance.)

[See **Cal.Jur.3d**, State of California, § 78.]

(6)

Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts.

Controlling principles of construction require that in the absence of irreconcilable conflict among their various parts, constitutional provisions must be harmonized and construed to give effect to all parts.

(7)

Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts--Pro Tanto Repeal of Constitutional Provision.

The goals of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), were to protect residents from excessive taxation and government spending, and to preclude a shift of financial responsibility for governmental functions from the state to local agencies. Since these goals can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, the adoption of [art. XIII B, § 6](#), did not effect a pro tanto repeal of  [Cal. Const., art. XIV, § 4](#), which gives the Legislature plenary power over workers' compensation. \*49

#### COUNSEL

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Rothenberg & Tunney and Clare Bronowski as Amici Curiae on behalf of Defendants and Respondents.

## GRODIN, J.

We are asked in this proceeding to determine whether legislation enacted in 1980 and 1982 increasing certain workers' compensation benefit payments is subject to the command of article XIII B of the California Constitution that local government costs mandated by the state must be funded by the state. The County of Los Angeles and the City of Sonoma sought review by this court of a decision of the Court of Appeal which held that state-mandated increases in workers' compensation benefits that do not exceed the rise in the cost of living are not costs which must be borne by the state under article XIII B, an initiative constitutional provision, and legislative implementing statutes.

Although we agree that the State Board of Control properly denied plaintiffs' claims, our conclusion rests on grounds other than those relied upon by the Court of Appeal, and requires that its judgment be reversed. (1) We conclude that when the voters adopted [article XIII B, section 6](#), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or ~~\*50~~ increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word "programs" they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public. Reimbursement for the cost or increased cost of providing workers' compensation benefits to employees of local agencies is not, therefore, required by [section 6](#).

We recognize also the potential conflict between [article XIII B](#) and the grant of plenary power over workers' compensation bestowed upon the Legislature by ~~§~~ [section 4 of article XIV](#), but in accord with established rules of construction our construction of [article XIII B, section 6](#), harmonizes these constitutional provisions.

### I

On November 6, 1979, the voters approved an initiative measure which added article XIII B to the California Constitution. That article imposed spending limits on the state and local governments and provided in [section 6](#) (hereafter

[section 6](#)): "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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." No definition of the phrase "higher level of service" was included in article XIII B, and the ballot materials did not explain its meaning.<sup>1</sup>

The genesis of this action was the enactment in 1980 and 1982, after article XIII B had been adopted, of laws increasing the amounts which ~~\*51~~ employers, including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.

The first of these statutes, Assembly, Bill No. 2750 (Stats. 1980, ch. 1042, p. 3328), amended several sections of the Labor Code related to workers' compensation. The amendments of [Labor Code sections 4453, § 4453.1](#) and ~~§~~ [4460](#) increased the maximum weekly wage upon which temporary and permanent disability indemnity is computed from \$231 per week to \$262.50 per week. The amendment of ~~§~~ [section 4702 of the Labor Code](#) increased certain death benefits from \$55,000 to \$75,000. No appropriation for increased state-mandated costs was made in this legislation.<sup>2</sup>

Test claims seeking reimbursement for the increased expenditure mandated by these changes were filed with the State Board of Control in 1981 by the County of San Bernardino and the City of Los Angeles. The board rejected the claims, after hearing, stating that the increased maximum workers' compensation benefit levels did not change the terms or conditions under which benefits were to be awarded, and therefore did not, by increasing the dollar amount of the benefits, create an increased level of service. The first of these consolidated actions was then filed by the County of Los Angeles, the County of San Bernardino, and the City of San Diego, seeking a writ of mandate to compel the board to approve the reimbursement claims for costs incurred in

providing an increased level of service mandated by the state pursuant to [Revenue and Taxation Code section 2207](#).<sup>3</sup> They also sought a declaration that because the State of California and the board were obliged by article XIII B to reimburse them, they were not obligated to pay the increased benefits until the state provided reimbursement.

The superior court denied relief in that action. The court recognized that although increased benefits reflecting cost of living raises were not expressly [\\*52](#) excepted from the requirement of state reimbursement in [section 6](#) the intent of article XIII B to limit governmental expenditures to the prior year's level allowed local governments to make adjustment for changes in the cost of living, by increasing their own appropriations. Because the Assembly Bill No. 2750 changes did not exceed cost of living changes, they did not, in the view of the trial court, create an "increased level of service" in the existing workers' compensation program.

The second piece of legislation (Assem. Bill No. 684), enacted in 1982 (Stats. 1982, ch. 922, p. 3363), again changed the benefit levels for workers' compensation by increasing the maximum weekly wage upon which benefits were to be computed, and made other changes among which were: The bill increased minimum weekly earnings for temporary and permanent total disability from \$73.50 to \$168, and the maximum from \$262.50 to \$336. For permanent partial disability the weekly wage was raised from a minimum of \$45 to \$105, and from a maximum of \$105 to \$210, in each case for injuries occurring on or after January 1, 1984. ([Lab. Code, § 4453](#).) A \$10,000 limit on additional compensation for injuries resulting from serious and willful employer misconduct was removed ([Lab. Code, § 4553](#)), and the maximum death benefit was raised from \$75,000 to \$85,000 for deaths in 1983, and to \$95,000 for deaths on or after January 1, 1984. ([Lab. Code, § 4702](#).)

Again the statute included no appropriation and this time the statute expressly acknowledged that the omission was made "[n]otwithstanding [section 6 of Article XIIIIB of the California Constitution](#) and [section 2231](#) ... of the Revenue and Taxation Code." (Stats. 1982, ch. 922, § 17, p. 3372.)<sup>4</sup>

Once again test claims were presented to the State Board of Control, this time by the City of Sonoma, the County of Los Angeles, and the City of San Diego. Again the claims were denied on grounds that the statute made no change in the terms and conditions under which workers' compensation

benefits were to be awarded, and the increased costs incurred as a result of higher benefit levels did not create an increased level of service as defined in [Revenue and Taxation Code section 2207](#), subdivision (a).

The three claimants then filed the second action asking that the board be compelled by writ of mandate to approve the claims and the state to pay them, and that chapter 922 be declared unconstitutional because it was not adopted in conformity with requirements of the Revenue and Taxation Code or [\\*53 section 6](#). The trial court granted partial relief and ordered the board to set aside its ruling. The court held that the board's decision was not supported by substantial evidence and legally adequate findings on the presence of a state-mandated cost. The basis for this ruling was the failure of the board to make adequate findings on the possible impact of changes in the burden of proof in some workers' compensation proceedings ([Lab. Code, § 3202.5](#)); a limitation on an injured worker's right to sue his employer under the "dual capacity" exception to the exclusive remedy doctrine ([Lab. Code, §§ 3601-3602](#)); and changes in death and disability benefits and in liability in serious and wilful misconduct cases. ([Lab. Code, § 4551](#).)

The court also held: "[T]he changes made by chapter 922, Statutes of 1982 may be excluded from state-mandated costs if that change effects a cost of living increase which does not impose a higher or increased level of service on an existing program." The City of Sonoma, the County of Los Angeles, and the City of San Diego appeal from this latter portion of the judgment only.

## II

The Court of Appeal consolidated the appeals. The court identified the dispositive issue as whether legislatively mandated increases in workers' compensation benefits constitute a "higher level of service" within the meaning of [section 6](#), or are an "increased level of service"<sup>5</sup> described in subdivision (a) of [Revenue and Taxation Code section 2207](#). The parties did not question the proposition that higher benefit payments might constitute a higher level of "service." The dispute centered on whether higher benefit payments which do not exceed increases in the cost of living constitute a higher level of service. Appellants maintained that the reimbursement requirement of [section 6](#) is absolute and permits no implied or judicially created exception for increased costs that do not exceed the inflation rate. The

Court of Appeal addressed the problem as one of defining "increased level of service."

The court rejected appellants' argument that a definition of "increased level of service" that once had been included in [§ 2231, subdivision \(e\) of the Revenue and Taxation Code](#) should be applied. That definition brought any law that imposed "additional costs" within the scope of "increased level of service." The court concluded that the repeal of [§ 2231](#) in 1975 (Stats. 1975, ch. 486, § 7, pp. 999-1000) and the failure of the Legislature by statute or the electorate in [article XIII B](#) to readopt the \*54 definition must be treated as reflecting an intent to change the law. (*Eu v. Chacon* (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289].)<sup>6</sup> On that basis the court concluded that increased costs were no longer tantamount to an increased level of service.

The court nonetheless assumed that an increase in costs mandated by the Legislature did constitute an increased level of service if the increase exceeds that in the cost of living. The judgment in the second, or "Sonoma" case was affirmed. The judgment in the first, or "Los Angeles" case, however, was reversed and the matter "remanded" to the board for more adequate findings, with directions.<sup>7</sup>

### III

The Court of Appeal did not articulate the basis for its conclusion that costs in excess of the increased cost of living do constitute a reimbursable increased level of service within the meaning of [section 6](#). Our task in ascertaining the meaning of the phrase is aided somewhat by one explanatory reference to this part of [section 6](#) in the ballot materials.

A statutory requirement of state reimbursement was in effect when [section 6](#) was adopted. That provision used the same "increased level of service" phraseology but it also failed to include a definition of "increased level of service," providing only: "Costs mandated by the state" means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law ... which mandates a new program or an increased level of service of an existing program." ([Rev. & Tax. Code § 2207](#).) As noted, however, the definition of that term which had been \*55 included in [Revenue and Taxation Code section 2164.3](#) as part of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 14.7, p. 2961), had been repealed in 1975 when [Revenue and](#)

[Taxation Code section 2231](#), which had replaced [§ 2164.3](#) in 1973, was repealed and a new [§ 2231](#) enacted. (Stats. 1975, ch. 486, §§ 6 & 7, p. 999.)<sup>8</sup> Prior to repeal, [Revenue and Taxation Code section 2164.3](#), and later [§ 2231](#), after providing in subdivision (a) for state reimbursement, explained in subdivision (e) that "Increased level of service" means any requirement mandated by state law or executive regulation ... which makes necessary expanded or additional costs to a county, city and county, city, or special district." (Stats. 1972, ch. 1406, § 14.7, p. 2963.)

(2) Appellants contend that despite its repeal, the definition is still valid, relying on the fact that the Legislature, in enacting [§ 2207](#), explained that the provision was "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6, p. 1006.) We concur with the Court of Appeal in rejecting this argument. "[I]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." ([Lake Forest Community Assn. v. County of Orange](#) (1978) 86 Cal.App.3d 394, 402 [[150 Cal.Rptr. 286](#)]; see also *Eu v. Chacon, supra*, 16 Cal.3d 465, 470.) Here, the revision was not minor: a whole subdivision was deleted. As the Court of Appeal noted, "A change must have been intended; otherwise deletion of the preexisting definition makes no sense."

Acceptance of appellants' argument leads to an unreasonable interpretation of [§ 2207](#). If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme. Since that definition has been repealed, an act of which the drafters of [section 6](#) and the electorate are presumed to have been \*56 aware, we may not conclude that an intent existed to incorporate the repealed definition into [section 6](#).

(3) In construing the meaning of the constitutional provision, our inquiry is not focussed on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted [article XIII B](#) in 1979. To determine this intent, we must

look to the language of the provision itself. (🚩 *ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, 866 [🚩 210 Cal.Rptr. 226, 693 P.2d 811].) In **section 6**, the electorate commands that the state reimburse local agencies for the cost of any “new program or higher level of service.” Because workers’ compensation is not a new program, the parties have focussed on whether providing higher benefit payments constitutes provision of a higher level of service. As we have observed, however, the former statutory definition of that term has been incorporated into neither **section 6** nor the current statutory reimbursement scheme.

(4) Looking at the language of **section 6** then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing “programs.” But the term “program” itself is not defined in **article XIII B**. What programs then did the electorate have in mind when **section 6** was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term—programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

The concern which prompted the inclusion of **section 6** in **article XIII B** was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of **article XIII B** explained **section 6** to the voters: “Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them.” (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase “to force programs on local governments” confirms that the intent underlying **section 6** was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not \*57 for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and

entities. Laws of general application are not passed by the Legislature to “force” programs on localities.

The language of **section 6** is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. We believe that if the electorate had intended such a far-reaching construction of **section 6**, the language would have explicitly indicated that the word “program” was being used in such a unique fashion.

(Cf. 🚩 *Fuentes v. Workers’ Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [🚩 128 Cal.Rptr. 673, 547 P.2d 449]; *Big Sur Properties v. Mott* (1976) 63 Cal.App.3d 99, 105 [🚩 132 Cal.Rptr. 835].) Nothing in the history of **article XIII B** that we have discovered, or that has been called to our attention by the parties, suggests that the electorate had in mind either this construction or the additional indirect, but substantial impact it would have on the legislative process.

Were **section 6** construed to require state subvention for the incidental cost to local governments of general laws, the result would be far-reaching indeed. Although such laws may be passed by simple majority vote of each house of the Legislature (art. IV, § 8, subd. (b)), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention

required by **article XIII B**. (🚩 *Rev. & Tax. Code*, §§ 2255, subd. (c).) Revenue bills must be passed by two-thirds vote of each house of the Legislature. (Art. IV, § 12, subd. (d).) Thus, were we to construe **section 6** as applicable to general legislation whenever it might have an incidental effect on local agency costs, such legislation could become effective only if passed by a supermajority vote.<sup>9</sup> Certainly no such intent is reflected in the language or history of **article XIII B** or **section 6**.

(5) We conclude therefore that **section 6** has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers’ compensation \*58 benefits that employees of private individuals or organizations receive.<sup>10</sup> Workers’ compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are

indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (See *Lab. Code*, § 3201 *et seq.*) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of *section 6*.

#### IV

(6) Our construction of *section 6* is further supported by the fact that it comports with controlling principles of construction which "require that in the absence of irreconcilable conflict among their various parts, [constitutional provisions] must be harmonized and construed to give effect to all parts. (*Clean Air Constituency v. California State Air Resources Bd.* (1974) 1 Cal.3d 801, 813-814 [ 114 Cal.Rptr. 577, 523 P.2d 617]; *Serrano v. Priest* (1971) 5 Cal.3d 584, 596 [ 96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645 [ 335 P.2d 672].)" ( *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 676 [ 194 Cal.Rptr. 781, 669 P.2d 17].)

Our concern over potential conflict arises because *article XIV, section 4*,<sup>11</sup> gives the Legislature "plenary power, unlimited by any provision of \*59 this Constitution" over workers' compensation. Although seemingly unrelated to workers' compensation, *section 6*, as we have shown, would have an indirect, but substantial impact on the ability of the Legislature to make future changes in the existing workers' compensation scheme. Any changes in the system which would increase benefit levels, provide new services, or extend current service might also increase local agencies' costs. Therefore, even though workers' compensation is a program which is intended to provide benefits to all injured or deceased employees and their families, because the change might have some incidental impact on local government costs, the change could be made only if it commanded a supermajority vote of two-thirds of the members of each house of the Legislature.

The potential conflict between *section 6* and the plenary power over workers' compensation granted to the Legislature by *article XIV, section 4* is apparent.

The County of Los Angeles, while recognizing the impact of *section 6* on the Legislature's power over workers' compensation, argues that the "plenary power" granted by

*article XIV, section 4*, is power over the substance of workers' compensation legislation, and that this power would be unaffected by *article XIII B* if the latter is construed to compel reimbursement. The subvention requirement, it is argued, is analogous to other procedural \*60 limitations on the Legislature, such as the "single subject rule" (art. IV, § 9), as to which *article XIV, section 4*, has no application. We do not agree. A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote would do more than simply establish a format or procedure by which legislation is to be enacted. It would place workers' compensation legislation in a special classification of substantive legislation and thereby curtail the power of a majority to enact substantive changes by any procedural means. If *section 6* were applicable, therefore, *article XIII B* would restrict the power of the Legislature over workers' compensation.

The City of Sonoma concedes that so construed *article XIII B* would restrict the plenary power of the Legislature, and reasons that the provision therefore either effected a *pro tanto* repeal of *article XIV, section 4*, or must be accepted as a limitation on the power of the Legislature. We need not accept that conclusion, however, because our construction of *section 6* permits the constitutional provisions to be reconciled.

Construing a recently enacted constitutional provision such as *section 6* to avoid conflict with, and thus *pro tanto* repeal of, an earlier provision is also consistent with and reflects the principle applied by this court in *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329 [ 178 Cal.Rptr. 801, 636 P.2d 1139]. There, by coincidence, *article XIV, section 4*, was the later provision. A statute, enacted pursuant to the plenary power of the Legislature over workers' compensation, gave the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before it. If construed to include a transfer of the authority to discipline attorneys from the Supreme Court to the Legislature, or to delegate that power to the board, *article*

XIV, section 4, would have conflicted with the constitutional power of this court over attorney discipline and might have violated the separation of powers doctrine. (Art. III, § 3.) The court was thus called upon to determine whether the adoption of Article XIV, section 4, granting the Legislature plenary power over workers' compensation effected a pro tanto repeal of the preexisting, exclusive jurisdiction of the Supreme Court over attorneys.

We concluded that there had been no pro tanto repeal because

Article XIV, section 4, did not give the Legislature the authority to enact the statute. Article XIV, section 4, did not expressly give the Legislature power over attorney discipline, and that power was not integral to or necessary to the establishment of a complete system of workers' compensation. In those circumstances the presumption against implied repeal controlled. "It is well established that the adoption of Article XIV, section 4 'effected a repeal *pro tanto*' of any state constitutional provisions which conflicted with that \*61 amendment. (Subsequent Etc. Fund. v.

Ind. Acc. Com. (1952) 39 Cal.2d 83, 88 [244 P.2d 889];

Western Indemnity Co. v. Pillsbury (1915) 170 Cal. 686, 695, [151 P. 398.] A *pro tanto* repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization of the objectives of the new article. (Methodist Hosp. of Sacramento v. Saylor (1971) 5 Cal.3d 685, 691-692 [97 Cal.Rptr. 1, 488 P.2d 161]; cf. City and County of San Francisco v. Workers' Comp. Appeals Bd. (1978) 22 Cal.3d

103, 115-117 [148 Cal.Rptr. 626, 583 P.2d 151].) Thus the question becomes whether the board must have the power to discipline attorneys if the objectives of Article XIV, section 4 are to be effectuated. In other words, does the achievement of those objectives compel the modification of a power—the disciplining of attorneys—that otherwise rests exclusively with this court?" (Hustedt v. Workers' Comp. Appeals Bd., *supra*, 30 Cal.3d 329, 343.) We concluded that the ability to discipline attorneys appearing before it was not necessary to the expeditious resolution of workers' claims or the efficient administration of the agency. Thus, the absence of disciplinary power over attorneys would not preclude the board from achieving the objectives of Article XIV, section 4, and no pro tanto repeal need be found.

(7) A similar analysis leads to the conclusion here that no pro tanto repeal of Article XIV, section 4, was intended or made necessary here by the adoption of section 6. The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and governmental spending.

( Huntington Park Redevelopment Agency v. Martin (1985)

38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].) Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage—costs which all employers must bear—neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.

Therefore, since the objectives of article XIII B and section 6 can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, section 6 did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation, a power that does not contemplate that the Legislature rather than the employer must fund the cost or increases in \*62 benefits paid to employees of local agencies, or that a statute affecting those benefits must garner a supermajority vote.

Because we conclude that section 6 has no application to legislation that is applicable to employees generally, whether public or private, and affects local agencies only incidentally as employers, we need not reach the question that was the focus of the decision of the Court of Appeal—whether the state must reimburse localities for state-mandated cost increases which merely reflect adjustments for cost-of-living in existing programs.

## V

It follows from our conclusions above, that in each of these cases the plaintiffs' reimbursement claims were properly denied by the State Board of Control. Their petitions for writs of mandate seeking to compel the board to approve the claims

lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

In B001713, the Los Angeles case, the Court of Appeal reversed the judgment of the superior court denying the petition. In the B003561, the Sonoma case, the superior court granted partial relief, ordering further proceedings before the board, and the Court of Appeal affirmed that judgment.

The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Bird, C. J., Broussard, J., Reynoso, J., Lucas, J., and Panelli, J., concurred.

#### MOSK, J.

I concur in the result reached by the majority, but I prefer the rationale of the Court of Appeal, i.e., that neither [article XIII B, section 6, of the Constitution](#) nor [Revenue and Taxation](#)

[Code sections 2207](#) and [2231](#) require state subvention for increased workers' compensation benefits provided by chapter 1042, Statutes of 1980, and chapter 922, Statutes of 1982, but only if the increases do not exceed applicable cost-of-living adjustments because such payments do not result in an increased level of service.

Under the majority theory, the state can order unlimited financial burdens on local units of government without providing the funds to meet those burdens. This may have serious implications in the future, and does violence to the requirement of [section 2231, subdivision \(a\)](#), that the state reimburse local government for "all costs mandated by the state."

In this instance it is clear from legislative history that the Legislature did not intend to mandate additional burdens, but merely to provide a cost-of-living [\\*63](#) adjustment. I agree with the Court of Appeal that this was permissible.

Appellants' petition for a rehearing was denied February 26, 1987. [\\*64](#)

#### Footnotes

1 The analysis by the Legislative Analyst advised that the state would be required to "reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders." Elsewhere the analysis repeats: "[T]he initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates. ...

The one ballot argument which made reference to [section 6](#), referred only to the "new program" provision, stating, "Additionally, this measure [¶] (1) will not allow the state government to force programs on local governments without the state paying for them."

2 The bill was approved by the Governor and filed with the Secretary of State on September 22, 1980. Prior to this, the Assembly gave unanimous consent to a request by the bill's author that his letter to the Speaker stating the intent of the Legislation be printed in the Assembly Journal. The letter stated: (1) that the Assembly Ways and Means Committee had recommended approval without appropriation on grounds that the increases were a result of changes in the cost of living that were not reimbursable under either [Revenue and Taxation](#) [Code section 2231](#), or [article XIII B](#); (2) the Senate Finance Committee had rejected a motion to add an appropriation and had approved a motion to concur in amendments of the Conference Committee deleting any appropriation.

Legislative history confirms only that the final version of Assembly Bill No. 2750, as amended in the Assembly on April 16, 1986, contained no appropriation. As introduced on March 4, 1980, with a higher minimum salary of \$510 on which to base benefits, an unspecified appropriation was included.

- 3 The superior court consolidated another action by the County of Butte, Novato Fire Protection District, and the Galt Unified School District with that action. Neither those plaintiffs nor the County of San Bernardino are parties to the appeal.
- 4 The same section "recognized," however, that a local agency "may pursue any remedies to obtain reimbursement available to it" under the statutes governing reimbursement for state-mandated costs in chapter 3 of the Revenue and Taxation Code, commencing with section 2201.
- 5 The court concluded that there was no legal or semantic difference in the meaning of the terms and considered the intent or purpose of the two provisions to be identical.
- 6 The Court of Appeal also considered the expression of legislative intent reflected in the letter by the author of Assembly Bill No. 2750 (see fn. 2, *ante*). While consideration of that expression of intent may have been proper in construing Assembly Bill No. 2750, we question its relevance to the proper construction of either section 6, adopted by the electorate in the prior year, or of [Revenue and Taxation Code section 2207](#), subdivision (a) enacted in 1975. (Cf. [California Employment Stabilization Co. v. Payne](#) (1947) 31 Cal.2d 210, 213-214 [[187 P.2d 702](#).]) There is no assurance that the Assembly understood that its approval of printing a statement of intent as to the later bill was also to be read as a statement of intent regarding the earlier statute, and it was not relevant to the intent of the electorate in adopting [section 6](#).

The Court of Appeal also recognized that the history of Assembly Bill No. 2750 and Statutes 1982, chapter 922, which demonstrated the clear intent of the Legislature to omit any appropriation for reimbursement of local government expenditures to pay the higher benefits precluded reliance on reimbursement provisions included in benefit-increase bills passed in earlier years. (See e.g., Stats. 1973, chs. 1021 and 1023.)

- 7 We infer that the intent of the Court of Appeal was to reverse the order denying the petition for writ of mandate and to order the superior court to grant the petition and remand the matter to the board with directions to set aside its order and reconsider the claim after making the additional findings. (See [Code Civ. Proc. § 1094.5, subd. \(f\)](#).)
- 8 Pursuant to the 1972 and successor 1973 property tax relief statutes the Legislature had included appropriations in measures which, in the opinion of the Legislature, mandated new programs or increased levels of service in existing programs (see, e.g., Stats. 1973, ch. 1021, § 4, p. 2026; ch. 1022, § 2, p. 2027; Stats. 1976, ch. 1017, § 9, p. 4597) and reimbursement claims filed with the State Board of Control pursuant to [Revenue and Taxation Code sections 2218-2218.54](#) had been honored. When the Legislature fails to include such appropriations there is no judicially enforceable remedy for the statutory violation notwithstanding the command of [Revenue and Taxation Code section 2231, subdivision \(a\)](#) that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in [Section 2207](#)" and the additional command of subdivision (b) that any statute imposing such costs "provide an appropriation therefor." ([County of Orange v. Flournoy](#) (1974) 42 Cal.App.3d 908, 913 [[117 Cal.Rptr. 224](#)].)
- 9 Whether a constitutional provision which requires a supermajority vote to enact substantive legislation, as opposed to funding the program, may be validly enacted as a Constitutional amendment rather than through

revision of the Constitution is an open question. (See  *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228 [ 149 Cal.Rptr. 239, 583 P.2d 1281].)

10 The Court of Appeal reached a different conclusion in  *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [ 203 Cal.Rptr. 258], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as to whether the expense was a "state mandated cost," rather than as whether the provision of an employee benefit was a "program or service" within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved.

11  **Section 4:** "The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

"The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

"The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

"Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed." (Italics added.)

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Distinguished by [Kirk v. Ratner](#), Cal.App. 2 Dist., February 10, 2022

15 Cal.4th 68, 931 P.2d 312, 61 Cal.Rptr.2d 134,  
Med & Med GD (CCH) P 45,112, 97 Cal. Daily  
Op. Serv. 1555, 97 Daily Journal D.A.R. 2296  
Supreme Court of California

COUNTY OF SAN DIEGO, Cross-  
complainant and Respondent,

v.

THE STATE OF CALIFORNIA et  
al., Cross-defendants and Appellants.

No. S046843.  
Mar 3, 1997.

## SUMMARY

After a county's unsuccessful administrative attempts to obtain reimbursement from the state for expenses incurred through its County Medical Services (CMS) program, and after a class action was filed on behalf of CMS program beneficiaries seeking to enjoin termination of the program, the county filed a cross-complaint and petition for a writ of mandate ([Code Civ. Proc., § 1085](#)) against the state, the Commission on State Mandates, and various state officers, to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service). The county alleged that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The trial court found that the state had an obligation to fund the county's CMS program. (Superior Court of San Diego County, No. 634931, Michael I. Greer, \* Harrison R. Hollywood, and Judith D. McConnell, Judges.) The Court of Appeal, Fourth Dist., Div. One, No. D018634, affirmed the judgment of the trial court insofar as it provided that [Cal. Const., art. XIII B, § 6](#), required the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required the county to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. The Court

of Appeal remanded to the commission to determine the reimbursement amount and appropriate statutory remedies.

The Supreme Court affirmed the judgment of the Court of Appeal insofar as it held that the exclusion of medically indigent adults from Medi-Cal imposed a mandate on the county within the meaning of [Cal. Const., art. XIII B, § 6](#). The Supreme Court reversed the judgment insofar as it held that the state required the county to spend at least \$41 million on the CMS \*69 program in fiscal years 1989-1990 and 1990-1991, and remanded the matter to the commission to determine whether, and by what amount, the statutory standards of care (e.g., [Health & Saf. Code, § 1442.5](#), former subd. (c), [Welf. & Inst. Code, §§ 10000, 17000](#)) forced the county to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which the county was entitled. The court held that the trial court had jurisdiction to adjudicate the county's mandate claim, notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The court also held that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was [Welf. & Inst. Code, § 17000](#), enacted in 1965, rather than the 1982 legislation, and since [Cal. Const., art. XIII B, § 6](#), did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, [Welf. & Inst. Code, § 17000](#), requires a county to support indigent persons only in the event they are not assisted by other sources. The court further held that there was a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide the medical care. While [Welf. & Inst. Code, § 17001](#), confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of [Welf. & Inst. Code, § 17000](#), or be struck down as void by the courts. The court also held that the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the commission to determine the amount of any reimbursement due, erred in finding the county had a minimum required expenditure on its CMS program. (Opinion by Chin, J., with

George, C. J., Mosk, and Baxter, JJ., Anderson, J., \* and Aldrich, J., † concurring. Dissenting opinion by Kennard, J.)

## HEADNOTES

### Classified to California Digest of Official Reports

(1)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program.

\***70** Cal. Const., art. XIII A, and art. XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Their goals are to protect residents from excessive taxation and government spending. The purpose of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), 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 Cal. Const., arts. XIII A and XIII B, impose. With certain exceptions, [Cal. Const., art. XIII B, § 6](#), essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

(2a, 2b)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Jurisdiction--With Pending Test Claim. The trial court had jurisdiction to adjudicate a county's mandate claim asserting the Legislature's transfer to counties of the responsibility for providing health care for medically indigent adults constituted a new program or higher level of service that required state funding under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for costs of new state-mandated program), notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The trial court's failure to defer to

the primary jurisdiction of the other court did not prejudice the state. The trial court did not usurp the Commission on State Mandates' authority, since the commission had exercised its authority in the pending action. Since the pending action was settled, no multiple decisions resulted. Nor did lack of an administrative record prejudice the state, since determining whether a statute imposes a state mandate is an issue of law. Also, attempts to seek relief from the commission would have been futile, thus triggering the futility exception to the exhaustion requirement, given that the commission rejected the other county's claim.

(3)

Administrative Law § 99--Judicial Review and Relief--Administrative Mandamus--Jurisdiction--As Derived From Constitution.

The power of superior courts to perform mandamus review of administrative decisions derives in part from [Cal. Const., art. VI, § 10](#). \***71** That section gives the Supreme Court, Courts of Appeal, and superior courts "original jurisdiction in proceedings for extraordinary relief in the nature of mandamus." The jurisdiction thus vested may not lightly be deemed to have been destroyed. While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication.

(4)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was [Welf. & Inst. Code, § 17000](#), enacted in 1965, rather than the 1982 legislation, and since [Cal. Const., art. XIII B, § 6](#), did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, [Welf. & Inst. Code, § 17000](#), requires a county to support indigent persons only in the event they are not assisted by other sources. To the extent care was provided

prior to the 1982 legislation, the county's obligation had been reduced. Also, the state's assumption of full funding responsibility prior to the 1982 legislation was not intended to be temporary. The 1978 legislation that assumed funding responsibility was limited to one year, but similar legislation in 1979 contained no such limiting language. Although the state asserted the health care program was never operated by the state, the Legislature, in adopting Medi-Cal, shifted responsibility for indigent medical care from counties to the state. Medi-Cal permitted county boards of supervisors to prescribe rules ([Welf. & Inst. Code, § 14000.2](#)), and Medi-Cal was administered by state departments and agencies.

[See [9 Witkin, Summary of Cal. Law \(9th ed. 1989\) Taxation, § 123.](#)]

(5a, 5b)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards-- \*72 Eligibility.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care. While [Welf. & Inst. Code, § 17001](#), confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of [Welf. & Inst. Code, § 17000](#) (counties shall relieve and support "indigent persons"), or be struck down as void by the courts. As to eligibility standards, counties must provide care to all adult medically indigent persons (MIP's). Although [Welf. & Inst. Code, § 17000](#), does not define "indigent persons," the 1982 legislation made clear that adult MIP's were within this category. The coverage history of Medi-Cal demonstrates the Legislature has always viewed all adult MIP's as "indigent persons" under [Welf. & Inst. Code, § 17000](#). The Attorney General also opined that the 1971 inclusion of MIP's in Medi-Cal did not alter the duty of counties to provide care to indigents not eligible for Medi-Cal, and this opinion was entitled to considerable weight. Absent controlling authority, the opinion was persuasive since it was presumed the Legislature was cognizant of the Attorney General's construction and would

have taken corrective action if it disagreed. (Disapproving

 [Bay General Community Hospital v. County of San Diego](#) (1984) 156 Cal.App.3d 944 [ 203 Cal.Rptr. 184] insofar as it holds that a county's responsibility under [Welf. & Inst. Code, § 17000](#), extends only to indigents as defined by the county's board of supervisors, and suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of [Welf. & Inst. Code, § 17000](#), but do not qualify for Medi-Cal.)

(6)

Public Aid and Welfare § 4--County Assistance--Counties' Discretion.

Counties may exercise their discretion under [Welf. & Inst. Code, § 17001](#) (county board of supervisors or authorized agency shall adopt standards of aid and care for indigent and dependent poor), only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose  [Gov. Code, § 11374](#)). Despite the counties' statutory discretion, courts have consistently invalidated county welfare regulations that fail to meet statutory requirements. \*73

(7)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards--Service.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care by setting its own service standards. [Welf. & Inst. Code, § 17000](#), mandates that medical care be provided to indigents, and [Welf. & Inst. Code, § 10000](#), requires that such care be provided promptly and humanely. There is no discretion concerning whether to provide such care. Courts construing [Welf. & Inst. Code, § 17000](#), have

held it imposes a mandatory duty upon counties to provide medically necessary care, not just emergency care, and it has been interpreted to impose a minimum standard of care. Until its repeal in 1992, [Health & Saf. Code, § 1442.5](#), former subd. (c), also spoke to the level of services that counties had to provide under [Welf. & Inst. Code, § 17000](#), requiring that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county. (Disapproving [Cooke v. Superior Court \(1989\) 213 Cal.App.3d 401](#) [¶ 261 Cal.Rptr. 706] to the extent it held that [Health & Saf. Code, § 1442.5](#), former subd. (c), was merely a limitation on a county's ability to close facilities or reduce services provided in those facilities, and was irrelevant absent a claim that a county facility was closed or that services in the county were reduced.)

(8)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Minimum Required Expenditure.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), in which the trial court found that the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults mandated a reimbursable new program entitling the county to reimbursement, the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the Commission on State Mandates to determine the amount of any reimbursement due, erred in finding the county \*74 had a minimum required expenditure on its County Medical Services (CMS) program. The Court of Appeal relied on [Welf. & Inst. Code, former § 16990, subd. \(a\)](#), which set forth the financial maintenance-of-effort requirement for counties that received California Healthcare for the Indigent Program (CHIP) funding. However, counties that chose to seek CHIP funds did so voluntarily. Thus, [Welf. & Inst. Code, former § 16990, subd. \(a\)](#), did not mandate a minimum funding requirement. Nor did [Welf. & Inst. Code, former § 16991, subd. \(a\)\(5\)](#), establish a minimum financial obligation. That statute required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its allocation from various sources was less than the funding it received under

[Welf. & Inst. Code, § 16703](#), for 1988-1989. Nothing

about this requirement imposed on the county a minimum funding requirement.

(9)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Proper Mandamus Proceeding: Mandamus and Prohibition § 23--Claim Against Commission on State Mandates.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), after the Commission on State Mandates indicated the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults did not mandate a reimbursable new program, a mandamus proceeding under [Code Civ. Proc., § 1085](#), was not an improper vehicle for challenging the commission's position. Mandamus under [Code Civ. Proc., § 1094.5](#), commonly denominated "administrative" mandamus, is mandamus still. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where they are modified by statute. Where entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding under [Code Civ. Proc., § 1085](#), as one brought under [Code Civ. Proc., § 1094.5](#), and should overrule a demurrer asserting that the wrong mandamus statute has been invoked. In any event, the determination whether the statutes at issue established a mandate under [Cal. Const., art. XIII B, § 6](#), was a question of law. Where a purely legal question is at issue, courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate. \*75

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CHIN, J.

Section 6 of article XIII B of the California Constitution (section 6) requires the State of California (state), subject

to certain exceptions, to “provide a subvention of funds to reimburse” local governments “[w]henever the Legislature or any state agency mandates a new program or higher level of service ....” In this action, the County of San Diego (San Diego or the County) seeks reimbursement under **section 6** from the state for the costs of providing health care services to certain adults who formerly received medical care under the California Medical Assistance Program (Medi-Cal) (see **Welf. & Inst. Code, § 14063**)<sup>1</sup> because they were medically indigent, i.e., they had insufficient financial resources to pay for their own medical care. In 1979, when the electorate adopted **section 6**, the state provided Medi-Cal coverage to these medically indigent adults without requiring financial contributions from counties. Effective January 1, 1983, the Legislature excluded this population from Medi-Cal. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Since that date, San Diego has provided medical care to these individuals with varying levels of state financial assistance.

To resolve San Diego's claim, we must determine whether the Legislature's exclusion of medically indigent adults from Medi-Cal “mandate[d] a new program or higher level of service” on San Diego within the meaning of section 6. The Commission on State Mandates (Commission), which the Legislature created to determine claims under section 6, has ruled that section 6 does not apply to the Legislature's action and has rejected reimbursement claims like San Diego's.

(See  *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 330, fn. 2 [285 Cal.Rptr. 66, 814 P.2d 1308] (*Kinlaw*).) The trial court and Court of Appeal in this case disagreed with the Commission, finding that San Diego was entitled to reimbursement. The state seeks \*76 reversal of this finding. It also argues that San Diego's failure to follow statutory procedures deprived the courts of jurisdiction to hear its claim. We reject the state's jurisdictional argument and affirm the finding that the Legislature's exclusion of medically indigent adults from Medi-Cal “mandate[d] a new program or higher level of service” within the meaning of section 6. Accordingly, we remand the matter to the Commission to determine the amount of reimbursement, if any, due San Diego under the governing statutes.

### I. Funding of Indigent Medical Care

Before the start of Medi-Cal, “the indigent in California were provided health care services through a variety of different programs and institutions.” (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p.

3 (Preliminary Report).) County hospitals “provided a wide range of inpatient and outpatient hospital services to all persons who met county indigency requirements whether or not they were public assistance recipients. The major responsibility for supporting county hospitals rested upon the counties, financed primarily through property taxes, with minor contributions from” other sources. (*Id.* at p. 4.)

Medi-Cal, which began operating March 1, 1966, established “a program of basic and extended health care services for recipients of public assistance and for medically indigent persons.” ( *Morris v. Williams* (1967) 67 Cal.2d 733, 738

[63 Cal.Rptr. 689, 433 P.2d 697] (*Morris*);  *id.* at p. 740; see also Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 103.) It “represent[ed] California's implementation of the federal Medicaid program ( 42 U.S.C. §§ 1396-1396v), through which the federal government provide[d] financial assistance to states so that they [might] furnish medical care to qualified indigent persons. [Citation.]” ( *Robert F. Kennedy Medical Center v. Belshé* (1996) 13 Cal.4th 748,

 55 Cal.Rptr.2d 107, 919 P.2d 721] (*Belshé*).) “[B]y meeting the requirements of federal law,” Medi-Cal “qualif [ied] California for the receipt of federal funds made available under title XIX of the Social Security Act.” ( *Morris, supra*, 67 Cal.2d at p. 738.) “Title [XIX] permitted the combination of the major governmental health care systems which provided care for the indigent into a single system financed by the state and federal governments. By 1975, this system, at least as originally proposed, would provide a wide range of health care services for all those who [were] indigent regardless of whether they [were] public assistance recipients ....” (Preliminary Rep., *supra*, at p. 4; see also Act of July 30, 1965, *Pub.L. No. 89-97*, § 121(a), 79 Stat. 286, reprinted in 1965 U.S. Code \*77 Cong. & Admin. News, p. 378 [states must make effort to liberalize eligibility requirements “with a view toward furnishing by July 1, 1975, comprehensive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources”].)<sup>2</sup>

However, eligibility for Medi-Cal was initially limited only to persons linked to a federal categorical aid program by age (at least 65), blindness, disability, or membership in a family with dependent children within the meaning of the Aid to Families with Dependent Children program (AFDC). (See Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of

1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.) pp. 548, 550 (1971 Legislative Analyst's Report.) Individuals possessing one of these characteristics (categorically linked persons) received full benefits if they actually received public assistance payments. (*Id.* at p. 550.) Lesser benefits were available to categorically linked persons who were only medically indigent, i.e., their income and resources, although rendering them ineligible for cash aid, were "not sufficient to meet the cost of health care." (*Morris, supra, 67 Cal.2d at p. 750*; see also 1971 Legis. Analyst's Rep., *supra*, at pp. 548, 550; Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, pp. 105-106.)

Individuals not linked to a federal categorical aid program (non-categorically linked persons) were ineligible for Medi-Cal, regardless of their means. Thus, "a group of citizens, not covered by Medi-Cal and yet unable to afford medical care, remained the responsibility of" the counties. (*County of Santa Clara v. Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629] (*Hall*.) In establishing Medi-Cal, the Legislature expressly recognized this fact by enacting former section 14108.5, which provided: "The Legislature hereby declares its concern with the problems which will be facing the counties with respect to the medical care of indigent persons who are not covered [by Medi-Cal] ... and ... whose medical care must be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116.) The Legislature directed the Health Review and Program Council "to study this problem and report its findings to the Legislature no later than March 1, 1967." (*Ibid.*)

Moreover, although it required counties to contribute to the costs of Medi-Cal, the Legislature established a method for determining the amount of their contributions that would "leave them with []sufficient funds to provide hospital care for those persons not eligible for Medi-Cal." (*Hall, supra, 23 Cal.App.3d at p. 1061*, fn. omitted.) Former section 14150.1, \*78 which was known as the "county option" or the "option plan," required a county "to pay the state a sum equal to 100 percent of the county's health care costs (which included both linked and nonlinked individuals) provided in the 1964-1965 fiscal year, with an adjustment for population increase; in return the state would pay the county's entire cost of medical care."<sup>3</sup> ( *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 581 [159 Cal.Rptr. 1] (*Lackner*.) Under the county option, "the state agreed to assume all county health care costs ... in excess of" the county's payment.

 (*Id.* at p. 586.) It "made no distinction between 'linked' and 'nonlinked' persons," and "simply guaranteed a medical cost ceiling to counties electing to come within the option plan." (*Ibid.*) "Any difference in actual operating costs and the limit set by the option provision [was] assumed entirely by the state." (Preliminary Rep., *supra*, at p. 10, fn. 2.) Thus, the county option "guarantee[d] state participation in the cost of care for medically indigent persons who [were] not otherwise covered by the basic Medi-Cal program or other repayment programs."<sup>4</sup> (1971 Legis. Analyst's Rep., *supra*, at p. 549.)

Primarily through the county option, Medi-Cal caused a "significant shift in financing of health care from the counties to the state and federal government.... During the first 28 months of the program the state ... paid approximately \$76 million for care of non-Medi-Cal indigents in county hospitals." (Preliminary Rep., *supra*, at p. 31.) These state funds paid "costs that would otherwise have been borne by counties through increases in property taxes." (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1974-1975 Budget Bill, Sen. Bill No. 1525 (1973-1974 Reg. Sess.) p. 626 (1974 Legislative Analyst's Report).) "[F]aced with escalating Medi-Cal costs, the Legislature in 1967 imposed strict guidelines on reimbursing counties electing to come under the 'option' plan. ([Former] § 14150.2.) Pursuant to subdivision (c) of [former] section 14150.2, the state imposed a limit on its obligation to pay for medical services to nonlinked persons \*79 served by a county within the 'option' plan." (*Lackner, supra, 97 Cal.App.3d at p. 589*; see also Stats. 1967, ch. 104, § 3, p. 1019; Stats. 1969, ch. 21, § 57, pp. 106-107; 1974 Legis. Analyst's Rep., *supra*, at p. 626.)

In 1971, the Legislature substantially revised Medi-Cal. It extended coverage to certain noncategorically linked minors and adults "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83; see Stats. 1971, ch. 577, §§ 12, 23, pp. 1110-1111, 1115.) These medically indigent individuals met "the income and resource requirements for aid under [AFDC] but [did] not otherwise qualify[] as a public assistance recipient." (56 Ops.Cal.Atty.Gen. 568, 569 (1973).) The Legislature anticipated that this eligibility expansion would bring "approximately 800,000 additional medically needy Californians" into Medi-Cal. (Stats. 1971, ch. 577, § 56, p. 1136.) The 1971 legislation referred to these individuals as "'[n]oncategorically related needy person [s]'." (Stats. 1971, ch. 577, § 23, p. 1115.) Subsequent legislation designated them as "medically indigent person[s]" (MIP's) and provided

them coverage under former section 14005.4. (Stats. 1976, ch. 126, § 7, p. 200; *id.* at § 20, p. 204.)

The 1971 legislation also established a new method for determining each county's financial contribution to Medi-Cal. The Legislature eliminated the county option by repealing former section 14150.1 and enacting former section 14150. That section specified (by amount) each county's share of Medi-Cal costs for the 1972-1973 fiscal year and set forth a formula for increasing the share in subsequent years based on the taxable assessed value of certain property. (Stats. 1971, ch. 577, §§ 41, 42, pp. 1131-1133.)

For the 1978-1979 fiscal year, the state assumed each county's share of Medi-Cal costs under former section 14150. (Stats. 1978, ch. 292, § 33, p. 610.) In July 1979, the Legislature repealed former section 14150 altogether, thereby eliminating the counties' responsibility to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 74, p. 1043.) Thus, in November 1979, when the electorate adopted section 6, "the state was funding Medi-Cal coverage for [MIP's] without requiring any county financial contribution." (Flag *Kinlaw, supra*, 54 Cal.3d at p. 329.) The state continued to provide full funding for MIP medical care through 1982.

In 1982, the Legislature passed two Medi-Cal reform bills that, as of January 1, 1983, excluded from Medi-Cal most adults who had been eligible \*80 under the MIP category (adult MIP's or Medically Indigent Adults).<sup>5</sup> (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357; Flag *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706] (*Cooke*)). As part of excluding this population from Medi-Cal, the Legislature created the Medically Indigent Services Account (MISA) as a mechanism for "transfer[ing] [state] funds to the counties for the provision of health care services." (Stats. 1982, ch. 1594, § 86, p. 6357.) Through MISA, the state annually allocated funds to counties based on "the average amount expended" during the previous three fiscal years on Medi-Cal services for county residents who had been eligible as MIP's. (Stats. 1982, ch. 1594, § 69, p. 6345.) The Legislature directed that MISA funds "be consolidated with existing county health services funds in order to provide health services to low-income persons and other persons not eligible for the Medi-Cal program." (Stats. 1982, ch. 1594, § 86, p. 6357.) It further provided: "Any person whose income and resources meet the income and resource criteria for certification for [Medi-Cal] services pursuant to Section

14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.)

After passage of the 1982 legislation, San Diego established a county medical services (CMS) program to provide medical care to adult MIP's. According to San Diego, between 1983 and June 1989, the state fully funded San Diego's CMS program through MISA. However, for fiscal years 1989-1990 and 1990-1991, the state only partially funded San Diego's CMS program. For example, San Diego asserts that, in fiscal year 1990-1991, it exhausted state-provided MISA funds by December 24, 1990. Faced with this shortfall, San Diego's board of supervisors voted in February 1991 to terminate the CMS program unless the state agreed by March 8 to provide full funding for the 1990-1991 fiscal year. After the state refused to provide additional funding, San Diego notified affected individuals and medical service providers that it would terminate the CMS program at midnight on March 19, 1991. The response to the County's notification ultimately resulted in the unfunded mandate claim now before us.

## II. Unfunded Mandates

Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (Flag *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486 [Flag \*81 280 Cal.Rptr. 92, 808 P.2d 235] (*County of Fresno*)).

The next year, the voters added article XIII B to the Constitution, which "impose[s] a complementary limit on the rate of growth in governmental spending." (Flag *San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574 [Flag 7 Cal.Rptr.2d 245, 828 P.2d 147].) (1) These two constitutional articles "work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (Flag *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [Flag 266 Cal.Rptr. 139, 785 P.2d 522].) Their goals are "to protect residents from excessive taxation and government spending. [Citation.]" (Flag *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 61 [Flag 233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*)).

California Constitution, article XIII B includes section 6, which is the constitutional provision at issue here. It

provides in relevant part: “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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.” Section 6 recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments.

( *County of Fresno, supra, 53 Cal.3d at p. 487.*) 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. ( *County*

*of Fresno, supra, 53 Cal.3d at p. 487;  *County of Los Angeles, supra, 43 Cal.3d at p. 61.*) With certain exceptions, section 6 “[e]ssentially” requires the state “to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]” ( *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [ 15 Cal.Rptr.2d 547].)*

In 1984, the Legislature created a statutory procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of section 6. (*Gov. Code, § 17500 et seq.*) The local agency must file a test claim with the Commission, which, after a public hearing, decides whether the statute mandates a new program or increased level of service. (*Gov. Code, §§ 17521, 17551, 17555.*) If the Commission finds a claim to be reimbursable, it must determine the amount of reimbursement. (*Gov. Code, § 17557.*) The local agency must then follow certain statutory procedures to \*82 obtain reimbursement. (*Gov. Code, § 17558 et seq.*) If the Legislature refuses to appropriate money for a reimbursable mandate, the local agency may file “an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement.” (*Gov. Code, § 17612, subd. (c).*) If the Commission finds no reimbursable mandate, the local agency may challenge this finding by administrative mandate proceedings under  *section 1094.5 of the Code of Civil Procedure.* (*Gov. Code, § 17559.*)

 *Government Code section 17552* declares that these provisions “provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6 ....”

### III. Administrative and Judicial Proceedings

#### A. The Los Angeles Action

On November 23, 1987, the County of Los Angeles (Los Angeles) filed a claim (the Los Angeles action) with the Commission asserting that the exclusion of adult MIP's from Medi-Cal constituted a reimbursable mandate under section 6. (*Kinlaw, supra, 54 Cal.3d at p. 330, fn. 2.*) Alameda County subsequently filed a claim on November 30, 1987, but the Commission rejected it because of the pending Los Angeles action. (*Id. at p. 331, fn. 4.*) Los Angeles refused to permit Alameda County to join as a claimant, but permitted San Bernardino County to join. (*Ibid.*)

In April 1989, the Commission rejected the Los Angeles claim, finding no reimbursable mandate.<sup>6</sup> (*Kinlaw, supra, 54 Cal.3d at p. 330, fn. 2.*) It found that the 1982 legislation did not impose on counties a new program or a higher level of service for an existing program because counties had a “pre-existing duty” to provide medical care to the medically indigent under *section 17000*. That section provides in relevant part: “Every county ... shall relieve and support all incompetent, poor, indigent persons ... lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.” *Section 17000* did not impose a reimbursable mandate under section 6, the Commission further reasoned, because it “was enacted prior to January 1, 1975 ....” Finally, the Commission found no mandate because the 1982 legislation “neither establish[ed] the level of care to be provided nor ... define[d] the class of persons determined to be eligible for medical care since these criteria were established by boards of supervisors” pursuant to *section 17001*.

On March 20, 1990, the Los Angeles Superior Court filed a judgment reversing the Commission's decision and directing issuance of a peremptory \*83 writ of mandate. On April 16, 1990, the Commission and the state filed an appeal in the Second District Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625).<sup>7</sup> In early 1992, the parties to the Los Angeles action agreed to settle their dispute and to seek dismissal. In April 1992, after learning of this

agreement, San Diego sought to intervene. Explaining that it had been waiting for resolution of the action, San Diego requested that the Court of Appeal deny the dismissal request and add (or substitute in) the County as a party. The Court of Appeal did not respond. On December 15, 1992, the parties to the Los Angeles action entered into a settlement agreement that provided for vacation of the superior court judgment and dismissal of the appeal and superior court action. Consistent with the settlement agreement, on December 29, 1992, the Court of Appeal filed an order vacating the superior court judgment, dismissing the appeal, and instructing the superior court to dismiss the action without prejudice on remand.<sup>8</sup>

### ***B. The San Diego Action***

#### ***1. Administrative Attempts to Obtain Reimbursement***

On March 13, 1991, San Diego submitted an invoice to the State Controller seeking reimbursement of its uncompensated expenditures on the CMS program for fiscal year 1989-1990. The Controller is a member of the Commission. ([Gov. Code, § 17525](#).) On April 12, the Controller returned the invoice “without action,” stating that “[n]o appropriation has been given to this office to allow for reimbursement” of medical costs for adult MIP’s and noting that litigation was pending regarding the state’s reimbursement obligation. On December 18, 1991, San Diego submitted a similar invoice for the 1990-1991 fiscal year. The state has not acted regarding this second invoice. \*84

#### ***2. Court Proceedings***

Responding to San Diego’s notice of intent to terminate the CMS program, on March 11, 1991, the Legal Aid Society of San Diego filed a class action on behalf of CMS program beneficiaries seeking to enjoin termination of the program. The trial court later issued a preliminary injunction prohibiting San Diego “from taking any action to reduce or terminate” the CMS program.

On March 15, 1991, San Diego filed a cross-complaint and petition for writ of mandate under [Code of Civil Procedure section 1085](#) against the state, the Commission, and various state officers.<sup>9</sup> The cross-complaint alleged that, by excluding adult MIP’s from Medi-Cal and transferring responsibility for their medical care to counties, the state had mandated a new program and higher level of service within the meaning of section 6. The cross-complaint further alleged that the state therefore had a duty under section 6 to reimburse

San Diego for the entire cost of its CMS program, and that the state had failed to perform its duty.

Proceeding from these initial allegations, the cross-complaint alleged causes of action for indemnification, declaratory and injunctive relief, reimbursement and damages, and writ of mandate. In its first declaratory relief claim, San Diego alleged (on information and belief) that the state contended the CMS program was a nonreimbursable, county obligation. In its claim for reimbursement, San Diego alleged (again on information and belief) that the Commission had “previously denied the claims of other counties, ruling that county medical care programs for [adult MIP’s] are not state-mandated and, therefore, counties are not entitled to reimbursement from the State for the costs of such programs.” “Under these circumstances,” San Diego asserted, “denial of the County’s claim by the Commission ... is virtually certain and further administrative pursuit of this claim would be a futile act.”

For relief, San Diego requested a judgment declaring the following: (1) that the state must fully reimburse San Diego if it “is compelled to provide any CMS Program services to plaintiffs ... after March 19, 1991”; (2) that section 6 requires the state “to fully fund the CMS Program” (or, alternatively, that the CMS program is discretionary); (3) that the state must pay San Diego for all of its unreimbursed costs for the CMS program during the \*85 1989-1990 and 1990-1991 fiscal years; and (4) that the state shall assume responsibility for operating any court-ordered continuation of the CMS program. San Diego also requested that the court issue a writ of mandamus requiring the state to fulfill its reimbursement obligation. Finally, San Diego requested issuance of preliminary and permanent injunctions to ensure that the state fulfilled its obligations to the County.

In April 1991, San Diego determined that it could continue operating the CMS program using previously unavailable general fund revenues. Accordingly, San Diego and plaintiffs settled their dispute, and plaintiffs dismissed their complaint.

The matter proceeded solely on San Diego’s cross-complaint. The court issued a preliminary injunction and alternative writ in May 1991. At a hearing on June 25, 1991, the court found that the state had an obligation to fund San Diego’s CMS program, granted San Diego’s request for a writ of mandate, and scheduled an evidentiary hearing to determine damages and remedies. On July 1, 1991, it issued an order reflecting this ruling and granting a peremptory writ of mandate. The writ did not issue, however, because of the pending hearing

to determine damages. In December 1992, after an extensive evidentiary hearing and posthearing proceedings on the claim for a peremptory writ of mandate, the court issued a judgment confirming its jurisdiction to determine San Diego's claim, finding that section 6 required the state to fund the entire cost of San Diego's CMS program, determining the amount that the state owed San Diego for fiscal years 1989-1990 and 1990-1991, identifying funds available to the state to satisfy the judgment, and ordering issuance of a peremptory writ of mandate.<sup>10</sup> The court also issued a peremptory writ of mandate directing the state and various state officers to comply with the judgment.

The Court of Appeal affirmed the judgment insofar as it provided that section 6 requires the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required San Diego to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. It remanded the matter to the Commission to determine the reimbursement amount and appropriate statutory remedies. We then granted the state's petition for review.

#### IV. Superior Court Jurisdiction

(2a) Before reaching the merits of the appeal, we must address the state's assertion that the superior court lacked jurisdiction to hear San Diego's mandate claim. According to the  state, in *Kinlaw, supra*, 54 Cal.3d 326, we "unequivocally held that the orderly determination of [unfunded] mandate questions demands that only one claim on any particular alleged mandate be entertained by the courts at any given time." Thus, if a test claim is pending, "other potential claims must be held in abeyance ...." Applying this principle, the state asserts that, since "the test claim litigation was pending" in the Los Angeles action when San Diego filed its cross-complaint seeking mandamus relief, "the superior court lacked jurisdiction from the outset, and the resulting judgment is a nullity. That defect cannot be cured by the settlement of the test claim, which occurred after judgment was entered herein."

In *Kinlaw*, we held that individual taxpayers and recipients of government benefits lack standing to enforce section 6 because the applicable administrative procedures, which "are the exclusive means" for determining and enforcing

the state's section 6 obligations, "are available only to local agencies and school districts directly affected by a state mandate ...." (*Kinlaw, supra*, 54 Cal.3d at p. 328.) In reaching this conclusion, we explained that the reimbursement right under section 6 "is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services." (*Id.* at p. 334.) We concluded that "[n]either public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues." (*Id.* at p. 335.)

In finding that individuals do not have standing to enforce the section 6 rights of local agencies, we made several observations in *Kinlaw* pertinent to operation of the statutory process as it applies to entities that do have standing. Citing **Government Code section 17500**, we explained that "the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6 ... because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process." (*Kinlaw, supra*, 54 Cal.3d at p. 331.) Thus, the governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created." (*Id.* at p. 333.) Specifically, "[t]he legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies ...." (*Id.* at p. 331.) Describing the Commission's application of the test-claim procedure to claims regarding exclusion of adult MIP's from Medi-Cal, we observed: "The test claim by the County of Los Angeles was filed prior to that \*87 proposed by Alameda County. The Alameda County claim was rejected for that reason. (See [Gov. Code,] § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the [adult MIP exclusion] issues .... Los Angeles County declined a request from Alameda County that it be included in the test claim ...." (*Id.* at p. 331, fn. 4.)

Consistent with our observations in *Kinlaw*, we here agree with the state that the trial court should not have proceeded to resolve San Diego's claim for reimbursement under section 6 while the Los Angeles action was pending. A contrary conclusion would undermine one of "the express purpose[s]"

of the statutory procedure: to “avoid[] multiple proceedings ... addressing the same claim that a reimbursable state mandate has been created.” (*Kinlaw, supra*, 54 Cal.3d at p. 333.)

(3) However, we reject the state's assertion that the error was jurisdictional. The power of superior courts to perform mandamus review of administrative decisions derives in part from **article VI, section 10 of the California**

**Constitution.** (Flag *Bixby v. Pierno* (1971) 4 Cal.3d 130, 138 [Flag 93 Cal.Rptr. 234, 481 P.2d 242]; Flag *Lipari v. Department of Motor Vehicles* (1993) 16 Cal.App.4th 667, 672 [Flag 20 Cal.Rptr.2d 246].) That section gives “[t]he Supreme Court, courts of appeal, [and] superior courts ... original jurisdiction in proceedings for extraordinary relief in the nature of mandamus ....” (*Cal. Const.*, art. VI, § 10.)

“The jurisdiction thus vested may not lightly be deemed to have been destroyed.” (Flag *Garrison v. Rourke* (1948) 32

Cal.2d 430, 435 [Flag 196 P.2d 884], overruled on another ground in Flag *Keane v. Smith* (1971) 4 Cal.3d 932, 939

[Flag 95 Cal.Rptr. 197, 485 P.2d 261].) “While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. [Citations.] Consequently an intent to defeat the exercise of the court's jurisdiction will

not be supplied by implication.” (Flag *Garrison, supra*, at p. 436.) (2b) Here, we find no statutory provision that either “expressly provide[s]” (Flag *id.* at p. 435) or otherwise “clearly intend[s]” (*id.* at p. 436) that the Legislature intended to divest all courts other than the court hearing the test claim of their mandamus jurisdiction.

Rather, following *Dowdall v. Superior Court* (1920) 183 Cal. 348 [191 P. 685] (*Dowdall*), we interpret the governing statutes as simply vesting primary jurisdiction in the court hearing the test claim. In *Dowdall*, we determined the jurisdictional effect of Code of Civil Procedure former section 1699 on actions to settle the account of trustees of a testamentary trust. Code of Civil Procedure former section 1699 provided in part: “Where any trust \*88 has been created by or under any will to continue after distribution, the Superior Court shall not lose jurisdiction of the estate by final distribution, but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust.” (Stats. 1889, ch. 228, § 1, p. 337.) We explained

that, under this section, “the superior court, sitting in probate upon the distribution of an estate wherein the will creates a trust, retain[ed] jurisdiction of the estate for the purpose of the settlement of the accounts under the trust.” (*Dowdall, supra*, 183 Cal. at p. 353.) However, we further observed that “the superior court of each county in the state has general jurisdiction in equity to settle trustees' accounts and to entertain actions for injunctions. This jurisdiction is, in a sense, concurrent with that of the superior court, which, by virtue of the decree of distribution, has jurisdiction of a trust created by will. The latter, however, is the primary jurisdiction, and if a bill in equity is filed in any other superior court for the purpose of settling the account of such trustee, that court, upon being informed of the jurisdiction of the court in probate and that an account is to be or has been filed therein for settlement, should postpone the proceeding in its own case and allow the account to be settled by the court having primary jurisdiction thereof.” (*Ibid.*)

Similarly, we conclude that, under the statutes governing determination of unfunded mandate claims, the court hearing the test claim has primary jurisdiction. Thus, if an action asserting the same unfunded mandate claim is filed in any other superior court, that court, upon being informed of the pending test claim, should postpone the proceeding before it and allow the court having primary jurisdiction to determine the test claim.

However, a court's erroneous refusal to stay further proceedings does not render those further proceedings void for lack of jurisdiction. As we explained in *Dowdall*, a court that refuses to defer to another court's primary jurisdiction “is not without jurisdiction.” (*Dowdall, supra*, 183 Cal. at p. 353.) Accordingly, notwithstanding pendency of the Los Angeles action, the trial court here did not lack jurisdiction to determine San Diego's mandamus petition. (See *Collins v. Ramish* (1920) 182 Cal. 360, 366-369 [188 P. 550] [although trial court erred in refusing to abate action because of former action pending, new trial was not warranted on issues that the trial court correctly decided]; Flag *People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 772 [25 Cal.Rptr.2d 192] (*Garamendi*) [“rule of exclusive concurrent jurisdiction is not 'jurisdictional' in the sense that failure to comply renders subsequent proceedings void”]; Flag *Stearns v. Los Angeles City School Dist.* (1966) 244 Cal.App.2d 696,

718 [Flag 53 Cal.Rptr. 482, 21 A.L.R.3d 164] [where trial court errs in failing to stay proceedings in \*89 deference

to jurisdiction of another court, reversal would be frivolous absent errors regarding the merits].)<sup>11</sup>

The trial court's failure to defer to the primary jurisdiction of the court hearing the Los Angeles action did not prejudice the state. Contrary to the state's assertion, the trial court did not "usurp" the Commission's "authority to determine, in the first place, whether or not legislation creates a mandate." The Commission had already exercised that authority in the Los Angeles action. Moreover, given the settlement of the Los Angeles action, which included vacating the judgment in that action, the trial court's exercise of jurisdiction here did not result in one of the principal harms that the statutory procedure seeks to prevent: multiple decisions regarding an unfunded mandate question. Finally, the lack of an administrative record specifically relating to San Diego's claim did not prejudice the state because the threshold determination of whether a statute imposes a state mandate is an issue of law. (*County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340, 347 [280 Cal.Rptr. 310].) To the extent that an administrative record was necessary, the record developed in the Los Angeles action could have been submitted to the trial court.<sup>12</sup> (See *Los Angeles Unified School Dist. v. State of California* (1988) 199 Cal.App.3d 686, 689 [245 Cal.Rptr. 140].)

We also find that, on the facts of this case, San Diego's failure to submit a test claim to the Commission before seeking judicial relief did not affect the superior court's jurisdiction. Ordinarily, counties seeking to pursue an unfunded mandate claim under section 6 must exhaust their administrative remedies. (Flag *Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 640 [Flag 21 Cal.Rptr.2d 453]; Flag *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 73-77 [222 Cal.Rptr. 750] (*County of Contra Costa*)).) However, counties may pursue section 6 claims in superior court without first resorting to administrative remedies if they "can establish an exception to" the exhaustion requirement. (Flag *County of Contra Costa, supra*, 177 Cal.App.3d at p. 77.) The futility exception to the exhaustion requirement applies if a county can "state with assurance that the [Commission] would rule adversely in its own particular case. [Citations.]" (*Lindeleaf v. Agricultural Labor Relations Bd.* (1986) 41 Cal.3d 861,

870 [226 Cal.Rptr. 119, 718 P.2d 106]; see also Flag *County of Contra Costa, supra*, 177 Cal.App.3d at pp. 77-78.) \*90

We agree with the trial court and the Court of Appeal that the futility exception applied in this case. As we have previously noted, San Diego invoked this exception by alleging in its cross-complaint that the Commission's denial of its claim was "virtually certain" because the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement ...." Given that the Commission rejected the Los Angeles claim (which alleged the same unfunded mandate claim that San Diego alleged) and appealed the judicial reversal of its decision, the trial court correctly determined that further attempts to seek relief from the Commission would have been futile. Therefore, we reject the state's jurisdictional argument and proceed to the merits of the appeal.

#### V. Existence of a Mandate Under Section 6

(4) In determining whether there is a mandate under section 6, we turn to our decision in Flag *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318] (*Lucia Mar*). There, we discussed section 6's application to Education Code section 59300, which "requires a school district to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped." (*Lucia Mar, supra*, at p. 832.) Before 1979, the Legislature had statutorily required school districts "to contribute to the education of pupils from the districts at the state schools [citations] ...." (*Id.* at pp. 832-833.) The Legislature repealed the statutory requirements in 1979 and, on July 12, 1979, the state assumed full-funding responsibility. (*Id.* at p. 833.) On July 1, 1980, when section 6 became effective, the state still had full-funding responsibility. On June 28, 1981, Education Code section 59300 took effect. (*Lucia Mar, supra*, at p. 833.)

Various school districts filed a claim seeking reimbursement under section 6 for the payments that Education Code section 59300 requires. The Commission denied the claim, finding that the statute did not impose on the districts a new program or higher level of service. The trial court and Court of Appeal agreed, the latter "reasoning that a shift in the funding of an existing program is not a new program or a higher level of service" under section 6. (Flag *Lucia Mar, supra*, 44 Cal.3d at p. 834.)

We reversed, finding that a contrary result would "violate the intent underlying section 6 ...." (*Lucia Mar, supra*, 44 Cal.3d at p. 835.) That section "was intended to preclude the state

from shifting to local agencies the financial responsibility for providing public services in view of the [] \*91 restrictions on the taxing and spending power of the local entities" that articles XIII A and XIII B of the California Constitution imposed. (*Lucia Mar, supra*, at pp. 835-836.) "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 ... because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B, the result seems equally violative of the fundamental purpose underlying section 6 ...." (*Id.* at p. 836, italics added, fn. omitted.) We thus concluded in *Lucia Mar* "that because [Education Code] section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts —an obligation the school districts did not have at the time article XIII B was adopted—it calls for [the school districts] to support a 'new program' within the meaning of section 6." (*Ibid.*, fn. omitted.)

The similarities between *Lucia Mar* and the case before us "are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-197[8] the state and county shared the cost of caring for [adult MIP's] under the Medi-Cal program.... [F]ollowing enactment of [article XIII A], the state took full responsibility for both programs." (*Kinlaw, supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.)) As to both programs, the Legislature cited adoption of article XIII A of the California Constitution, and specifically its effect on tax revenues, as the basis for the state's assumption of full funding responsibility. (Stats. 1979, ch. 237, § 10, p. 493; Stats. 1979, ch. 282, § 106, p. 1059.) "Then in 1981 (for handicapped children) and 1982 (for [adult MIP's]), the state sought to shift some of the burden back to the counties." (*Kinlaw, supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.))

Adopting the Commission's analysis in the Los Angeles action, the state nevertheless argues that *Lucia Mar* "is inapposite." The school program at issue in *Lucia Mar* "had been wholly operated, administered and financed by the state" and "was unquestionably a 'state program.' " " 'In

contrast,' " the state argues, " 'the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for' " it under **section 17000** and its predecessors.<sup>13</sup> The courts have interpreted **section 17000** as "impos[ing] upon counties a duty to \*92 provide hospital and medical services to indigent residents. [Citations.]" (Board of Supervisors v. Superior Court (1989) 207 Cal.App.3d 552, 557 [254 Cal.Rptr. 905].) Thus, the state argues, the source of San Diego's obligation to provide medical care to adult MIP's is **section 17000**, not the 1982 legislation. Moreover, because the Legislature enacted **section 17000** in 1965, and section 6 does not apply to "mandates enacted prior to January 1, 1975," there is no reimbursable mandate. Finally, the state argues that, because **section 17001** give counties "complete discretion" in setting eligibility and service standards under **section 17000**, there is no mandate. A contrary conclusion, the state asserts, "would erroneously expand the definition of what constitutes a 'new program' under" section 6. As we explain, we reject these arguments.

#### A. The Source and Existence of San Diego's Obligation

##### 1. The Residual Nature of the Counties' Duty Under Section 17000

The state's argument that San Diego's obligation to provide medical care to adult MIP's predates the 1982 legislation contains numerous errors. First, the state misunderstands San Diego's obligation under **section 17000**. That section creates "the residual fund" to sustain indigents "who cannot qualify ... under any specialized aid programs." (Mooney, *supra*, 4 Cal.3d at p. 681, italics added; see also Board of Supervisors v. Superior Court, *supra*, 207 Cal.App.3d at p. 562; *Boehm v. Superior Court* (1986) 178 Cal.App.3d 494, 499 [223 Cal.Rptr. 716] [general assistance "is a program of last resort"].) By its express terms, the statute requires a county to relieve and support indigent persons *only* "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (§ 17000.)<sup>14</sup> "Consequently, to the extent that the state or federal governments provide[d] care for [adult MIP's], the [C]ounty's obligation to do so [was] reduced ...." (*Kinlaw, supra*, 54 Cal.3d at p. 354, fn. 14 (dis. opn. of Broussard, J.)).<sup>15</sup>

As we have explained, the state began providing adult MIP's with medical care under Medi-Cal in 1971. Although it initially required counties to \*93 contribute generally to the costs of Medi-Cal, it did not set forth a specific amount for coverage of MIP's. The state was primarily responsible for the costs of the program, and the counties were simply required to contribute funds to defray the state's costs. Beginning with the 1978-1979 fiscal year, the state paid all costs of the Medi-Cal program, including the cost of medical care for adult MIP's. Thus, when section 6 was adopted in November 1979, to the extent that Medi-Cal provided medical care to adult MIP's, San Diego bore no financial responsibility for these health care costs.<sup>16</sup>

The California Attorney General has expressed a similar understanding of Medi-Cal's effect on the counties' medical care responsibility under [section 17000](#). After the 1971 extension of Medi-Cal coverage to MIP's, Fresno County sought an opinion regarding the scope of its duty to provide medical care under [section 17000](#). It asserted that the 1971 repeal of former section 14108.5, which declared the Legislature's concern with the counties' problems in caring for indigents not eligible for Medi-Cal, evidenced a legislative intent to preempt the field of providing health services. (56 Ops.Cal. Atty.Gen., *supra*, at p. 571.) The Attorney General disagreed, concluding that the 1971 change "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (*Id.* at p. 569.) The Attorney General explained: "The statement of concern acknowledged the obligation of counties to continue to provide medical assistance under [section 17000](#); the removal of the statement of concern was not accompanied by elimination of such duty on the part of the counties, *except as the addition of [MIP's] to the Medi-Cal program would remove the burden on the counties to provide medical care for such persons.*" (*Id.* at p. 571, italics added.) \*94

Indeed, the Legislature's statement of intent in an uncodified section of the 1982 legislation excluding adult MIP's from Medi-Cal suggests that it also shared our understanding of [section 17000](#). Section 8.3 of the 1982 Medi-Cal revisions expressly declared the Legislature's intent "[i]n eliminating [M]edically [I]ndigent [A]dults from the Medi-Cal program ...." (Stats. 1982, ch. 328, § 8.3, p. 1575; Stats. 1982, ch. 1594, § 86, p. 6357.) It stated in part: "It is further the intent of the Legislature to provide counties with as much flexibility as possible in organizing county health services to serve *the population being transferred.*" (Stats. 1982, ch. 328, § 8.3, p. 1576; Stats. 1982, ch. 1594, § 86, p. 6357, italics

added.) If, as the state contends, counties had always been responsible under [section 17000](#) for the medical care of adult MIP's, the description of adult MIP's as "the population being transferred" would have been inaccurate. By so describing adult MIP's, the Legislature indicated its understanding that counties did not have this responsibility while adult MIP's were eligible for Medi-Cal. These sources fully support our rejection of the state's argument that the 1982 legislation did not impose a mandate because, under [section 17000](#), counties had always borne the responsibility for providing medical care to adult MIP's.

## 2. The State's Assumption of Full Funding Responsibility for Providing Medical Care to Adult MIP's Under Medi-Cal

To support its argument that it never relieved counties of their obligation under [section 17000](#) to provide medical care to adult MIP's, the state characterizes as "temporary" the Legislature's assumption of full-funding responsibility for adult MIP's. According to the state, "any ongoing responsibility of the county was, at best, only temporarily, partially, alleviated (and never supplanted)." The state asserts that the Court of Appeal thus "erred by focusing on one phase in th[e] shifting pattern of arrangements" for funding indigent health care, "a focus which led to a myopic conclusion that the state alone is forever responsible for funding the health care for" adult MIP's.

A comparison of the 1978 and 1979 statutes that eliminated the counties' share of Medi-Cal costs refutes the state's claim. The Legislature expressly limited the effect of the 1978 legislation to one fiscal year, providing that the state "shall pay" each county's Medi-Cal cost share "for the period from July 1, 1978, to June 30, 1979." (Stats. 1978, ch. 292, § 33, p. 610.) The Legislative Counsel's Digest explained that this section would require the state to pay "[a]ll county costs for Medi-Cal" for "the 1978-79 fiscal year only." (Legis. Counsel's Dig., Sen. Bill No. 154, 4 Stats. 1978 (Reg. Sess.), Summary Dig., p. 71.) The digest further explained that the purpose of the bill containing this section was "the *partial* relief of local government from the *temporary* difficulties brought about by the approval of Proposition 13." \*95 (*Id.* at p. 70, italics added.) Clearly, the Legislature knew how to include words of limitation when it intended the effects of its provisions to be temporary.

By contrast, the 1979 legislation contains no such limiting language. It simply provided: "[Section 14150 of the Welfare and Institutions Code](#) is repealed." (Stats. 1979, ch. 282, § 74,

p. 1043.) In setting forth the need to enact the legislation as an urgency statute, the Legislature explained: “The adoption of Article XIII A ... may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately.” (Stats. 1979, ch. 282, § 106, p. 1059.) In describing the effect of this legislation, the Legislative Counsel first explained that, “[u]nder existing law, the counties pay a specified annual share of the cost of” Medi-Cal. (Legis. Counsel's Dig., Assem. Bill No. 8, 4 Stats. 1979 (Reg. Sess.), Summary Dig., p. 79.) Referring to the 1978 legislation, it further explained that “[f]or the 1978-79 fiscal year only, the state pays ... [¶] ... [a]ll county costs for Medi-Cal ....” (*Ibid.*) The 1979 legislation, the digest continued, “provid[ed] for state assumption of all county costs of Medi-Cal.” (*Ibid.*) We find nothing in the 1979 legislation or the Legislative Counsel's summary indicating a legislative intent to eliminate the counties' cost share of Medi-Cal only temporarily.

The state budget process for the 1980-1981 fiscal year confirms that the Legislature's assumption of all Medi-Cal costs was not viewed as “temporary.” In the summary of his proposed budget, then Governor Brown described Assembly Bill No. 8, 1981-1982 Regular Session, generally as “a long-term local financing measure” (Governor's Budget for 1980-1981 as submitted to Legislature (1979-1980 Reg. Sess.) Summary of Local Government Fiscal Relief, p. A-30) through which “[t]he total cost of [the Medi-Cal] program was *permanently* assumed by the State ....” (*Id.* at p. A-32, italics added.) Similarly, in describing to the Joint Legislative Budget Committee the Medi-Cal funding item in the proposed budget, the Legislative Analyst explained: “Item 287 includes the state cost of 'buying out' the county share of Medi-Cal expenditures. Following passage of Proposition 13, [Senate Bill No.] 154 appropriated \$418 million to relieve counties of all fiscal responsibility for Medi-Cal program costs. Subsequently, [Assembly Bill No.] 8 was enacted, which made permanent state assumption of county Medi-Cal costs.” (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1980-1981 Budget Bill, Assem. Bill No. 2020 (1979-1980 Reg. Sess.) at p. 721, italics added.) Thus, the state errs in asserting that the 1979 legislation eliminated the counties' financial support of Medi-Cal “only temporarily.”

\*96

### 3. State Administration of Medical Care for Adult MIP's Under Medi-Cal

The state argues that, unlike the school program before us in  *Lucia Mar, supra*, 44 Cal.3d 830, which “had been wholly operated, administered and financed by the state,” the program for providing medical care to adult MIP's “has never been operated or administered by” the state. According to the state, Medi-Cal was simply a state “reimbursement program” for care that **section 17000** required counties to provide. The state is incorrect.

One of the legislative goals of Medi-Cal was “to allow eligible persons to secure basic health care in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 104.) “In effect, this meant that poorer people could have access to a private practitioner of their choice, and not be relegated to a county hospital program.” ( *California Medical Assn. v. Brian* (1973) 30 Cal.App.3d 637, 642 [ 106 Cal.Rptr. 555].) Medi-Cal “provided for reimbursement to both public and private health care providers for medical services rendered.” ( *Lackner, supra*, 97 Cal.App.3d at p. 581.) It further directed that, “[i]nsofar as practical,” public assistance recipients be afforded “free choice of arrangements under which they shall receive basic health care.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 115.) Finally, since its inception, Medi-Cal has permitted county boards of supervisors to “prescribe rules which authorize the county hospital to integrate its services with those of other hospitals into a system of community service which offers free choice of hospitals to those requiring hospital care. The intent of this section is to eliminate discrimination or segregation based on economic disability so that the county hospital and other hospitals in the community share in providing services to paying patients and to those who qualify for care in public medical care programs.” (**§ 14000.2.**) Thus, “Medi-Cal eligibles were to be able to secure health care in the same manner employed by the general public (i.e., in the private sector or at a county facility).” (1974 Legis. Analyst's Rep., *supra*, at p. 625; see also Preliminary Rep., *supra*, at p. 17.) By allowing eligible persons “a choice of medical facilities for treatment,” Medi-Cal placed county health care providers “in competition with private hospitals.” (*Hall, supra*, 23 Cal.App.3d at p. 1061.)

Moreover, administration of Medi-Cal over the years has been the responsibility of various state departments and agencies. (§§ 10720-10721, 14061-14062, 14105, 14203;

 *Belshé, supra*, 13 Cal.4th at p. 751;  *Morris, supra*, 67 Cal.2d at p. 741; Summary of Major Events,  *supra*, at pp. 2-3, 15.) Thus, “[i]n adopting the Medi-Cal program the state Legislature, for the most part, shifted indigent medical care from being a county responsibility to a State \*97 responsibility under the Medi-Cal program. [Citation.]” ( *Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944, 959 [203 Cal.Rptr. 184] (*Bay General*); see also Preliminary Rep., *supra*, at p. 18 [with certain exceptions, Medi-Cal “shifted to the state” the responsibility for administration of the medical care provided to eligible persons].) We therefore reject the state's assertion that, while Medi-Cal covered adult MIP's, county facilities were the sole providers of their medical care, and counties both operated and administered the program that provided that care.

The circumstances we have discussed readily distinguish this case from  *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 [ 38 Cal.Rptr.2d 304], on which the state relies. There, the court rejected the claim that **Penal Code section 987.9**, which required counties to provide criminal defendants with certain defense funds, imposed an unfunded state mandate. Los Angeles filed the claim after the state, which had enacted appropriations between 1977 and 1990 “to reimburse counties for their costs under” the statute, made no appropriation for the 1990-1991 fiscal year. (*County of Los Angeles v. Commission on State Mandates, supra*, at p. 812.) In rejecting the claim, the court first held that there was no state mandate because **Penal Code section 987.9** merely implemented the requirements of federal law. (*County of Los Angeles v. Commission on State Mandates, supra*, at pp. 814-816.) Thus, the court stated, “[a]ssuming, arguendo, the provisions of [Penal Code] section 987.9 [constituted] a new program” under section 6, there was no state mandate. (*County of Los Angeles v. Commission on State Mandates, supra*, at p. 818.) Here, of course, it is unquestionably the state that has required San Diego to provide medical care to indigent persons.

In dictum, the court also rejected the argument that, under  *Lucia Mar, supra*, 44 Cal.3d 830, the state's “decision not to reimburse the counties for their programs under [Penal Code] section 987.9” imposed a new program by shifting financial responsibility for the program to counties.

 *County of Los Angeles v. Commission on State Mandates*,

*supra*, 32 Cal.App.4th at p. 817.) The court explained: “In contrast [to *Lucia Mar*], the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under [Penal Code] section 987.9. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility.” (*Ibid.*) Here, as we have explained, between 1971 and 1983, the state administered and bore financial responsibility for the medical care that adult MIP's received under Medi-Cal. The Medi-Cal program was not simply a \*98 method of reimbursement for county costs. Thus, the state's reliance on this dictum is misplaced.<sup>17</sup>

In summary, our discussion demonstrates the Legislature excluded adult MIP's from Medi-Cal *knowing* and *intending* that the 1982 legislation would trigger the counties' responsibility to provide medical care as providers of last resort under **section 17000**. Thus, through the 1982 legislation, the Legislature attempted to do precisely that which the voters enacted section 6 to prevent: “transfer[] to [counties] the fiscal responsibility for providing services which the state believed should be extended to the public.”<sup>18</sup>

 *County of Los Angeles, supra*, 43 Cal.3d at p. 56; see also  *City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68 [A “central purpose” of section 6 was “to prevent the state's transfer of the *cost of government* from *itself* to the local level.”].) Accordingly, we view the 1982 legislation as having mandated a “ ‘new program’ ” on counties by “compelling them to accept financial responsibility in whole or in part for a program,” i.e., medical care for adult MIP's, “which was funded entirely by the state before the advent of article XIII B.”<sup>19</sup> (*Lucia Mar, supra*, 44 Cal.3d at p. 836.)

A contrary conclusion would defeat the purpose of section 6. Under the state's interpretation of that section, because **section 17000** was enacted before 1975, the Legislature could eliminate the *entire* Medi-Cal program and shift to the counties under **section 17000** complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded **section 17000** obligation. “County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further ....” (*Kinlaw, supra*, 54 Cal.3d at p. 351 (dis. opn. of Broussard, J.).) As we have previously explained,

the voters, recognizing that articles XIII A and XIII B left counties “ill equipped” to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. (Flag \*99 *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) Thus, it was the voters who decreed that we must, as the state puts it, “focus[] on one phase in th[e] shifting pattern of [financial] arrangements” between the state and the counties. Under section 6, the state simply cannot “compel[] [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B ....”<sup>20</sup> (*Lucia Mar, supra*, 44 Cal.3d at p. 836.)

### B. County Discretion to Set Eligibility and Service Standards

(5a) The state next argues that, because San Diego had statutory discretion to set eligibility and service standards, there was no reimbursable mandate. Citing section 16704, the state asserts that the 1982 legislation required San Diego to spend MISA funds “only on those whom the *county* deems eligible *under § 17000*,” “gave the county exclusive authority to determine the level and type of benefits it would provide,” and required counties “to include [adult MIP’s] in their § 17000 eligibility **only to the extent state funds were available and then only for 3 years.**”<sup>21</sup> (Original emphasis.) According to the state, under section 17001, “[t]he counties have **\*100** complete discretion over the determination of eligibility, scope of benefits and how the services will be provided.”<sup>22</sup>

The state exaggerates the extent of a county’s discretion under section 17001. It is true “case law ... has recognized that section 17001 confers broad discretion upon the counties in performing their statutory duty to provide general assistance benefits to needy residents. [Citations.]” (Flag *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 211 [211 Cal.Rptr. 398, 695 P.2d 695] (*Robbins*)). However, there are “clear-cut limits” to this discretion. (*Ibid.*) (6) The counties may exercise their discretion “only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. [Citation.] When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency’s regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. (Flag *Gov. Code, § 11374.*)” (*Mooney, supra*, 4 Cal.3d at p. 679.) Thus, the counties’ eligibility

and service standards must “carry out” the objectives of section 17000. (*Mooney, supra*, 4 Cal.3d at p. 679; see also

Flag *Poverty Resistance Center v. Hart* (1989) 213 Cal.App.3d 295, 304-305 [Flag 261 Cal.Rptr. 545]; § 11000 [“provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program”].) County standards that fail to carry out section 17000’s objectives “are void and no protestations that they are merely an exercise of administrative discretion can sanctify them.” (*Morris, supra*, 67 Cal.2d at p. 737.) Courts, which have “final responsibility for the interpretation of the law,” must strike them down. (*Id.* at p. 748.) Indeed, despite the counties’ statutory discretion, “courts have consistently invalidated ... county welfare regulations that fail to meet statutory requirements. [Citations.]” (Flag *Robbins, supra*, 38 Cal.3d at p. 212.)

#### 1. Eligibility

(5b) Regarding eligibility, we conclude that counties must provide medical care to all adult MIP’s. As we emphasized in *Mooney*, section 17000 requires counties to relieve and support “*all indigent persons* lawfully resident therein, “when such persons are not supported and relieved by their relatives” or by some other means.” (*Mooney, supra*, 4 Cal.3d at p. 678; see also Flag *Bernhardt v. Board of Supervisors* (1976) 58 Cal.App.3d 806, 811 [Flag 130 Cal.Rptr. 189].) Moreover, section 10000 declares that the statutory “purpose” of division 9 of the Welfare and Institutions Code, which includes **\*101** section 17000, “is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to *all* of its needy and distressed.” (Italics added.) Thus, counties have no discretion to refuse to provide medical care to “indigent persons” within the meaning of section 17000 who do not receive it from other sources.<sup>23</sup> (See *Bell v. Board of Supervisors* (1994) 23 Cal.App.4th 1695, 1706 [28 Cal.Rptr.2d 919] [eligibility standards may not “defeat the purpose of the statutory scheme by depriving qualified recipients of mandated support”]; *Washington v. Board of Supervisors* (1993) 18 Cal.App.4th 981, 985 [22 Cal.Rptr.2d 852] [courts have repeatedly “voided county ordinances which have attempted to redefine eligibility standards set by state statute”].)

Although [section 17000](#) does not define the term “indigent persons,” the 1982 legislation made clear that all adult MIP’s fall within this category for purposes of defining a county’s obligation to provide medical care.<sup>24</sup> As part of its exclusion of adult MIP’s, that legislation required counties to participate in the MISA program. (Stats. 1982, ch. 1594, §§ 68, 70, 86, pp. 6343-6347, 6357.) Regarding that program, the 1982 legislation amended section 16704, subdivision (c) (1), to require that a county board of supervisors, in applying for MISA funds, “assure that it will expend such funds only for [specified] health services … provided to persons certified as eligible for such services pursuant to [Section 17000](#) ....” (Stats. 1982, ch. 1594, § 70, p. 6346.) At the same time, the 1982 legislation amended section 16704, subdivision (c)(3), to provide that “[a]ny person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided.” (Stats. 1982, ch. 1594, § 70, p. 6346.) As the state correctly explains, under this provision, “counties had to include [Medically Indigent Adults] in their [[section](#)] 17000 eligibility” standards. By requiring counties to make all adult MIP’s eligible for services paid for with MISA funds, while at the same time requiring counties to promise to spend such funds *only* on those certified as eligible under [section 17000](#), the Legislature established that all adult MIP’s are “indigent persons” for purposes of the counties’ duty to provide medical care under [section 17000](#). Otherwise, the counties could not comply with their promise. \*102

Our conclusion is not affected by language in section 16704, subdivision (c)(3), making it “operative only until June 30, 1985, unless a later enacted statute extends or deletes that date.”<sup>25</sup> As we have explained, the subdivision established that adult MIP’s are “indigent persons” within the meaning of [section 17000](#) for medical care purposes. As we have also explained, [section 17000](#) requires counties to relieve and support *all* “indigent persons.” Thus, even if the state is correct in asserting that section 16704, subdivision (c)(3), is now inoperative and no longer prohibits counties from excluding adult MIP’s from eligibility for medical services, [section 17000](#) has that effect.<sup>26</sup>

Additionally, the coverage history of Medi-Cal demonstrates that the Legislature has always viewed all adult MIP’s as “indigent persons” within the meaning of [section 17000](#) for medical care purposes. As we have previously explained, when the Legislature created the original Medi-Cal

program, which covered only categorically linked persons, it “declar[ed] its concern with the problems which [would] be facing the counties with respect to the medical care of indigent persons who [were] not covered” by Medi-Cal, “whose medical care [had to] be financed entirely by the counties in a time of heavily increasing medical costs.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116 [enacting former § 14108.5].) Moreover, to ensure that the counties’ Medi-Cal cost share would not leave counties “with insufficient funds to provide hospital care for those persons not eligible for Medi-Cal,” the Legislature also created the county option. (*Hall, supra*, 23 Cal.App.3d at p. 1061.) Through the county option, “the state agreed to assume all county health care costs … in excess of county costs incurred during the 1964-1965 fiscal year, adjusted for population increases.” ( *Lackner, supra*, 97 Cal.App.3d at p. 586.) Thus, the Legislature expressly recognized that the categorically linked persons initially eligible for Medi-Cal did not constitute all “indigent persons” entitled to medical care under [section 17000](#), and required the state to share in the financial responsibility for providing that care.

In adding adult MIP’s to Medi-Cal in 1971, the Legislature extended Medi-Cal coverage to noncategorically linked persons “who [were] financially unable to pay for their medical care.” (Legis. Counsel’s Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83.) This \*103 description was consistent with prior judicial decisions that, for purposes of a county’s duty to provide “indigent persons” with hospitalization, had defined the term to include a person “who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support.” ( *Goodall v. Brite* (1936) 11 Cal.App.2d 540, 550 [ 54 P.2d 510].)

Moreover, the fate of amendments to [section 17000](#) proposed at the same time suggests that, in the Legislature’s view, the category of “indigent persons” entitled to medical care under [section 17000](#) extended even *beyond* those eligible for Medi-Cal as MIP’s. The June 17, 1971, version of Assembly Bill No. 949 amended [section 17000](#) by adding the following: “however, the health needs of such persons shall be met under [Medi-Cal].” (Assem. Bill No. 949 (1971 Reg. Sess.) § 53.3, as amended June 17, 1971.) The Assembly deleted this amendment on July 20, 1971. (Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971, p. 37.) Regarding this change, the Assembly Committee on Health explained: “The proposed amendment to [Section 17000](#), … which would

have removed the counties' responsibilities as health care provider of last resort, is deleted. This change was originally proposed to clarify the guarantee to hold counties harmless from additional Medi-Cal costs. It is deleted since it cannot remove the fact that counties are, by definition, a 'last resort' for any person, with or without the means to pay, who does not qualify for federal or state aid." (Assem. Com. on Health, Analysis of Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971 (July 21, 1971), p. 4.)

The Legislature's failure to amend [section 17000](#) in 1971 figured prominently in the Attorney General's interpretation of that section only two years later. In a 1973 published opinion, the Attorney General stated that the 1971 inclusion of MIP's in Medi-Cal "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (56 Ops.Cal.Atty.Gen., *supra*, at p. 569.) He based this conclusion on the 1971 legislation, relevant legislative history, and "the history of state medical care programs." (*Id.* at p. 570.) The opinion concluded: "The definition of medically indigent in [the chapter establishing Medi-Cal] is applicable only to that chapter and *does not include all those enumerated in section 17000*. If the former medical care program, by providing care only for a specific group, public assistance recipients, did not affect the responsibility of the counties to provide such service under [section 17000](#), we believe the most recent expansion of the medical assistance program does not affect, *absent an express legislative intent to the contrary*, the duty of the counties under [section 17000](#) to continue to provide services to those eligible under [section 17000](#) but not under [Medi-Cal]." (*Ibid.*, italics added.) The Attorney General's opinion, although not binding, is entitled to considerable weight. [\\*104](#) (🚩 [Freedom Newspapers, Inc. v. Orange County Employees Retirement System](#) (1993) 6 Cal.4th 821, 829 [🚩 25 Cal.Rptr.2d 148, 863 P.2d 218].) Absent controlling authority, it is persuasive because we presume that the Legislature was cognizant of the Attorney General's construction of [section 17000](#) and would have taken corrective action if it disagreed with that construction. (🚩 [California Assn. of Psychology Providers v. Rank](#) (1990) 51 Cal.3d 1, 17 [🚩 270 Cal.Rptr. 796, 793 P.2d 2].)

In this case, of course, we need not (and do not) decide whether San Diego's obligation under [section 17000](#) to provide medical care extended beyond adult MIP's. Our discussion establishes, however, that the obligation extended *at least* that far. The Legislature has made it clear that all adult MIP's are "indigent persons" under [section 17000](#)

for purposes of San Diego's obligation to provide medical care. Therefore, the state errs in arguing that San Diego had discretion to refuse to provide medical care to this population.<sup>27</sup>

## 2. Service Standards

(7) A number of statutes are relevant to the state's argument that San Diego had discretion in setting service standards. [Section 17000](#) requires in general terms that counties "relieve and support" indigent persons. [Section 10000](#), which sets forth the purpose of the division containing [section 17000](#), declares the "legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life," so "as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society." (§ 10000.) "Section 17000, as authoritatively interpreted, mandates that medical care be provided to indigents and [section 10000](#) requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care ...." (*Tailfeather v. Board of Supervisors* (1996) 48 Cal.App.4th 1223, 1245 [56 Cal.Rptr.2d 255] (*Tailfeather*)).

Courts construing [section 17000](#) have held that it "imposes a mandatory duty upon all counties to provide 'medically necessary care,' not just \*105 emergency care.

[Citation.]" (🚩 [County of Alameda v. State Bd. of Control](#) (1993) 14 Cal.App.4th 1096, 1108 [🚩 18 Cal.Rptr.2d 487]; see also 🚩 [Gardner v. County of Los Angeles](#) (1995) 34 Cal.App.4th 200, 216 [🚩 40 Cal.Rptr.2d 271]; § 16704.1 [prohibiting a county from requiring payment of a fee or charge "before [it] renders medically necessary services to ... persons entitled to services under [Section 17000](#)"].) It further "ha[s] been interpreted ... to impose a minimum standard of care below which the provision of medical services may not fall." (*Tailfeather*, *supra*, 48 Cal.App.4th at p. 1239.) In *Tailfeather*, the court stated that "section 17000 requires provision of medical services to the poor at a level which does not lead to unnecessary suffering or endanger life and health ...." (*Id.* at p. 1240.) In reaching this conclusion, it cited *Cooke*, *supra*, 213 Cal.App.3d at page 404, which held that [section 17000](#) requires counties to provide "dental care sufficient to remedy substantial pain and infection." (See also § 14059.5 [defining "[a] service [as] 'medically necessary' ... when it is reasonable and necessary to protect life, to prevent

significant illness or significant disability, or to alleviate severe pain”].)

During the years for which San Diego sought reimbursement, [Health and Safety Code section 1442.5](#), former subdivision (c) (former subdivision (c)), also spoke to the level of services that counties had to provide under [Welfare and Institutions Code section 17000](#).<sup>28</sup> As enacted in September 1974, former subdivision (c) provided that, whether a county's duty to provide care to all indigent people “is fulfilled directly by the county or through alternative means, the availability of services, and the quality of the treatment received by people who cannot afford to pay for their health care shall be the same as that available to nonindigent people receiving health care services in private facilities in that county.” (Stats. 1974, ch. 810, § 3, p. 1765.) The express “purpose and intent” of the act that contained former subdivision (c) was “to insure that the duty of counties to provide health care to indigents [was] properly and continuously fulfilled.” (Stats. 1974, ch. 810, § 1, p. 1764.) Thus, until its repeal in September 1992,<sup>29</sup> former subdivision (c) “[r]equire[d] that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county.” (Legis. Counsel's Dig., Sen. Bill No. 2369, 2 Stats. 1974 (Reg. Sess.)

Summary Dig., p. 130; see also  [Gardner v. County of Los Angeles, supra](#), 34 Cal.App.4th at p. 216; \*106  [Board of Supervisors v. Superior Court, supra](#), 207 Cal.App.3d at p. 564 [former subdivision (c) required that care provided “be comparable to that enjoyed by the nonindigent”].)<sup>30</sup> “For the 1990-91 fiscal year,” the Legislature qualified this obligation by providing: “nothing in [former] subdivision (c) ... shall require any county to exceed the standard of care provided by the state Medi-Cal program. Notwithstanding any other provision of law, counties shall not be required to increase eligibility or expand the scope of services in the 1990-91 fiscal year for their programs.” (Stats. 1990, ch. 457, § 23, p. 2013.)

Although we have identified statutes relevant to service standards, we need not here define the precise contours of San Diego's statutory health care obligation. The state argues generally that San Diego had discretion regarding the services it provided. However, the state fails to identify either the specific services that San Diego provided under its CMS program or which of those services, if any, were not required under the governing statutes. Nor does the state argue that San Diego could have eliminated all services and complied

with statutory requirements. Accordingly, we reject the state's argument that, because San Diego had some discretion in providing services, the 1982 legislation did not impose a reimbursable mandate.<sup>31</sup>

## VI. Minimum Required Expenditure

(8) The Court of Appeal held that, under the governing statutes, the Commission must initially determine the precise amount of any reimbursement due San Diego. It therefore reversed the damages portion of the trial court's judgment and remanded the matter to the Commission for this determination. Nevertheless, the Court of Appeal affirmed the trial court's finding that the Legislature required San Diego to spend at least \$41 million on its CMS program for fiscal years 1989-1990 and 1990-1991. In affirming this finding, the Court of Appeal relied primarily on [Welfare and Institutions Code section 16990, subdivision \(a\)](#), as it read at all relevant times. The state contends this provision did not mandate that San Diego spend any minimum amount on the CMS program. It further asserts that the Court of Appeal's “ruling in effect sets a damages baseline, in contradiction to [its] ostensible reversal of the damage award.” \*107

Former section 16990, subdivision (a), set forth the financial maintenance-of-effort requirement for counties that received funding under the California Healthcare for the Indigent Program (CHIP). The Legislature enacted CHIP in 1989 to implement Proposition 99, the Tobacco Tax and Health Protection Act of 1988 (codified at [Rev. & Tax. Code, § 30121 et seq.](#)). Proposition 99, which the voters approved on November 8, 1988, increased the tax on tobacco products and allocated the resulting revenue in part to medical and hospital care for certain persons who could not afford those services.

 [Kennedy Wholesale, Inc. v. State Bd. of Equalization](#) (1991) 53 Cal.3d 245, 248, 254  279 Cal.Rptr. 325, 806 P.2d 1360].) During the 1989-1990 and 1990-1991 fiscal years, former section 16990, subdivision (a), required counties receiving CHIP funds, “at a minimum,” to “maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988-89 fiscal year,” adjusted annually as provided. (Stats. 1989, ch. 1331, § 9, p. 5427.) Applying this provision, the Court of Appeal affirmed the trial court's finding that the state had required San Diego to spend in fiscal years 1989-1990 and 1990-1991 at least \$41 million on the CMS program.

We agree with the state that this finding is erroneous. Unlike participation in MISA, which was mandatory, participation in CHIP was voluntary. In establishing CHIP, the Legislature appropriated funds “for allocation to counties *participating in*” the program. (Stats. 1989, ch. 1331, § 10, p. 5436, *italics added.*) Section 16980, subdivision (a), directed the State Department of Health Services to make CHIP payments “upon application of the county assuring that it will comply with” applicable provisions. Among the governing provisions were former sections 16990, subdivision (a), and 16995, subdivision (a), which provided: “To be eligible for receipt of funds under this chapter, a county may not impose more stringent eligibility standards for the receipt of benefits under **Section 17000** or reduce the scope of benefits compared to those which were in effect on November 8, 1988.” (Stats. 1989, ch. 1331, § 9, p. 5431.)

However, San Diego has cited no provision, and we have found none, that *required* eligible counties to participate in the program or apply for CHIP funds. Through **Revenue and Taxation Code section 30125**, which was part of Proposition 99, the electorate directed that funds raised through Proposition 99 “shall be used to supplement existing levels of service and not to fund existing levels of service.” (See also Stats. 1989, ch. 1331, §§ 1, 19, pp. 5382, 5438.) Counties not wanting to supplement their existing levels of service, and who therefore did not want CHIP funds, were not bound by the program's requirements. Those counties, including San Diego, that chose to **\*108** seek CHIP funds did so voluntarily.<sup>32</sup> Thus, the Court of Appeal erred in concluding that former section 16990, subdivision (a), mandated a minimum funding requirement for San Diego's CMS program.

Nor did former section 16991, subdivision (a)(5), which the trial court and Court of Appeal also cited, establish a minimum financial obligation for San Diego's CMS program. Former section 16991 generally “establish[ed] a procedure for the allocation of funds to each county receiving funds from the [MISA] ... for the provision of services to persons meeting certain Medi-Cal eligibility requirements, based on the percentage of newly legalized individuals under the federal Immigration Reform and Control Act (IRCA).” (Legis. Counsel's Dig., Assem. Bill No. 75, 4 Stats. 1989 (Reg. Sess.) Summary Dig., p. 548.) Former section 16991, subdivision (a)(5) required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its combined allocation from various sources was less than the funding it received under **§ 16703** for fiscal year 1988-1989.<sup>33</sup> Nothing

about this state reimbursement requirement imposed on San Diego a minimum funding requirement for its CMS program.

Thus, we must reverse the judgment insofar as it finds that former sections 16990, subdivision (a), and 16991, subdivision (a)(5), established a \$41 million spending floor for San Diego's CMS program. Instead, the various statutes that we have previously discussed (e.g., **§§ 10000, 17000**, and **Health & Saf. Code, § 1442.5**, former subd. (c)), the cases construing those statutes, and any other relevant authorities must guide the Commission's determination of the level of services that San Diego had to provide and any reimbursement to which it is entitled. **\*109**

## VII. Remaining Issues

(9) The state raises a number of additional issues. It first complains that a mandamus proceeding under **Code of Civil Procedure section 1085** was an improper vehicle for challenging the Commission's position. It asserts that, under **Government Code section 17559**, review by administrative mandamus under **Code of Civil Procedure section 1094.5** is the exclusive method for challenging a Commission decision denying a mandate claim. The Court of Appeal rejected this argument, reasoning that the trial court had jurisdiction under **Code of Civil Procedure section 1085** because, under section 6, the state has a ministerial duty of reimbursement when it imposes a mandate.

Like the Court of Appeal, but for different reasons, we reject the state's argument. “[M]andamus pursuant to **Code of Civil Procedure** section 1094.5, commonly denominated 'administrative' mandamus, is mandamus still. It is not possessed of 'a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.' [Citations.] The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute. [Citations.]” (**Woods v. Superior Court** (1981) 28 Cal.3d 668, 673-674 [**170 Cal.Rptr. 484, 620 P.2d 1032**.]) Where the entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding brought under **Code of Civil Procedure section 1085** as one brought under **Code of Civil Procedure section 1094.5** and should deny a demurrer asserting that the wrong mandamus statute has been invoked. (**Woods, supra**, 28 Cal.3d at

pp. 673-674;  *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 813-814 [ 140 Cal.Rptr. 442, 567 P.2d 1162].) Thus, even if San Diego identified the wrong mandamus statute, the error did not affect the trial court's ability to grant mandamus relief.

"In any event, distinctions between traditional and administrative mandate have little impact on this appeal ...." ( *McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1584 [ 18 Cal.Rptr.2d 680].) The determination whether the statutes here at issue established a mandate under section 6 is a question of law. (*County of Fresno v. Lehman, supra*, 229 Cal.App.3d at p. 347.) In reaching our conclusion, we have relied on no facts that are in dispute. Where, as here, a "purely legal question" is at issue, courts "exercise independent judgment ... , no matter whether the issue arises by traditional or administrative mandate. [Citations.]" ( *McIntosh, supra*, 14 Cal.App.4th at p. 1584.)

As the state concedes, even under  *Code of Civil Procedure section 1094.5*, a judgment must "be reversed if based on erroneous conclusions of law." Thus, any differences between the two mandamus statutes have had no impact on our analysis. \*110

The state next contends that the trial court prejudicially erred in denying the "peremptory disqualification" motion that the Director of the Department of Finance filed under *Code of Civil Procedure section 170.6*. We will not review this ruling, however, because it is reviewable only by writ of mandate under *Code of Civil Procedure section 170.3*, subdivision (d).

( *People v. Webb* (1993) 6 Cal.4th 494, 522-523 [ 24 Cal.Rptr.2d 779, 862 P.2d 779];  *People v. Hull* (1991) 1 Cal.4th 266 [ 2 Cal.Rptr.2d 526, 820 P.2d 1036].)

Nor can we address the state's argument that the trial court erred in granting a preliminary injunction. The May 1991 order granting the preliminary injunction was "immediately and separately appealable" under *Code of Civil Procedure section 904.1*, subdivision (a)(6). ( *Art Movers, Inc. v. Ni*

*West, Inc.* (1992) 3 Cal.App.4th 640, 645 [ 4 Cal.Rptr.2d 689].) Thus, the state's attempt to challenge the order in an appeal filed after entry of final judgment in December 1992 was untimely.<sup>34</sup> (See  *Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230, 251 [ 256

Cal.Rptr. 194].) Moreover, the state's attempt to appeal the order granting the preliminary injunction is moot because of (1) the trial court's July 1 order granting a peremptory writ of mandate, which expressly "supersede[d] and replace[d]" the preliminary injunction order and (2) entry of final judgment.

( *Sheward v. Citizens' Water Co.* (1891) 90 Cal. 635, 638-639 [ 27 P. 439];  *People v. Morse* (1993) 21 Cal.App.4th 259, 264-265 [ 25 Cal.Rptr.2d 816];  *Art Movers, Inc., supra*, 3 Cal.App.4th at p. 647.)

Finally, the state requests that we reverse the trial court's reservation of jurisdiction regarding an award of attorney fees. This request is premature. In the judgment, the trial court "retain[ed] jurisdiction to determine any right to and amount of attorneys' fees ...." This provision does not declare that San Diego in fact has a right to an award of attorney fees. Nor has San Diego asserted such a right. As San Diego states, at this point, "[t]here is nothing for this Court to review." We will not give an advisory ruling on this issue.

### VIII. Disposition

The judgment of the Court of Appeal is affirmed insofar as it holds that the exclusion of adult MIP's from Medi-Cal imposed a mandate on San Diego within the meaning of section 6. The judgment is reversed insofar as it holds that the state required San Diego to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. The matter is \*111 remanded to the Commission to determine whether, and by what amount, the statutory standards of care (e.g., *Health & Saf. Code*, § 1442.5, former subd. (c); *Welf. & Inst. Code*, §§ 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled.

C. J., Mosk, J., Baxter, J., Anderson, J., \* and Aldrich, J., †  
]]] concurred.

### KENNARD, J.

I dissent.

As part of an initiative measure placing spending limits on state and local government, the voters in 1979 added *article XIII B to the California Constitution*. Section 6 of this article provides that when the state "mandates a new

program or higher level of service on any local government,” the state must reimburse the local government for the cost of such program or service. Under subdivision (c) of this constitutional provision, however, the state “may, but need not,” provide such reimbursement *if the state mandate was enacted before January 1, 1975*. (Cal. Const., art. XIII B, § 6, subd. (c).) Subdivision (c) is the critical provision here.

Because the counties have for many decades been under a state mandate to provide for the poor, a mandate that existed before the voters added article XIII B to the state Constitution, the express language of subdivision (c) of section 6 of article XIII B exempts the state from any *legal obligation* to reimburse the counties for the cost of medical care to the needy. The fact that for a certain period after 1975 the state directly paid under the state Medi-Cal program for these costs did not lead to the creation of a new mandate once the state stopped doing so. To hold to the contrary, as the majority does, is to render subdivision (c) a nullity.

The issue here is not whether the poor are entitled to medical care. They are. The issue is whether the state or the counties must pay for this care. The majority places this obligation on the state. The counties' win, however, may be a pyrrhic victory. For, in anticipation of today's decision, the Legislature has enacted legislation that will drastically reduce the counties' share of other state revenue, as discussed in part III below.

## I

Beginning in 1855, California imposed a legal obligation on the counties to take care of their poor. (Mooney v. Pickett (1971) 4 Cal.3d 669, 677-678 \*112 [94 Cal.Rptr. 279, 483 P.2d 1231].) Since 1965, this obligation has been codified in Welfare and Institutions Code section 17000. (Stats. 1965, ch. 1784, § 5, p. 4090.) That statute states in full: “Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.” (Welf. & Inst. Code, § 17000.) Included in this is a duty to provide medical care to indigents. (Board of Supervisors v. Superior Court (1989) 207 Cal.App.3d 552, 557 [254 Cal.Rptr. 905].)

A brief overview of the efforts by federal, state, and local governments to furnish medical services to the poor may be helpful.

Before March 1, 1966, the date on which California began its Medi-Cal program, medical services for the poor “were provided in different ways and were funded by the state, county, and federal governments in varying amounts.” (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3.) The Medi-Cal program, which California adopted to implement the federal Medicaid program (42 U.S.C. § 1396 et seq.; see Morris v. Williams (1967) 67 Cal.2d 733, 738 [63 Cal.Rptr. 689, 433 P.2d 697]), at first limited eligibility to those persons “linked” to a federal categorical aid program by being over age 65, blind, disabled, or a member of a family with dependent children. (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.), pp. 548, 550.) Persons not linked to federal programs were ineligible for Medi-Cal; they could obtain medical care from the counties. (County of Santa Clara v. Hall (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629].)

In 1971, the Legislature revised Medi-Cal by extending coverage to certain so-called “noncategorically linked” persons, or “medically indigent persons.” (Stats. 1971, ch. 577, §§ 12, 13, 22.5, 23, pp. 1110-1111, 1115.) The revisions included a formula for determining each county's share of Medi-Cal costs for the 1972-1973 fiscal year, with increases in later years based on the assessed value of property. (*Id.* at §§ 41, 42, pp. 1131-1133.)

In 1978, California voters added to the state Constitution article XIII A (Proposition 13), which severely limited property taxes. In that same year, to help the counties deal with the drastic drop in local tax revenue, the Legislature assumed the counties' share of Medi-Cal costs. (Stats. 1978, ch. 292, § 33, p. 610.) In 1979, the Legislature relieved the counties of their obligation to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 106, p. 1059.) \*113 Also in 1979, the voters added to the state Constitution article XIII B, which placed spending limits on state and local governments and added the mandate/reimbursement provisions at issue here.

In 1982, the Legislature removed from Medi-Cal eligibility the category of “medically indigent persons” that had been added in 1971. The Legislature also transferred funds for indigent health care services from the state to the counties

through the Medically Indigent Services Account. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Medically Indigent Services Account funds were then combined with county health service funds to provide health care to persons not eligible for Medi-Cal (Stats. 1982, ch. 1594, § 86, p. 6357), and counties were to provide health services to persons in this category “to the extent that state funds are provided” (*id.*, § 70, p. 6346).

From 1983 through June 1989, the state fully funded San Diego County's program for furnishing medical care to the poor. Thereafter, in fiscal years 1989-1990 and 1990-1991, the state partially funded San Diego County's program. In early 1991, however, the state refused to provide San Diego County full funding for the 1990-1991 fiscal year, prompting a threat by the county to terminate its indigent medical care program. This in turn led the Legal Aid Society of San Diego to file an action against the County of San Diego, asserting that [Welfare and Institutions Code section 17000](#) imposed a legal obligation on the county to provide medical care to the poor. The county cross-complained against the state. The county argued that the state's 1982 removal of the category of “medically indigent persons” from Medi-Cal eligibility mandated a “new program or higher level of service” within the meaning of [section 6 of article XIII B of the California Constitution](#), because it transferred the cost of caring for these persons to the county. Accordingly, the county contended, [section 6](#) required the state to reimburse the county for its cost of providing such care, and prohibited the state from terminating reimbursement as it did in 1991. The county eventually reached a settlement with the Legal Aid Society of San Diego, leading to a dismissal of the latter's complaint.

While the County of San Diego's case against the state was pending, litigation was proceeding in a similar action against the state by the County of Los Angeles and the County of San Bernardino. In that action, the Superior Court for the County of Los Angeles entered a judgment in favor of Los Angeles and San Bernardino Counties. The state sought review in the Second District Court of Appeal in Los Angeles. In December 1992, the parties to the Los Angeles case entered into a settlement agreement providing for dismissal of the appeal and vacating of the superior court judgment. \*114 The Court of Appeal thereafter ordered that the superior court judgment be vacated and that the appeal be dismissed.

The County of San Diego's action against the state, however, was not settled. It proceeded on the county's claim against

the state for reimbursement of the county's expenditures for medical care to the indigent.<sup>1</sup> The majority holds that the county is entitled to such reimbursement. I disagree.

## II

[Article XIII B, section 6 of the California Constitution](#) 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 such local government for the costs of such program or increased level of service, *except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.*” (Italics added.)<sup>2</sup>

Of importance here is [Welfare and Institutions Code section 17000](#) (hereafter sometimes [section 17000](#)). It imposes a legal obligation on the counties to provide, among other things, medical services to the poor. (*Board of Supervisors v. Superior Court, supra*, 207 Cal.App.3d at p. 557; *County of San Diego v. Viloria* (1969) 276 Cal.App.2d 350, 352 [80 Cal.Rptr. 869].) Section 17000 was enacted long before and has existed continuously since January 1, 1975, the date set forth in [subdivision \(c\) of section 6 of article XIII B of the California Constitution](#). Thus, [section 17000](#) falls within subdivision (c)'s language of “[l]egislative mandates enacted prior to January 1, 1975,” rendering it exempt from the reimbursement provision of [section 6](#).

Contrary to the majority's conclusion, the Legislature's 1982 legislation removing the category of “medically indigent persons” from Medi-Cal did not meet [California Constitution, article XIII B, section 6](#) 's requirement of imposing on local government “a new program or higher level of service,” and therefore did not entitle the counties to reimbursement from the state under [section 6 of article XIII B](#). The counties' legal obligation to provide medical care arises from [section 17000](#), not from the subsequently enacted \*115 1982 legislation. The majority itself concedes that the 1982 legislation merely “trigger[ed] the counties' responsibility to provide medical care as providers of last resort under [section 17000](#).” (Maj.

opn.,  *ante*, at p. 98.) Although certain actions by the state and the federal government during the 1970's and 1980's may have alleviated the counties' financial burden of providing medical care for the indigent, those actions did not supplant or remove the counties' existing legal obligation under [section](#)

17000 to furnish such care. (红旗 *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 411 [红旗 261 Cal.Rptr. 706]; 黄旗 *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136, 151 [红旗 201 Cal.Rptr. 768].)

The state's reimbursement obligation under **section 6 of article XIII B of the California Constitution** arises only if, after January 1, 1975, the date mentioned in subdivision (c) of **section 6**, the state imposes on the counties "a new program or higher level of service." That did not occur here. As I pointed out above, the counties' legal obligation to provide for the poor arises from **section 17000**, enacted long before the January 1, 1975, cutoff date set forth in subdivision (c) of **section 6**. That statutory obligation remained in effect when during a certain period after 1975 the state assumed the financial burden of providing medical care to the poor, in an effort to help the counties deal with a drastic drop in local revenue as a result of the voters' passage of Proposition 13, which severely limited property taxes. Because the counties' statutory obligation to provide health care to the poor was created before 1975 and has existed unchanged since that time, the state's 1982 termination of Medi-Cal eligibility for "medically indigent persons" did not create a "new program or higher level of service" within the meaning of **section 6 of article XIII B**, and therefore did not obligate the state to reimburse the counties for their expenditures in health care for the poor.

### III

In imposing on the state a legal obligation to reimburse the counties for their cost of furnishing medical services to the poor, the majority's holding appears to bail out financially strapped counties. Not so.

Today's decision will immediately result in a reduction of state funds available to the counties. Here is why. In 1991, the Legislature added **section 11001.5 to the Revenue and Taxation Code**, providing that 24.33 percent of the moneys collected by the Department of Motor Vehicles as motor vehicle license fees must be deposited in the State Treasury to the credit of the Local Revenue Fund. In anticipation of today's decision, the Legislature stated in subdivision (d) of this statute: "This section shall cease to be operative on \*116 the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal

[that]: [红旗] ... [红旗] (2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (Rev. & Tax. Code, § 11001.5, subd. (d); see also *id.*, § 10753.8, subd. (b).)

The loss of such revenue, which the Attorney General estimates at "hundreds of millions of dollars," may put the counties in a serious financial bind. Indeed, realization of the scope of this revenue loss appears to explain why the County of Los Angeles, after a superior court victory in its action seeking state reimbursement for the cost of furnishing medical care to "medically indigent persons," entered into a settlement with the state under which the superior court judgment was effectively obliterated by a stipulated reversal.

(See 黄旗 *Neary v. Regents of University of California* (1992) 3 Cal.4th 273 [红旗 10 Cal.Rptr.2d 859, 834 P.2d 119].) In

a letter addressed to the Second District Court of Appeal, sent while the County of Los Angeles was engaged in settlement negotiations with the state, the county's attorney referred to the legislation mentioned above in these terms: "This legislation was quite clearly written with this case in mind. Consequently, to pursue this matter, *the County of Los Angeles risks losing a funding source it must have to maintain its health services programs at current levels*. The additional funding that might flow to the County from a final judgment in its favor in this matter, is several years away *and is most likely of a lesser amount than this County's share of the vehicle license fees.*" (Italics added.) Thus, the County of Los Angeles had apparently determined that a legal victory entitling it to reimbursement from the state for the cost of providing medical care to the category of "medically indigent persons" would not in fact serve its economic interests.

I have an additional concern. According to the majority, whenever there is a change in a state program that has the effect of increasing a county's financial burden under **section 17000** there must be reimbursement by the state. This means that so long as **section 17000** continues to exist, an increase in state funding to a particular county for the care of the poor, once undertaken, may be irreversible, thus locking the state into perpetual financial assistance to that county for health care to the needy. This would, understandably, be a major disincentive for the Legislature to ever increase the state's funding of a county's medical care for the poor.

The rigidity imposed by today's holding will have unfortunate consequences should the state's limited financial resources

prove insufficient to \*117 reimburse the counties under section 6 of article XIII B of the California Constitution for the “new program or higher level of service” of providing medical care to the poor under section 17000. In that event, the state may be required to modify this “new program or higher level of service” in order to reconcile the state's reimbursement obligation with its finite resources and its other financial commitments. Such modifications are likely to take the form of limitations on eligibility for medical care or on the amount or kinds of medical care that the counties must provide to the poor under section 17000. A more flexible system—one that actively encouraged shared state and county responsibility for indigent medical care, using a variety of innovative funding mechanisms—would be less likely to result in a curtailment of medical services to the poor.

And if the Legislature is unable or unwilling to appropriate funds to comply with the majority's reimbursement order, the law allows the county to file “in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement.” (Gov. Code, § 17612, subd. (c); see maj. opn.,

 *ante*, at p. 82.) Such a declaration would do nothing to alleviate the plight of the poor.

### Conclusion

The dispute in this case ultimately arises from a collision between the taxing limitations on the counties imposed by article XIII A of the state Constitution and the preexisting, open-ended mandate imposed on them under Welfare and Institutions Code section 17000 to provide medical care for the poor. As I have explained, the Legislature's assumption

thereafter of some of the resulting financial burden to the counties did not repeal section 17000's mandate, nor did the Legislature's later termination of its financial support create a new mandate. In holding to the contrary, the majority imposes on the Legislature an obligation that the Legislature does not have under the law.

I recognize that my resolution of this issue—that under existing law the state has *no legal obligation* to reimburse the counties for health expenditures for the poor—would leave the counties in the same difficult position in which they find themselves now: providing funding for indigent medical care while maintaining other essential public services in a time of fiscal austerity. But complex policy questions such as the structuring and funding of indigent medical care are best left to the counties, the Legislature, and ultimately the electorate, rather than to the courts. It is the counties that must figure out how to allocate the limited budgets imposed on them by the electorate's adoption of articles XIII A and XIII B of the California Constitution among indigent medical care programs and a host of other pressing \*118 and essential needs. It is the Legislature that must decide whether to furnish financial assistance to the counties so they can meet their section 17000 obligations to provide for the poor, and whether to continue to impose the obligations of section 17000 on the counties. It is the electorate that must decide whether, given the ever-increasing costs of meeting the needs of indigents under section 17000, counties should be afforded some relief from the taxing and spending limits of articles XIII A and XIII B, both enacted by voters' initiative. These are hard choices, but for the reasons just given they are better made by the representative branches of government and the electorate than by the courts. \*119

### Footnotes

- \* Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
- \* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
- † Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
- 1 Except as otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

- 2 Congress later repealed the requirement that states work towards expanding eligibility. (See Cal. Health and Welfare Agency, *The Medi-Cal Program: A Brief Summary of Major Events* (Mar. 1990) p. 1 (Summary of Major Events).)
- 3 Former section 14150.1 provided in relevant part: “[A] county may elect to pay as its share [of Medi-Cal costs] one hundred percent ... of the county cost of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county .... If the county so elects, the county costs of health care in any fiscal year shall not exceed the total county costs of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county ....” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 121.)
- 4 Former section 14150 provided the standard method for determining the counties' share of Medi-Cal costs. Under it, “a county was required to pay the state a specific sum, in return for which the state would pay for the medical care of all [categorically linked] individuals .... Financial responsibility for nonlinked individuals ... remained with the counties.” (Flag *Lackner, supra*, 97 Cal.App.3d at p. 581.)
- 5 In this opinion, the terms “adult MIP's” and “Medically Indigent Adults” refer only to those persons who were excluded from the Medi-Cal program by the 1982 legislation.
- 6 San Diego lodged with the trial court a copy of the Commission's decision in the Los Angeles action.
- 7 In setting forth the facts relating to the Los Angeles action, we rely in part on the appellate record from that action, of which we take judicial notice. (Evid. Code, §§ 452, subd. (d), 459.)
- 8 The settlement resulted from 1991 legislation that changed the system of health care funding as of June 30, 1991. (See § 17600 et seq.; Stats. 1991, chs. 87, 89, pp. 231-235, 243-341.) That legislation provided counties with new revenue sources, including a portion of state vehicle license fees, to fund health care programs. However, the legislation declared that the statutes providing counties with vehicle license fees would “cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal” that “[t]he state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982.” (Flag *Rev. & Tax. Code*, §§ 10753.8, subd. (b)(2), 11001.5, subd. (d)(2); see also Stats. 1991, ch. 89, § 210, p. 340.) Los Angeles and San Bernardino Counties settled their action to avoid triggering these provisions. Unlike the dissent, we do not believe that consideration of these recently enacted provisions is appropriate in analyzing the 1982 legislation. Nor do we assume, as the dissent does, that our decision necessarily triggers these provisions. That issue is not before us.
- 9 The cross-complaint named the following state officers: (1) Kenneth W. Kizer, Director of the Department of Health Services; (2) Kim Belshé, Acting Secretary of the Health and Welfare Agency; (3) Gray Davis, the State Controller; (4) Kathleen Brown, the State Treasurer; and (5) Thomas Hayes, the Director of the Department of Finance. Where the context suggests, subsequent references in this opinion to “the state” include these officers.
- 10 The judgment dismissed all of San Diego's other claims.

11 In  *Garamendi, supra*, 20 Cal.App.4th at pages 771-775, the court discussed procedural requirements for raising a claim that another court has already exercised its concurrent jurisdiction. Given our conclusion that the trial court's error here was not jurisdictional, we express no opinion about this discussion in *Garamendi* or the sufficiency of the state's efforts to raise the issue in this case.

12 Notably, in discussing the options still available to San Diego, the state asserts that San Diego "might have been able to go to superior court and file a [mandamus] petition based on the record of the prior test claim."

13 "County General Assistance in California dates from 1855, and for many years afforded the only form of relief to indigents." ( *Mooney v. Pickett* (1971) 4 Cal.3d 669, 677 [94 Cal.Rptr. 279, 483 P.2d 1231] (*Mooney*).) **Section 17000** is substantively identical to former section 2500, which was enacted in 1937. (Stats. 1937, chs. 369, 464, pp. 1097, 1406.)

14 See also  *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639 [ 122 P.2d 526] (construing former section 2500);  *Jennings v. Jones* (1985) 165 Cal.App.3d 1083, 1091 [ 212 Cal.Rptr. 134] (counties must support all indigent persons "having no other means of support");  *Union of American Physicians & Dentists v. County of Santa Clara* (1983) 149 Cal.App.3d 45, 51, fn. 10 [ 196 Cal.Rptr. 602];  *Rogers v. Detrich* (1976) 58 Cal.App.3d 90, 95 [ 128 Cal.Rptr. 261] (counties have duty of support "where such support is not otherwise furnished").

15 In asserting that Medi-Cal coverage did not supplant San Diego's obligation under **section 17000**, the dissent incorrectly relies on  *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] (*Madera*) and  *Cooke, supra*, 213 Cal.App.3d 401. (Dis. opn., post, at p. 115.) In *Madera*, the court voided a county ordinance that extended county benefits under **section 17000** only to persons "meeting all eligibility standards for the Medi-Cal program." ( *Madera, supra*, 155 Cal.App.3d at p. 150.) The court explained: "Because all funding for the Medi-Cal program comes from either the federal or the state government ..., [c]ounty has denied any financial obligation whatsoever from county funds for the medical care of its indigent and poor residents." (*Ibid.*) Thus, properly understood, *Madera* held only that Medi-Cal does not relieve counties of their obligation to provide medical care to persons who are "indigent" within the meaning of **section 17000** but who are ineligible for Medi-Cal. The limit of *Madera*'s holding is apparent from the court's reliance on a 1979 opinion of the Attorney General discussing the scope of a county's authority under **section 17000**. (*Madera, supra*, 155 Cal.App.3d at pp. 151-152.) The Attorney General explained that "[t]he county obligation [under **section 17000**] to provide general relief extends to those indigents who do not qualify under specialized aid programs, ... including Medi-Cal." (62 Ops.Cal.Atty.Gen. 70, 71, fn. 1 (1979).) Moreover, the *Madera* court expressly recognized that state and federal programs "alleviate, to a greater or lesser extent, [a] [c]ounty's burden." (*Madera, supra*, 155 Cal.App.3d at p. 151.) In *Cooke*, the court simply made a passing reference to *Madera* in dictum describing the coverage history of Medi-Cal. ( *Cooke, supra*, 213 Cal.App.3d at p. 411.) It neither analyzed the issue before us nor explained the meaning of the dictum that the dissent cites.

16 As we have previously explained, even before 1971 the state, through the county option, assumed much of the financial responsibility for providing medical care to adult MIP's.

17 Because  *County of Los Angeles v. Commission on State Mandates, supra*, 32 Cal.App.4th 805, is distinguishable, we need not (and do not) express an opinion regarding the court's analysis in that decision or its conclusions.

18 The state properly does not contend that the provision of medical care to adult MIP's is not a "program" within the meaning of section 6. (See  *County of Los Angeles, supra*, 43 Cal.3d at p. 56 [section 6 applies to "programs that carry out the governmental function of providing services to the public"].)

19 Alternatively, the 1982 legislation can be viewed as having mandated an increase in the services that counties were providing through existing [section 17000](#) programs, by adding adult MIP's to the indigent population that counties already had to serve under that section. (See  *County of Los Angeles, supra*, 43 Cal.3d at p. 56 ["subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs' "].)

20 In reaching a contrary conclusion, the dissent ignores the electorate's purpose in adopting section 6. The dissent also mischaracterizes our decision. We do not hold that "whenever there is a change in a state program that has the effect of increasing a county's financial burden under [section 17000](#) there must be reimbursement by the state." (Dis. opn., *post*, at p. 116.) Rather, we hold that section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before adoption of section 6. Whether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us.

21 As amended in 1982, section 16704, subdivision (c)(1), provided in relevant part: "The [county board of supervisors] shall assure that it will expend [MISA] funds only for the health services specified in Sections 14132 and 14021 provided to persons certified as eligible for such services pursuant to [Section 17000](#) and shall assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount required to obtain the maximum allocation under [Section 16702](#)." (Stats. 1982, ch. 1594, § 70, p. 6346.) Section 16704, subdivision (c)(3), provided in relevant part: "Any person whose income and resources meet the income and resource criteria for certification for services pursuant to [Section 14005.7](#) other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which would deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service .... The provisions of this paragraph shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandates [sic] that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1983, unless a later enacted statute extends or deletes that date." (Stats. 1982, ch. 1594, § 70, pp. 6346-6347.)

22 [Section 17001](#) provides: "The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county."

23 We disapprove  *Bay General, supra*, 156 Cal.App.3d at pages 959-960, insofar as it (1) states that a county's responsibility under [section 17000](#) extends only to indigents as defined by the county's board of supervisors, and (2) suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of [section 17000](#) but do not qualify for Medi-Cal.

24 Our conclusion is limited to this aspect of a county's duty under [section 17000](#). We express no opinion regarding the scope of a county's duty to provide other forms of relief and support under [section 17000](#).

25 The 1982 legislation made the subdivision operative until June 30, 1983. (Stats. 1982, ch. 1594, § 70, p. 6347.) In 1983, the Legislature repealed and reenacted section 16704, and extended the operative date of subdivision (c)(3) to June 30, 1985. (Stats. 1983, ch. 323, §§ 131.1, 131.2, pp. 1079-1080.)

26 Given our analysis, we express no opinion about the statement in [Cooke, supra, 213 Cal.App.3d at page 412, footnote 9](#), that the "life" of section 16704, subdivision (c)(3), "was implicitly extended" by the fact that the "paragraph remains in the statute despite three subsequent amendments to the statute ...."

27 Although asserting that nothing required San Diego to provide "all" adult MIP's with medical care, the state never precisely identifies which adult MIP's were legally entitled to medical care and which ones were not. Nor does the state ever directly assert that some adult MIP's were not "indigent persons" under [section 17000](#). On the contrary, despite its argument, the state seems to suggest that San Diego's medical care obligation under [section 17000](#) extended even beyond adult MIP's. It asserts: "At no time prior to or following 1983 did Medi-Cal ever provide medical services to, or pay for medical services provided to, all persons who could not afford such services and therefore might be deemed 'medically indigent.' ... For some period prior to 1983, Medi-Cal paid for services for *some* indigent adults under its 'medically indigent adults' category.... [A]t no time did the state ever assume financial responsibility for all adults who are too indigent to afford health care." (Original italics.)

28 The state argues that former subdivision (c) is irrelevant to our determination because, like [section 17000](#), it "predate[d] 1975." Our previous analysis rejecting this argument in connection with [section 17000](#) applies here as well.

29 Statutes 1992, chapter 719, section 2, page 2882, repealed former subdivision (c) and enacted a new subdivision (c) in its place. This urgency measure was approved by the Governor on September 14, 1992, and filed with the Secretary of State on September 15, 1992.

30 We disapprove [Cooke, supra, 213 Cal.App.3d at page 410](#), to the extent it held that [Health and Safety Code section 1442.5](#), former subdivision (c), was merely "a limitation on a county's ability to close facilities or reduce services provided in those facilities," and was irrelevant absent a claim that a "county facility was closed [or] that any services in [the] county ... were reduced." Although former subdivision (c) was contained in a section that dealt in part with closures and service reductions, nothing limited its reach to that context.

31 During further proceedings before the Commission to determine the amount of reimbursement due San Diego, the state may argue that particular services available under San Diego's CMS program exceeded statutory requirements.

32 Consistent with the electorate's direction, in its application for CHIP funds, San Diego assured the state that it would "[e]xpend [CHIP] funds only to supplement existing levels of services provided and not to fund existing levels of service ...." Because San Diego's initial decision to seek CHIP funds was voluntary, the evidence it cites of state threats to withhold CHIP funds if it eliminated the CMS program is irrelevant.

33 Former section 16991, subdivision (a)(5), provided in full: "If the sum of funding that a county received from its allocation pursuant to [Section 16703](#), the amount of reimbursement it received from federal State Legalization Impact Assistance Grant [(SLIAG)] funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to [Section 16703](#) in fiscal year 1988-89 the state shall reimburse the county for the amount of the difference. For the 1990-91 fiscal year, if the

sum of funding received from its allocation, pursuant to  [Section 16703](#) and the amount of reimbursement it received from [SLIAG] Funding for indigent care that year is less than the amount of funding the county received pursuant to  [Section 16703](#) in the 1988-89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement." (Stats. 1989, ch. 1331, § 9, p. 5428.)

34 Despite its argument here, when it initially appealed, the state apparently recognized that it could no longer challenge the May 1991 order. In its March 1993 notice of appeal, it appealed only from the judgment entered December 18, 1992, and did not mention the May 1991 order.

\* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

† Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

1 I agree with the majority that the superior court had jurisdiction to decide this case. (Maj. opn.,  [ante](#), at pp. 86-90.)

2 [Section 6 of article XIII B](#) pertains to two types of mandates: new programs and higher levels of service. The words "such subvention" in the first paragraph of this constitutional provision makes the subdivision (c) exemption applicable to both types of mandates.

 KeyCite Yellow Flag - Negative Treatment

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53 Cal.3d 482, 808 P.2d 235, 280 Cal.Rptr. 92

Supreme Court of California

COUNTY OF FRESNO, Plaintiff and Appellant,  
v.

THE STATE OF CALIFORNIA et  
al., Defendants and Respondents.

No. S015637.

Apr 22, 1991.

## SUMMARY

A county filed a test claim with the Commission on State Mandates seeking, under [Cal. Const., art. XIII B, § 6](#) (state must provide subvention of funds to reimburse local governments for costs of state-mandated programs or increased levels of service), reimbursement from the state for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act ([Health & Saf. Code, § 25500 et seq.](#)). The commission found the county had the authority to charge fees to pay for the program, and the program was thus not a reimbursable state-mandated program under  [Gov. Code, § 17556, subd. \(d\)](#), which provides that costs are not state-mandated if the agency has authority to levy a charge or fee sufficient to pay for the program. The county filed a petition for writ of mandate and a complaint for declaratory relief against the state. The trial court denied relief. (Superior Court of Fresno County, No. 379518-4, Gary S. Austin, Judge.) The Court of Appeal, Fifth Dist., No. F011925, affirmed.

The Supreme Court affirmed the decision of the Court of Appeal. The court held, as to the single issue on review, that  [Gov. Code, § 17556, subd. \(d\)](#), was facially constitutional under [Cal. Const., art. XIII B, § 6](#). It held [art. XIII B](#) was not intended to reach beyond taxation, and [§ 6](#) was included in [art. XIII B](#) in recognition that [Cal. Const., art. XIII A](#), severely restricted the taxing powers of local governments. It held that [art. XIII B, § 6](#) was designed to protect the tax revenues of local governments from state mandates that would require an expenditure of such revenues and, when read in textual and historical context, requires subvention only

when the costs in question can be recovered solely from tax revenues. Accordingly, the court held that  [Gov. Code, § 17556, subd. \(d\)](#), effectively construed the term "cost" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that such a construction is altogether sound. (Opinion by Mosk, J., with Lucas, C. J., Broussard, \*483 Panelli, Kennard, JJ., and Best (Hollis G.), J., \* concurring. Separate concurring opinion by Arabian, J.)

## HEADNOTES

### Classified to California Digest of Official Reports

(1)

State of California § 11--Reimbursement to Local Governments for State-mandated Costs--Costs for Which Fees May Be Levied--Validity of Exclusion.

In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by [Cal. Const., art. XIII B, § 6](#), to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act ([Health & Saf. Code, § 25500 et seq.](#)), the trial court properly found

that  [Gov. Code, § 17556, subd. \(d\)](#) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was facially constitutional. [Cal. Const., art. XIII B](#), was intended to apply to taxation and was not intended to reach beyond taxation, as is apparent from its language and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues; read in its textual and historical contexts, requires subvention only when the costs in question can be recovered solely from

tax revenues.  [Gov. Code, § 17556, subd. \(d\)](#), effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound.

Accordingly,  [Gov. Code, § 17556, subd. \(d\)](#), is facially constitutional under [Cal. Const., art. XIII B, § 6](#).

[See [Cal.Jur.3d \(Rev\)](#), Municipalities, § 361; [9 Witkin, Summary of Cal. Law \(9th ed. 1988\)](#) Taxation, § 124.]

COUNSEL

Max E. Robinson, County Counsel, and Pamela A. Stone, Deputy County Counsel, for Plaintiff and Appellant.

B. C. Barnum, County Counsel (Kern), and Patricia J. Randolph, Deputy County Counsel, as Amici Curiae on behalf of Plaintiff and Appellant. \*484

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, and Richard M. Frank, Deputy Attorney General, for Defendants and Respondents.

## MOSK, J.

We granted review in this proceeding to decide whether [§ 17556](#), subdivision (d), of the [Government Code](#) ([§ 17556\(d\)](#)) is facially valid under [article XIII B, section 6, of the California Constitution](#) ([article XIII B, section 6](#)).

[Article XIII B, section 6](#), 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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

The Legislature enacted [Government Code](#) sections 17500 through 17630 to implement [article XIII B, section 6](#). ([Gov. Code, § 17500](#).) It created a “quasi-judicial body” (*ibid.*) called the Commission on State Mandates (commission) (*id.*, § 17525) to “hear and decide upon [any] claim” by a local government that the local government “is entitled to be reimbursed by the state for costs” as required by [article XIII B, section 6](#). ([Gov. Code, § 17551, subd. \(a\)](#).) It defined “costs” as “costs mandated by the state”—“any increased costs” that the local government “is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program” within the meaning of [article XIII B, section 6](#).

([Gov. Code, § 17514](#).) Finally, in [§ 17556\(d\)](#) it declared that “The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that” the local government “has the authority to levy

service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.”

For the reasons discussed below, we conclude that [§ 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#). \*485

## I. Facts and Procedural History

The present proceeding arose after the Legislature enacted the Hazardous Materials Release Response Plans and Inventory Act (Act). ([Health & Saf. Code, § 25500 et seq.](#)) The Act establishes minimum statewide standards for business and area plans relating to the handling and release or threatened release of hazardous materials. (*Id.*, § 25500.) It requires local governments to implement its provisions. (*Id.*, § 25502.) To cover the costs they may incur, it authorizes them to collect fees from those who handle hazardous materials. (*Id.*, § 25513.)

The County of Fresno (County) implemented the Act but chose not to impose the authorized fees. Instead, it filed a so-called “test” or initial claim with the commission ([Gov. Code, § 17521](#)) seeking reimbursement from the State of California (State) under [article XIII B, section 6](#). After a hearing, the commission rejected the claim. In its statement of decision, the commission made the following findings, among others: the Act constituted a “new program”; the County did indeed incur increased costs; but because it had authority under the Act to levy fees sufficient to cover such costs, [§ 17556\(d\)](#) prohibited a finding of reimbursable costs.

The County then filed a petition for writ of mandate and complaint for declaratory relief against the State, the commission, and others, seeking vacation of the commission’s decision and a declaration that [§ 17556\(d\)](#) is unconstitutional under [article XIII B, section 6](#). While the matter was pending, the commission amended its statement of decision to include another basis for denial of the test claim: the Act did not constitute a “program” under the rationale of [County of Los Angeles v. State of California \(1987\) 43 Cal.3d 46](#) [233 Cal.Rptr. 38, 729 P.2d 202] ([County of Los Angeles](#)), because it did not impose unique requirements on local governments.

After a hearing, the trial court denied the petition and effectively dismissed the complaint. It determined, inter

alia, that mandate under  [Code of Civil Procedure section 1094.5](#) was the County's sole remedy, and that the commission was the sole properly named respondent. It also determined that  [section 17556\(d\)](#) is constitutional under [article XIII B, section 6](#). It did not address the question whether the Act constituted a "program" under *County of Los Angeles*. Judgment was entered accordingly.

The Court of Appeal affirmed. It held the Act did indeed constitute a "program" under  *County of Los Angeles, supra*, 43 Cal.3d 46. It also held  [section 17556\(d\)](#) is constitutional under [article XIII B, section 6](#). \*486

(1) We granted review to decide a single issue, i.e., whether  [section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#).

## II. Discussion

We begin our analysis with the California Constitution. At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new "special taxes." ( *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [ 149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. ( *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [ 266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*)).

At the November 6, 1979, Special Statewide Election, [article XIII B](#) was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

"Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes." ( *City of Sacramento, supra*, 50 Cal.3d at p. 59, fn. 1.)

Article XIII B of the Constitution was intended to apply to taxation—specifically, to provide "permanent protection

for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels." (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument in favor of Prop. 4, p. 18.) To this end, it establishes an "appropriations limit" for both state and local governments ([Cal. Const., art. XIII B, § 8, subd. \(h\)](#)) and allows no "appropriations subject to limitation" in excess thereof (*id.*, § 2). (See *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 446.) It defines the relevant "appropriations subject to limitation" as "any authorization to expend during a fiscal year the proceeds of taxes ...." ([Cal. Const., art. XIII B, § 8, subd. \(b\)](#).) It defines "proceeds of taxes" as including "all tax revenues and the proceeds to ... government from," *inter alia*, "regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by [government] in providing the regulation, product, or service ...." ([Cal. Const., art. XIII B, § 8, subd. \(c\)](#), italics added.) Such "excess" proceeds from "licenses," "charges," and "fees" "are but \*487 taxes" for purposes here. (*County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 451, italics in original.)

Article XIII B of the Constitution, however, was not intended to reach beyond taxation. That fact is apparent from the language of the measure. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 "would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts." (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)

[Section 6](#) was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See  *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see  *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [ 244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such

revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context [section 6 of article XIII B](#) requires subvention only when the costs in question can be recovered *solely from tax revenues*.

In view of the foregoing analysis, the question of the facial constitutionality of [§ section 17556\(d\)](#) under [article XIII B, section 6](#), can be readily resolved. As noted, the statute provides that “The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that” the local government “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” Considered within its context, the section effectively construes the term “costs” in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that [§ section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#).

The County argues to the contrary. It maintains that [§ section 17556\(d\)](#) in essence creates a new exception to the reimbursement requirement of article [\\*488 XIII B, section 6](#), for self-financing programs and that the Legislature cannot create exceptions to the reimbursement requirement beyond those enumerated in the Constitution.

We do not agree that in enacting [§ section 17556\(d\)](#) the Legislature created a new exception to the reimbursement requirement of [article XIII B, section 6](#). As explained, the Legislature effectively—and properly—construed the term “costs” as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the requirement. Therefore, they need not be explicitly excepted from its reach.

The County nevertheless argues that no matter how characterized, [§ section 17556\(d\)](#) is indeed inconsistent with [article XIII B, section 6](#). Its contention is in substance as follows: the source of [§ section 17556\(d\)](#) is former Revenue and Taxation Code section 2253.2; at the time of Proposition 4, subdivision (b)(4) of that former section stated that the State

Board of Control shall not allow a claim for reimbursement of costs mandated by the state if the legislation contains a self-financing authority; the drafters of Proposition 4 incorporated some of the provisions of former Revenue and Taxation Code section 2253.2 into [article XIII B, section 6](#), but did not incorporate former subdivision (b)(4); their failure to do so reveals an intent to treat as immaterial the presence or absence of a “self-financing” provision; and such an intent is confirmed by the “legislative history” set out at page 55 in *Spirit of 13, Inc., Summary of Proposed Implementing Legislation and Drafters' Intent*: “the state may not arbitrarily declare that it is not going to comply with [Section 6](#) ... if the state provides new compensating revenues.”

In our view, the County's argument is unpersuasive. Even if we assume arguendo that the intent of those who drafted Proposition 4 is as claimed, what is crucial here is the intent of those who voted for the measure. (See [County of Los Angeles, supra, 43 Cal.3d 46, 56](#).) There is no substantial evidence that the voters sought what the County assumes the drafters desired. Moreover, the “legislative history” cited above cannot be considered relevant; it was written and circulated after the passage of Proposition 4. As such, it could not have affected the voters in any way.

To avoid this result, the County advances one final argument: “Based on the authority of [\[§ section 17556\(d\)\]](#), the Commission on State Mandates refuses to hear mandates on the merits once it finds that the authority to charge fees is given by the Legislature. This position is taken whether or not fees can actually or legally be charged to recover the entire costs of the program.” [\\*489](#)

The County appears to be making one or both of the following arguments: (1) the commission applies [§ section 17556\(d\)](#) in an unconstitutional manner; or (2) the Act's self-financing authority is somehow lacking. Such contentions, however, miss the designated mark. They raise questions bearing on the constitutionality of [§ section 17556\(d\)](#) as applied and the legal efficacy of the authority conferred by the Act. The sole issue on review, however, is the facial constitutionality of [§ section 17556\(d\)](#).

### III. Conclusion

For the reasons set forth above, we conclude that  section 17556(d) is facially constitutional under article XIII B, section 6.

The judgment of the Court of Appeal is affirmed.

Lucas, C. J., Broussard, J., Panelli, J., Kennard, J., and Best (Hollis G.), J., \* concurred.

**ARABIAN, J.,**

Concurring.

I concur in the determination that  Government Code section 17556, subdivision (d)<sup>1</sup> (section 17556(d)), does not offend article XIII B, section 6, of the California Constitution (article XIII B, section 6). In my estimation, however, the constitutional measure of the issue before us warrants fuller examination than the majority allow. A literalistic analysis begs the question of whether the Legislature had the authority to act statutorily upon a subject matter the electorate has spoken to constitutionally through the initiative process.

Article XIII B, section 6, unequivocally commands that “the state shall provide a subvention of funds to reimburse ... local government for the costs of [a new] program or increased level of service” except as specified therein. Article XIII B does not define this reference to “costs.” (See Cal. Const., art. XIII B, § 8.) Rather, the Legislature assumed the task of explicating the related concept of “costs mandated by the state” when it created the Commission on State Mandates and enacted procedures intended to implement article XIII B, section 6, more effectively. (See § 17500 et seq.) As part of this statutory scheme, it exempted the state from its constitutionally imposed subvention obligation under certain enumerated circumstances. Some of these exemptions the electorate expressly contemplated in approving article XIII B, section 6 ( § 17556, subds. (a), (c), & (g); see § 17514), while others are strictly of legislative formulation and derive from \*490 former Revenue and Taxation Code section 2253.2. ( § 17556, subds. (b), (d), (e), & (f).)

The majority find  section 17556 valid notwithstanding the mandatory language of article XIII B, section 6, based on the circular and conclusory rationale that “the Legislature

effectively—and properly—construed the term ‘costs’ as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the [subvention] requirement. Therefore, they need not be explicitly excepted from its reach.” (Maj. opn., *ante*, at p. 488<sup>ante</sup>, at p. 488.) In my view, excluding or otherwise removing something from the purview of a law is tantamount to creating an exception thereto. When an exclusionary implication is clear from the import or effect of the statutory language, use of the word “except” should not be necessary to construe the result for what it clearly is. In this circumstance, “I would invoke the folk wisdom that if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck.” ( *In re Deborah C.* (1981) 30 Cal.3d 125, 141  177 Cal.Rptr. 852, 635 P.2d 446] (conc. opn. by Mosk, J.))

Of at least equal importance, section 17500 et seq. constitutes a legislative implementation of article XIII B, section 6. As such, the overall statutory scheme must comport with the express constitutional language it was designed to effectuate as well as the implicit electoral intent. Eschewing semantics, I would squarely and forthrightly address the fundamental and substantial question of whether the Legislature could lawfully enlarge upon the scope of article XIII B, section 6, to include exceptions not originally designated in the initiative.

I do not hereby seek to undermine the majority holding but rather to set it on a firmer constitutional footing. “[S]tatutes must be given a reasonable interpretation, one which will carry out the intent of the legislators and render them valid and operative rather than defeat them. In so doing, sections of the Constitution, as well as the codes, will be harmonized where reasonably possible, in order that all may stand.” ( *Rose v. State of California* (1942) 19 Cal.2d 713, 723  123 P.2d 505]; see also  *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58  233 Cal.Rptr. 38, 729 P.2d 202].) To this end, it is a fundamental premise of our form of government that “the Constitution of this State is not to be considered as a grant of power, but rather as a restriction upon the powers of the Legislature; and ... it is competent for the Legislature to exercise all powers not forbidden ....” ( *People v. Coleman* (1854) 4 Cal. 46, 49.)

“Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people’s right of initiative and referendum, is vested in the \*491

Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] *In other words, 'we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.'* [Citation.] ¶ Secondly, all intemds favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations.]" (Methodist Hosp. of Sacramento v. Saylor (1971) 5 Cal.3d 685, 691 [97 Cal.Rptr. 1, 488 P.2d 161], italics added.) "Specifically, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms. [Citations.]" (Dean v. Kuchel (1951) 37 Cal.2d 97, 100 [230 P.2d 811].)

As the majority opinion impliedly recognizes, neither the language nor the intent of article XIII B conflicts with the exercise of legislative prerogative we review today. Of paramount significance, neither section 6 nor any other provision of article XIII B prohibits statutory delineation of additional circumstances obviating reimbursement for state mandated programs. (See Dean v. Kuchel, *supra*, 37 Cal.2d at p. 101; Roth Drugs, Inc. v. Johnson (1936) 13 Cal.App.2d 720, 729 [57 P.2d 1022]; see also Kehrlein v. City of Oakland (1981) 116 Cal.App.3d 332, 338 [172 Cal.Rptr. 111].)

Furthermore, the initiative was "billed as a flexible way to provide discipline in government spending" by creating appropriations limits to restrict the amount of such expenditures. (County of Placer v. Corin (1980) 113 Cal.App.3d 443, 447 [170 Cal.Rptr. 232]; see Cal. Const., art. XIII B, § 1.) By their nature, user fees do not affect the equation of local government spending: While they facilitate implementation of newly mandated state programs or increased levels of service, they are excluded from the "appropriations subject to limitations" calculation and its attendant budgetary constraints. (See Cal. Const., art. XIII B, § 8; see also City Council v. South (1983) 146 Cal.App.3d 320, 334 [194 Cal.Rptr. 110]; County of Placer v. Corin, *supra*, 113 Cal.App.3d at pp. 448-449; Cal. Const., art. XIII B, § 3, subd. (b); cf. Russ Bldg. Partnership v. City and County of San Francisco (1987) 199 Cal.App.3d 1496, 1505

[246 Cal.Rptr. 21] ["fees not exceeding the reasonable cost of providing the service or regulatory activity for which the fee is charged and which are not levied for general revenue purposes, have been considered outside the realm of "special taxes" [limited by California Constitution, article XIII A]"]; Terminal Plaza Corp. v. City \*492 and County of San Francisco (1986) 177 Cal.App.3d 892, 906 [223 Cal.Rptr. 379] [same].)

This conclusion fully accommodates the intent of the voters in adopting article XIII B, as reflected in the ballot materials accompanying the proposition. (See Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 245-246 [149 Cal.Rptr. 239, 583 P.2d 1281].) In general, these materials convey that "[t]he goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending." (County of Los Angeles v. State of California, *supra*, 43 Cal.3d at p. 61; Huntington Park Redevelopment Agency v. Martin (1985) 38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].) To the extent user fees are not borne by the general public or applied to the general revenues, they do not bear upon this purpose. Moreover, by imputation, voter approval contemplated the continued imposition of reasonable user fees outside the scope of article XIII B. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Limitation of Government Appropriations, Special Statewide Elec. (Nov. 6, 1979), arguments in favor of and against Prop. 4, p. 18 [initiative "Will curb excessive user fees imposed by local government" but "will Not eliminate user fees ..."]; see County of Placer v. Corin, *supra*, 113 Cal.App.3d at p. 452.)

"The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (County of Los Angeles v. State of California, *supra*, 43 Cal.3d at p. 56; see City of Sacramento v. State of California (1990) 50 Cal.3d 51, 66 [266 Cal.Rptr. 139, 785 P.2d 522].) "Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to

local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new

programs.” (🚩 *County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61.) An exemption from reimbursement for state mandated programs for which local governments are authorized to charge offsetting user fees does not frustrate or compromise these goals or otherwise disturb the balance of local government financing and expenditure.<sup>2</sup> (See \*493 *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 452, fn. 7.) Article XIII B, section 8, subdivision (c), specifically includes regulatory licenses, user charges, and user fees in the appropriations limitation equation only “to the extent that those proceeds exceed the costs reasonably borne by [the governmental] entity in providing the regulation, product, or service ....”

The self-executing nature of article XIII B does not alter this analysis. “It has been uniformly held that the legislature has the power to enact statutes providing for reasonable regulation and control of rights granted under constitutional provisions. [Citations.]” (🚩 *Chesney v. Byram* (1940) 15 Cal.2d 460, 465 [🚩 101 P.2d 1106].)

“Legislation may be desirable, by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its exact limits may be known and understood; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it.” [Citations.]<sup>1</sup> (🚩 *Id.*, at pp. 463-464; see also 🚩 *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [🚩 222 Cal.Rptr. 750].) 🚩 Section 17556(d) is not “merely [a] transparent attempt[] to do indirectly that which cannot lawfully be done directly.” (🚩 *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 541 [🚩 234 Cal.Rptr. 795].) On the contrary, it creates

no conflict with the constitutional directive it subserves. Hence, rather than pursue an interpretive expedient, this court should expressly declare that it operates as a valid legislative implementation thereof.

“[Initiative] provisions of the Constitution and of charters and statutes should, as a general rule, be liberally construed in favor of the reserved power. [Citations.] As opposed to that principle, however, ‘in examining and ascertaining the intention of the people with respect to the scope and nature of those ... powers, it is proper and important to consider what the consequences of applying it to a particular act of legislation would be, and if upon such consideration it be found that by so applying it the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential and, perhaps, ... indispensable, to the convenience, comfort, and well-being of the inhabitants of certain legally established districts or subdivisions of the state or of the whole state, then in such case the courts may and should assume that the people intended no such result to flow from the application of those powers and that they do not so apply.’ [Citation.]” (🚩 *Hunt v. Mayor & Council of Riverside* (1948) 31 Cal.2d 619, 628-629 [🚩 191 P.2d 426].)

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This court is not infrequently called upon to resolve the tension of apparent or actual conflicts in the express will of the people.<sup>3</sup> Whether that expression emanates directly from the ballot or indirectly through legislative implementation, each deserves our fullest estimation and effectuation. Given the historical and abiding role of government by initiative, I decline to circumvent that responsibility and accept uncritically the Legislature’s self-validating statutory scheme as the basis for approving the exercise of its prerogative. It is not enough to say a broader constitutional analysis yields the same result and therefore is unnecessary. We provide a higher quality of justice harmonizing rather than ignoring the diverse voices of the people, for such is the nature of our office. \*495

## Footnotes

\* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

\* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

1 Unless otherwise indicated, all further statutory references are to the Government Code.

2 This conclusion also accords with the traditional and historical role of user fees in promoting the multifarious functions of local government by imposing on those receiving a service the cost of providing it. (Cf. *County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 454 ["Special assessments, being levied only for improvements that benefit particular parcels of land, and not to raise general revenues, are simply not the type of exaction that can be used as a mechanism for circumventing these tax relief provisions. [Citation.]"].)

3 See, e.g.,  *Zumwalt v. Superior Court* (1989) 49 Cal.3d 167 [ 260 Cal.Rptr. 545, 776 P.2d 247];  *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197 [ 182 Cal.Rptr. 324, 643 P.2d 941];  *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171 [ 148 Cal.Rptr. 875, 583 P.2d 729];  *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575 [ 131 Cal.Rptr. 361, 551 P.2d 1193];  *Blotter v. Farrell* (1954) 42 Cal.2d 804 [ 270 P.2d 481]; *Dean v. Kuchel, supra*, 37 Cal.2d 97;  *Hunt v. Mayor & Council of Riverside, supra*, 31 Cal.2d 619.

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55 Cal.App.4th 976, 64 Cal.Rptr.2d 270, 97 Cal. Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464

REDEVELOPMENT AGENCY OF THE CITY  
OF SAN MARCOS, Plaintiff and Appellant,  
v.

CALIFORNIA COMMISSION ON STATE  
MANDATES, Defendant and Respondent;  
CALIFORNIA DEPARTMENT OF  
FINANCE, Intervener and Respondent.

No. D026195.

Court of Appeal, Fourth District, Division 1, California.

May 30, 1997.

## SUMMARY

The trial court denied a petition for a writ of administrative mandate brought by a city's redevelopment agency that challenged the California Commission on State Mandates' denial of the agency's test claim under [Gov. Code, § 17550 et seq.](#) (reimbursement of costs mandated by the state). In its claim, the agency sought a determination that the State of California should reimburse the agency for moneys transferred into its low and moderate-income housing fund pursuant to [Health & Saf. Code, §§ 33334.2 and 33334.3](#), of the Community Redevelopment Law. Those statutes require a 20 percent deposit of the particular form of financing received by the agency (tax increment financing generated from its project areas) for purposes of improving the supply of affordable housing. The agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under [Cal. Const., art. XIII B, § 6](#). The trial court found that the source of funds used by the agency was exempt, under [Health & Saf. Code, § 33678](#), from the scope of [Cal. Const., art. XIII B, § 6](#). (Superior Court of San Diego County, No. 686818, Sheridan E. Reed and Herbert B. Hoffman, Judges.)

The Court of Appeal affirmed. It held that under [Health & Saf. Code, § 33678](#), which provides that tax increment financing is not deemed to be the "proceeds of taxes," the

source of funds used by the agency was exempt \*977 from the scope of [Cal. Const., art. XIII B, § 6](#). Although [Cal. Const., art. XIII B, § 6](#), does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of [Health & Saf. Code, §§ 33334.2 and 33334.3](#). (Opinion by Huffman, J., with Work, Acting P. J., and McIntyre, J., concurring.)

## HEADNOTES

### Classified to California Digest of Official Reports

(1)

State of California § 11--Fiscal Matters--Subvention:Words, Phrases, and Maxims--Subvention.

"Subvention" generally means a grant of financial aid or assistance, or a subsidy.

(2)

State of California § 11--Fiscal Matters--Subvention--Judicial Rules.

Under [Gov. Code, § 17559](#), review by administrative mandamus is the exclusive method of challenging a decision of the California Commission on State Mandates to deny a subvention claim. The determination whether the statutes at issue established a mandate under [Cal. Const., art. XIII B, § 6](#), is a question of law. On appellate review, the following standards apply: [Gov. Code, § 17559](#), governs the proceeding below and requires that the trial court review the decision of the commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, the appellate court is generally confined to inquiring whether substantial evidence supports the trial court's findings and judgment. However, the appellate court independently reviews the trial court's legal conclusions

about the meaning and effect of constitutional and statutory provisions.

**(3a, 3b)**

State of California § 11--Fiscal Matters--Subvention--State-mandated Costs--Statutory Set-aside Requirement for Local Redevelopment Agency's Tax Increment Financing.

The California Commission on State Mandates properly denied a test claim brought by a city's redevelopment agency seeking a determination that the state should reimburse the agency for moneys transferred into its low and **\*978** moderate-income housing fund pursuant to [Health & Saf. Code, §§ 33334.2](#) and [33334.3](#), which require a 20 percent deposit of the particular form of financing received by the agency, i.e., tax increment financing generated from its project areas. Under [Health & Saf. Code, § 33678](#), which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of [Cal. Const., art. XIII B, § 6](#) (subvention). Although [Cal. Const., art. XIII B, § 6](#), does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of [Health & Saf. Code, §§ 33334.2](#) and [33334.3](#).

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

**(4)**

Constitutional Law § 10--Construction of Constitutional Provisions-- Limitations on Legislative Powers.

The rules of constitutional interpretation require a strict construction of a constitutional provision that contains limitations and restrictions on legislative powers, because such limitations and restrictions are not to be extended to include matters not covered by the language used.

**(5)**

State of California § 11--Fiscal Matters--Subvention--Purpose of Constitutional Provisions.

The goal of Cal. Const., arts. XIII A and XIII B, is to protect California residents from excessive taxation and government spending. A central purpose of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government of state-mandated costs), is to prevent the state's transfer of the cost of government from itself to the local level.

**COUNSEL**

Higgs, Fletcher & Mack and John Morris for Plaintiff and Appellant.

Gary D. Hori for Defendant and Respondent. **\*979**

Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, Linda A. Cabatic and Daniel G. Stone, Deputy Attorneys General, for Intervener and Respondent.

**HUFFMAN, J.**

The California Commission on State Mandates (the Commission) denied a test claim by the Redevelopment Agency of the City of San Marcos (the Agency) ([Gov. Code, § 17550 et seq.](#)), which sought a determination that the State of California should reimburse the Agency for moneys transferred into its Low and Moderate Income Housing Fund (the Housing Fund) pursuant to [Health and Safety Code](#)<sup>1</sup> [sections 33334.2](#) and [33334.3](#). Those sections require a 20 percent deposit of the particular form of financing received by the Agency, tax increment financing generated from its project areas, for purposes of improving the supply of affordable housing. (1) (See fn. 2) The Agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under [article XIII B of the California Constitution, section 6](#) (hereafter [section 6](#); all further references to articles are to the California Constitution).<sup>2</sup> ([Cal. Const., art. XVI, § 16](#); § 33670.)

The Agency brought a petition for writ of administrative mandamus to challenge the decision of the Commission.

( [Code Civ. Proc., § 1094.5](#); [Gov. Code, § 17559](#).) The superior court denied the petition, ruling that the source of funds used by the Agency for redevelopment, tax increment financing, was exempt pursuant to [section 33678](#) from the

scope of [section 6](#), as not constituting “proceeds of taxes” which are governed by that section. The superior court did not rule upon the alternative grounds of decision stated by the Commission, i.e., the 20 percent set-aside requirement for lowand moderate-income housing did not impose a new program or higher level of service in an existing program within the meaning of [section 6](#), and, further, there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency.

The Agency appeals the judgment denying its petition for writ of mandate. For the reasons set forth below, we affirm. [\\*980](#)

### I. Procedural Context

This test claim was litigated before the Commission pursuant to statutory procedures for determining whether a statute imposes state-mandated costs upon a local agency which must be reimbursed, through a subvention of funds, under [section 6](#). ([Gov. Code, § 17500 et seq.](#))<sup>3</sup> The Commission hearing consisted of oral argument on the points and authorities presented.

(2) Under [Government Code section 17559](#), review by administrative mandamus is the exclusive method of challenging a Commission decision denying a subvention claim. “The determination whether the statutes here at issue established a mandate under [section 6](#) is a question of law. [Citation.]” ( *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109 [ 61 Cal.Rptr.2d 134, 931 P.2d 312].) On appellate review, we apply these standards: “[Government Code section 17559](#) governs the proceeding below and requires that the trial court review the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]” ( *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810 [ 53 Cal.Rptr.2d 521].)

### II. Statutory Schemes

Before we outline the statutory provisions setting up tax increment financing for redevelopment agencies, we first set

forth the Supreme Court's recent summary of the history and substance of the law applicable to state mandates, such as the Agency claims exist here: “Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which 'imposes a limit on the power of state and local governments to [\\*981](#) adopt and levy taxes. [Citation.]' [Citation.] The next year, the voters added article XIII B to the Constitution, which 'impose[s] a complementary limit on the rate of growth in governmental spending.' [Citation.] These two constitutional articles 'work in tandem, together restricting California governments' power both to levy and to spend for public purposes.' [Citation.] Their goals are 'to protect residents from excessive taxation and government spending. [Citation.]' [Citation.]’ ( *County of San Diego v. State of California*, *supra*, 15 Cal.4th at pp. 80-81.)

[Section 6](#), part of article XIII B and the provision here at issue, requires that whenever the Legislature or any state agency mandates a “new program or higher level of service” on any local government, “ 'the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service ....' ” (*County of San Diego v. State of California*, *supra*, 15 Cal.4th at p. 81, italics added.) Certain exceptions are then stated, none of which is relevant here.<sup>4</sup>

In *County of San Diego v. State of California*, *supra*, 15 Cal.4th at page 81, the Supreme Court explained that [section 6](#) represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies. The purpose of the section is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations under articles XIII A and XIII B. (*County of San Diego v. State of California*, *supra*, at p. 81.)

To evaluate the Agency's argument that the provisions of [sections 33334.2](#) and [33334.3](#), requiring a deposit into the housing fund of 20 percent of the tax increment financing received by the Agency, impose this type of reimbursable governmental program or a higher level of service under an existing program, we first review the provisions establishing financing for redevelopment agencies. Such agencies have no independent powers of taxation ( [\\*982](#) *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100,

106 [¶ 211 Cal.Rptr. 133, 695 P.2d 220]), but receive a portion of tax revenues collected by other local agencies from property within a redevelopment project area, which may result from the following scheme: “Redevelopment agencies finance real property improvements in blighted areas. Pursuant to [article XVI, section 16 of the Constitution](#), these agencies are authorized to use tax increment revenues for redevelopment projects. The constitutional mandate has been implemented through the Community Redevelopment Law ([Health & Saf. Code, § 33000 et seq.](#)). [¶] The Community Redevelopment Law authorizes several methods of financing; one is the issuance of tax allocation bonds. Tax increment revenue, the increase in annual property taxes attributable to redevelopment improvements, provides the security for tax allocation bonds. Tax increment revenues are computed as follows: The real property within a redevelopment project area is assessed in the year the redevelopment plan is adopted. Typically, after redevelopment, property values in the project area increase. The taxing agencies (e.g., city, county, school or special district) keep the tax revenues attributable to the original assessed value and pass the portion of the assessed property value which exceeds the original assessment on to the redevelopment agency. ([Health & Saf. Code, §§ 33640, 33641, ¶ 33670, 33675](#)). In short, tax increment financing permits a redevelopment agency to take advantage of increased property tax revenues in the project areas without an increase in the tax rate. This scheme for redevelopment financing has been a part of the California Constitution since 1952. ([Cal. Const., art. XVI, § 16.](#))” (*Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016-1017 [214 Cal.Rptr. 626].)<sup>5</sup>

In *Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pages 1016-1018, the court determined that by enacting [section 33678](#), the Legislature interpreted article XIII B of the Constitution as not broad enough in reach to cover the raising or spending of tax increment revenues by redevelopment agencies. Specifically, the court decided the funds a redevelopment agency receives from tax increment financing do not constitute “proceeds of taxes” subject to article XIII B appropriations limits. (*Brown v. Community Redevelopment Agency, supra*, at p. 1019).<sup>6</sup> This ruling was based on [section 33678](#), providing in pertinent part: “This section implements and fulfills the intent ... of Article XIII B and [\\*983 Section 16 of Article XVI of the California Constitution](#). *The allocation and payment to an agency of the portion of taxes specified in ¶ subdivision (b) of Section*

*33670 for the purpose of paying principal of, or interest on ... indebtedness incurred for redevelopment activity ... shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning of or for the purposes of Article XIII B ... nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B ... or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution.”* (Italics added.)

In *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451 [170 Cal.Rptr. 232], the court defined “proceeds of taxes” in this way: “Under [article XIII B](#), with the exception of state subventions, the items that make up the scope of ‘proceeds of taxes’ concern charges levied to raise *general revenues* for the local entity. ‘Proceeds of taxes,’ in addition to ‘all tax revenues’ includes ‘proceeds ... from ... regulatory licenses, user charges, and user fees [only] to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service....’” ([§ 8, subd. \(c.\)](#)) (Italics added.) Such ‘excess’ regulatory or user fees are but *taxes* for the raising of general revenue for the entity. [Citations.] Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. [Citation.] *We conclude ‘proceeds of taxes’ generally contemplates only those impositions which raise general tax revenues for the entity.*” (Italics added.)<sup>7</sup>

(3a) In light of these interrelated sections and concepts, our task is to determine whether the 20 percent Housing Fund set-aside requirement of a redevelopment agency’s tax increment financing qualifies under [section 6](#) as a “cost” of a program. As will be explained, we agree with the trial court that the resolution of this issue is sufficient to dispose of the entire matter, and [\\*984](#) accordingly we need not discuss the alternate grounds of decision stated by the Commission.<sup>8</sup>

### III. Housing Fund Allocations: Reimbursable Costs?

#### 1. Arguments

The Agency takes the position that the language of [section 33678](#) is simply inapplicable to its claim for subvention

of funds required to be deposited into the Housing Fund. It points out that **section 6** expressly lists three exceptions to the requirement for subvention of funds to cover the costs of state-mandated programs: (a) Legislative mandates requested by the local agency affected; (b) legislation defining or changing a definition of a crime; or (c) pre-1975 legislative mandates or implementing regulations or orders. (See fn. 4, *ante. ante.*) None of these exceptions refers to the source of the funding originally used by the agency to pay the costs incurred for which reimbursement is now being sought. Thus, the agency argues it is immaterial that under **section 33678**, *for purposes of appropriations limitations*, tax increment financing is not deemed to be the “proceeds of taxes.” (*Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pp. 1017-1020.) The Agency would apply a “plain meaning” rule to **section 6** (see, e.g., *Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234 [272 Cal.Rptr. 139, 794 P.2d 897]) and conclude that the source of the funds used to pay the program costs up front, before any subvention, is not stated in the section and thus is not relevant.

As an illustration of its argument that the source of its funds is irrelevant under **section 6**, the Agency cites to **Government Code section 17556**. That section is a legislative interpretation of **section 6**, creating several classes of state-mandated programs for which no state reimbursement of local agencies for costs incurred is required. In *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [280 Cal.Rptr. 92, 808 P.2d 235], the Supreme Court upheld the facial constitutionality of **Government Code section 17556**, subdivision (d), which disallows state subvention of funds where the local government is authorized to collect service charges or fees in connection with a mandated program. The court explained that **section 6** “was designed to protect the tax revenues of local governments from state mandates that \*985 would require expenditure of such revenues.” (*County of Fresno v. State of California, supra*, at p. 487.) Based on the language and history of the measure, the court stated, “Article XIII B of the Constitution, however, was not intended to reach beyond taxation.” (*Ibid.*) The court therefore concluded that in view of its textual and historical context, **section 6** “requires subvention only when the costs in question can be recovered *solely from tax revenues.*” (*Ibid.*, original italics.) Interpreting **section 6**, the court stated: “Considered within its context, the section effectively construes the term ‘costs’ in the constitutional provision as excluding expenses that are recoverable from

sources other than taxes.” (*Ibid.*) No subvention was required where the local authority could recover its expenses through fees or assessments, not taxes.

## 2. Interpretation of **Section 6**

Here, the Agency contends the authority of **County of Fresno v. State of California, supra**, 53 Cal.3d 482, should be narrowly read to cover only self-financing programs, and the Supreme Court’s broad statements defining “costs” in this context read as mere dicta. It also continues to argue for a “plain meaning” reading of **section 6**, which it reiterates does not expressly discuss the source of funds used by an agency to pay the costs of a program before any reimbursement is sought. We disagree with both of these arguments. The correct approach is to read **section 6** in light of its historical and textual context. (4) The rules of constitutional interpretation require a strict construction of **section 6**, because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. (**City of San Jose v. State of California, supra**, 45 Cal.App.4th at pp. 1816-1817.)

(5) The goals of articles XIII A and XIII B are to protect California residents from excessive taxation and government spending. (*County of Los Angeles v. State of California, supra*, 15 Cal.4th at p. 81.) A central purpose of **section 6** is to prevent the state’s transfer of the cost of government from itself to the local level. (**City of Sacramento v. State of California, supra**, 50 Cal.3d at p. 68.) ( 3b) The related goals of these enactments require us to read the term “costs” in **section 6** in light of the enactment as a whole. The “costs” for which the Agency is seeking reimbursement are its deposits of tax increment financing proceeds into the Housing Fund. Those tax increment financing proceeds are normally received pursuant to the Community Redevelopment Law (§ 33000 et seq.) when, after redevelopment, the taxing agencies collect and keep the tax revenues attributable to the original assessed value and pass on to the redevelopment agency the portion of the \*986 assessed property value which exceeds the original assessment. (*Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pp. 1016-1017.) Is this the type of expenditure of tax revenues of local governments, upon state mandates which require use of such revenues, against which **section 6** was designed to protect? (**County of Fresno v. State of California, supra**, 53 Cal.3d at p. 487.)

### 3. Relationship of Appropriations Limitations and Subvention

We may find assistance in answering this question by looking to the type of appropriations limitations imposed by article XIII B. In *County of Placer v. Corin, supra*, 113 Cal.App.3d at page 447, the court described the discipline imposed by article XIII B in this way: “[A]rticle XIIIIB does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on 'appropriations subject to limitation,' which consists primarily of the authorization to expend during a fiscal year the 'proceeds of taxes.' (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute 'proceeds of taxes.'”<sup>9</sup>

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any “proceeds of taxes.” Nor do they raise, through tax increment financing, “general revenues for the local entity.” (*County of Placer v. Corin, supra*, 113 Cal.App.3d at p. 451, original italics.) The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of sections 33334.2 and 33334.3. (See *City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68.) The state is not transferring to the Agency the operation and administration of a program for which it was formerly legally

and financially \*987 responsible. (County of Los Angeles v. Commission on State Mandates (1995) 32 Cal.App.4th 805, 817 [38 Cal.Rptr.2d 304].)<sup>10</sup>

For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIII B appropriations limits also support denying reimbursement under section 6 for this particular allocation of those revenues to the Housing Fund. Tax increment financing is not within the scope of article XIII B. (*Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pp. 1016-1020.) Section 6 “requires subvention only when the costs in question can be recovered *solely from tax revenues.*” (County of Fresno v. State of California, supra, 53 Cal.3d at p. 487, original italics.) No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes. Here, these costs of depositing tax increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies' collection of tax revenues. (§ 33000 et seq.) Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable “cost” under section 6. We therefore need not interpret any remaining portions of section 6.

### Disposition

The judgment is affirmed.

Work, Acting P. J., and McIntyre, J., concurred.  
Appellant's petition for review by the Supreme Court was denied September 3, 1997.

### Footnotes

1 All further statutory references are to the Health and Safety Code unless otherwise noted.

2 “Subvention” generally means a grant of financial aid or assistance, or a subsidy. [Citation.]” (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [15 Cal.Rptr.2d 547].)

3 In our prior opinion issued in this case, we determined the trial court erred when it denied the California Department of Finance (DOF) leave to intervene as an indispensable party and a real party in interest

in the mandamus proceeding. (🚩 [Redevelopment Agency v. Commission on State Mandates \(1996\) 43 Cal.App.4th 1188, 1194-1199 \[51 Cal.Rptr.2d 100\]](#).) Thus, DOF is now a respondent on this appeal, as is the Commission (sometimes collectively referred to as respondents). However, our decision in that case was a collateral matter and does not assist us on the merits of this proceeding.

- 4 Section 6 lists the following exclusions to the requirement for subvention of funds: "(a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." In FLAG [City of Sacramento v. State of California \(1990\) 50 Cal.3d 51, 69 \[266 Cal.Rptr. 139, 785 P.2d 522\]](#), the Supreme Court identified these items as exclusions of otherwise reimbursable programs from the scope of [section 6](#). (See also [Gov. Code, § 17514](#), definition of "costs mandated by the state," using the same "new program or higher level of service" language of [section 6](#).)
- 5 Section 33071 in the Community Redevelopment Law provides that a fundamental purpose of redevelopment is to expand the supply of low and moderate-income housing, as well as expanding employment opportunities and improving the social environment.
- 6 The term of art, "proceeds of taxes," is defined in [article XIII B, section 8](#), as follows: (c) "*'Proceeds of taxes' shall include, but not be restricted to, all tax revenues* and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state, other than pursuant to [Section 6](#), and, with respect to the state, proceeds of taxes shall exclude such subventions." (Italics added.)
- 7 The issues before the court in [County of Placer v. Corin, supra, 113 Cal.App.3d 443](#) were whether special assessments and federal grants should be considered proceeds of taxes; the court held they should not. [Section 6](#) is not discussed; the court's analysis of other concepts found in [article XIII B](#) is nevertheless instructive.
- 8 The alternate grounds of the Commission's decision were that there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency, and that the set-aside requirement did not constitute a mandated "new program or higher level of service" under this section.
- 9 The term of art, "appropriations subject to limitation," is defined in [article XIII B, section 8](#), as follows: [¶] (b) "*'Appropriations subject to limitation'* of an entity of local government means any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity* and the proceeds of state subventions to that entity (other than subventions made pursuant to [Section 6](#)) exclusive of refunds of taxes." (Italics added.)
- 10 We disagree with respondents that the legislative history of [sections 33334.2](#) and [33334.3](#) is of assistance here, specifically, that section 23 of the bill creating these sections provided that no appropriations were made by the act, nor was any obligation for reimbursements of local agencies created for any costs incurred in carrying out the programs created by the act. (Stats. 1976, ch. 1337, § 23, pp. 6070-6071.) As stated in [City of San Jose v. State of California, supra, 45 Cal.App.4th at pages 1817-1818](#), legislative findings regarding mandate are irrelevant to the issue to be decided by the Commission, whether a state mandate exists.

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54 Cal.3d 326, 814 P.2d 1308, 285 Cal.Rptr. 66

Supreme Court of California

FRANCES KINLAW et al., Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA et al., Defendants and Respondents.

No. S014349.

Aug 30, 1991.

## SUMMARY

Medically indigent adults and taxpayers brought an action pursuant to  [Code Civ. Proc., § 526a](#), against the state, alleging that it had violated [Cal. Const., art. XIII B, § 6](#) (reimbursement of local governments for state-mandated new programs), by shifting its financial responsibility for the funding of health care for the poor onto the county without providing the necessary funding, and that as a result the state had evaded its constitutionally mandated spending limits. The trial court granted summary judgment for the State after concluding plaintiffs lacked standing to prosecute the action. (Superior Court of Alameda County, No. 632120-4, Henry Ramsey, Jr., and Demetrios P. Agretelis, Judges.) The Court of Appeal, First Dist., Div. Two, Nos. A041426 and A043500, reversed.

The Supreme Court reversed the judgment of the Court of Appeal, holding the administrative procedures established by the Legislature ([Gov. Code, § 17500 et seq.](#)), which are available only to local agencies and school districts directly affected by a state mandate, were the exclusive means by which the state's obligations under [Cal. Const., art. XIII B, § 6](#), were to be determined and enforced. Accordingly, the court held plaintiffs lacked standing to prosecute the action. (Opinion by Baxter, J., with Lucas, C. J., Panelli, Kennard, and Arabian, JJ., concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.)

## HEADNOTES

## Classified to California Digest of Official Reports

(1)

State of California § 7--Actions--State-mandated Costs--Reimbursement-- Exclusive Statutory Remedy.

[Gov. Code, § 17500 et seq.](#), creates an administrative forum for resolution of state mandate claims arising under [Cal. Const., art. XIII B, § 6](#), and establishes \*327 procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid. It also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid ([Gov. Code, § 17612](#)). In view of the comprehensive nature of the legislative scheme, and from the expressed intent, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [Cal. Const., art. XIII B, § 6](#).

(2)

State of California § 7--Actions--State-mandated Costs--Reimbursement-- Private Action to Enforce--Standing.

In an action by medically indigent adults and taxpayers seeking to enforce [Cal. Const., art. XIII B, § 6](#), for declaratory and injunctive relief requiring the state to reimburse the county for the cost of providing health care services to medically indigent adults who, prior to 1983, had been included in the state Medi-Cal program, the Court of Appeal erred in holding that the existence of an administrative remedy ([Gov. Code, § 17500 et seq.](#)) by which affected local agencies could enforce their constitutional right under [art. XIII B, § 6](#) to reimbursement for the cost of state mandates did not bar the action. Because the right involved was given by the Constitution to local agencies and school districts, not individuals either as taxpayers or recipients of government benefits and services, the administrative remedy was adequate fully to implement the constitutional provision. The Legislature has the authority to establish procedures for the implementation of local agency rights under [art. XIII B, § 6](#); unless the exercise of a constitutional right is unduly restricted, a court must limit enforcement to the procedures established by the Legislature. Plaintiffs' interest, although pressing, was indirect and did not differ from the interest of the public at large in the financial plight of local government. Relief by way of reinstatement to Medi-Cal pending further

action by the state was not a remedy available under the statute, and thus was not one which a court may award.

[See [Cal.Jur.3d, State of California, § 78](#); [7 Witkin, Summary of Cal. Law \(9th ed. 1988\) Constitutional Law, § 1127](#) [Witkin, Summary of Cal. Law \(9th ed. 1988\) Constitutional Law, § 112](#).]

#### COUNSEL

Stephen D. Schear, Stephen E. Ronfeldt, Armando M. Menocal III, Lois Salisbury, Laura Schulkind and Kirk McInnis for Plaintiffs and Appellants. [\\*328](#)

Catherine I. Hanson, Astrid G. Meghrigian, Alice P. Mead, Alan K. Marks, County Counsel (San Bernardino), Paul F. Mordy, Deputy County Counsel, De Witt W. Clinton, County Counsel (Los Angeles), Robert M. Fesler, Assistant County Counsel, Frank J. DaVanzo, Deputy County Counsel, Weissburg & Aronson, Mark S. Windisch, Carl Weissburg and Howard W. Cohen as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, Richard M. Frank, Asher Rubin and Carol Hunter, Deputy Attorneys General, for Defendants and Respondents.

#### BAXTER, J.

Plaintiffs, medically indigent adults and taxpayers, seek to enforce [section 6 of article XIII B](#) (hereafter, [section 6](#)) of the California Constitution through an action for declaratory and injunctive relief. They invoked the jurisdiction of the superior court as taxpayers pursuant to  [Code of Civil Procedure section 526a](#) and as persons affected by the alleged failure of the state to comply with [section 6](#). The superior court granted summary judgment for defendants State of California and Director of the Department of Health Services, after concluding that plaintiffs lacked standing to prosecute the action. On appeal, the Court of Appeal held that plaintiffs have standing and that the action is not barred by the availability of administrative remedies.

We reverse. The administrative procedures established by the Legislature, which are available only to local agencies and school districts directly affected by a state mandate, are the exclusive means by which the state's obligations under [section 6](#) are to be determined and enforced. Plaintiffs therefore lack standing.

#### I State Mandates

[Section 6](#), adopted on November 6, 1979, as part of an initiative measure imposing spending limits on state and local government, also imposes on the state an obligation to reimburse local agencies for the cost of most programs and services which they must provide pursuant to a state mandate if the local agencies were not under a preexisting duty to fund the activity. It provides: [\\*329](#)

“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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

“(a) Legislative mandates requested by the local agency affected;

“(b) Legislation defining a new crime or changing an existing definition of a crime; or

“(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

A complementary provision, [section 3 of article XIII B](#), provides for a shift from the state to the local agency of a portion of the spending or “appropriation” limit of the state when responsibility for funding an activity is shifted to a local agency:

“The appropriations limit for any fiscal year ... shall be adjusted as follows: [¶] (a) In the event that the financial responsibility of providing services is transferred, in whole or in part, ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.”

#### II Plaintiffs' Action

The underlying issue in this action is whether the state is obligated to reimburse the County of Alameda, and shift to Alameda County a concomitant portion of the state's spending limit, for the cost of providing health care services

to medically indigent adults who prior to 1983 had been included in the state Medi-Cal program. Assembly Bill No. 799 (1981-1982 Reg. Sess.) (AB 799) (Stats. 1982, ch. 328, p. 1568) removed medically indigent adults from Medi-Cal effective January 1, 1983. At the time [section 6](#) was adopted, the state was funding Medi-Cal coverage for these persons without requiring any county financial contribution.

Plaintiffs initiated this action in the Alameda County Superior Court. They sought relief on their own behalf and on behalf of a class of similarly [\\*330](#) situated medically indigent adult residents of Alameda County. The only named defendants were the State of California, the Director of the Department of Health Services, and the County of Alameda.

In the complaint for declaratory and injunctive relief, plaintiffs sought an injunction compelling the state to restore Medi-Cal eligibility to medically indigent adults or to reimburse the County of Alameda for the cost of providing health care to those persons. They also prayed for a declaration that the transfer of responsibility from the state-financed Medi-Cal program to the counties without adequate reimbursement violated the California Constitution.<sup>1</sup>

At the time plaintiffs initiated their action neither Alameda County, nor any other county or local agency, had filed a reimbursement claim with the Commission on State Mandates (Commission).<sup>2</sup>

Whether viewed as an action seeking restoration of Medi-Cal benefits, one to compel state reimbursement of county costs, or one for declaratory relief, therefore, the action required a determination that the enactment of AB 799 created a state mandate within the contemplation of [section 6](#). Only upon resolution of that issue favorably to plaintiffs would the state have an obligation to reimburse the county for its increased expense and shift a portion of its appropriation limit, or to reinstate Medi-Cal benefits for plaintiffs and the class they seek to represent.

The gravamen of the action is, therefore, enforcement of [section 6](#).<sup>3</sup> [\\*331](#)

### III Enforcement of Article XIII B, Section 6

In 1984, almost five years after the adoption of [article XIII B](#), the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of [section 6](#). ([§ 17500](#).) The Legislature did so because the absence

of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. The necessity for the legislation was explained in [section 17500](#):

“The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under [Section 6 of Article XIII B of the California Constitution](#). The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, *it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.*” (Italics added.)

In part 7 of division 4 of title 2 of the Government Code, “State-Mandated Costs,” which commences with [section 17500](#), the Legislature created the Commission ([§ 17525](#)), to adjudicate disputes over the existence of a state-mandated program ([§§ 17551, 17557](#)) and to adopt procedures for submission and adjudication of reimbursement claims ([§ 17553](#)). The five-member Commission includes the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member experienced in public finance. ([§ 17525](#).)

The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies ([§ 17554](#)),<sup>4</sup> establishes the method of [\\*332](#) payment of claims ([§§ 17558, 17561](#)), and creates reporting procedures which enable the Legislature to budget adequate funds to meet the expense of state mandates ([§§ 17562, 17600, 17612](#), subd. (a).)

Pursuant to procedures which the Commission was authorized to establish ([§ 17553](#)), local agencies<sup>5</sup> and school districts<sup>6</sup> are to file claims for reimbursement of state-mandated costs with the Commission ([§§ 17551, 17560](#)), and reimbursement is to be provided only through this statutory procedure. ([§§ 17550, 17552](#).)

The first reimbursement claim filed which alleges that a state mandate has been created under a statute or executive order is treated as a “test claim.” (§ 17521.) A public hearing must be held promptly on any test claim. At the hearing on a test claim or on any other reimbursement claim, evidence may be presented not only by the claimant, but also by the Department of Finance and any other department or agency potentially affected by the claim. (§ 17553.) Any interested organization or individual may participate in the hearing. (§ 17555.)

A local agency filing a test claim need not first expend sums to comply with the alleged state mandate, but may base its claim on estimated costs. (§ 17555.) The Commission must determine both whether a state mandate exists and, if so, the amount to be reimbursed to local agencies and school districts, adopting “parameters and guidelines” for reimbursement of any claims relating to that statute or executive order. (§ 17557.) Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. (§ 17620 et seq.) Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to  Code of Civil Procedure section 1094.5. (§ 17559.)

The legislative scheme is not limited to establishing the claims procedure, however. It also contemplates reporting to the Legislature and to departments and agencies of the state which have responsibilities related to funding state mandates, budget planning, and payment. The parameters and guidelines adopted by the Commission must be submitted to the Controller, who is to pay subsequent claims arising out of the mandate. (§ 17558.) Executive orders mandating costs are to be accompanied by an appropriations \*333 bill to cover the costs if the costs are not included in the budget bill, and in subsequent years the costs must be included in the budget bill. (§ 17561, subds. (a) & (b).) Regular review of the costs is to be made by the Legislative Analyst, who must report to the Legislature and recommend whether the mandate should be continued. (§ 17562.) The Commission is also required to make semiannual reports to the Legislature of the number of mandates found and the estimated reimbursement cost to the state. (§ 17600.) The Legislature must then adopt a “local government claims bill.” If that bill does not include funding for a state mandate, an affected local agency or school district may seek a declaration from the superior court for the County of Sacramento that the mandate is unenforceable, and an injunction against enforcement. (§ 17612.)

Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. (§ 17615 et seq.)

(1) It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of [section 6](#) lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (§ 17612).

The legislative intent is clearly stated in [section 17500](#): “It is the intent of the Legislature in enacting this part to provide for the implementation of [Section 6 of Article XIII B of the California Constitution](#) and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. ...” And section 17550 states: “Reimbursement of local agencies and school districts for costs mandated by the state shall be provided pursuant to this chapter.”

Finally, section 17552 provides: “This chapter shall provide *the sole and exclusive procedure* by which a local agency or school district may claim reimbursement for costs mandated by the state as required by [Section 6 of Article XIII B of the California Constitution](#).” (Italics added.)

In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [section 6](#). \*334

#### IV Exclusivity

(2) Plaintiffs argued, and the Court of Appeal agreed, that the existence of an administrative remedy by which affected local agencies could enforce their right under [section 6](#) to reimbursement for the cost of state mandates did not bar this action because the administrative remedy is available only to local agencies and school districts.

The Court of Appeal recognized that the decision of the County of Alameda, which had not filed a claim for reimbursement at the time the complaint was filed, was a discretionary decision which plaintiffs could not challenge.

(*Dunn v. Long Beach L. & W. Co.* (1896) 114 Cal. 605, 609, 610-611 [46 P. 607];  *Silver v. Watson* (1972) 26 Cal.App.3d 905, 909 [ 103 Cal.Rptr. 576]; *Whitson v. City of Long Beach* (1962) 200 Cal.App.2d 486, 506 [19 Cal.Rptr. 668];  *Elliott v. Superior Court* (1960) 180 Cal.App.2d 894, 897 [ 5 Cal.Rptr. 116].) The court concluded, however, that public policy and practical necessity required that plaintiffs have a remedy for enforcement of [section 6](#) independent of the statutory procedure.

The right involved, however, is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services. [Section 6](#) provides that the “state shall provide a subvention of funds *to reimburse ... local governments ...*” (Italics added.) The administrative remedy created by the Legislature is adequate to fully implement [section 6](#). That Alameda County did not file a reimbursement claim does not establish that the enforcement remedy is inadequate. Any of the 58 counties was free to file a claim, and other counties did so. The test claim is now before the Court of Appeal. The administrative procedure has operated as intended.

The Legislature has the authority to establish procedures for the implementation of local agency rights under [section 6](#). Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the Legislature. ( *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 [ 268 P.2d 723];  *Chesney v. Byram* (1940) 15 Cal.2d 460, 463 [ 101 P.2d 1106];  *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [ 222 Cal.Rptr. 750].)

Plaintiffs' argument that they must be permitted to enforce [section 6](#) as individuals because their right to adequate health care services has been compromised by the failure of the state to reimburse the county for the cost [\\*335](#) of services to medically indigent adults is unpersuasive. Plaintiffs' interest, although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government. Although the basis for the claim that the state must reimburse the county for its costs of providing the care that was formerly available to plaintiffs under Medi-Cal is that AB 799 created a state mandate, plaintiffs have no right to have any reimbursement expended for health care services of

any kind. Nothing in [article XIII B](#) or other provision of law controls the county's expenditure of the funds plaintiffs claim must be paid to the county. To the contrary, section 17563 gives the local agency complete discretion in the expenditure of funds received pursuant to [section 6](#), providing: “Any funds received by a local agency or school district pursuant to the provisions of this chapter may be used for any public purpose.”

The relief plaintiffs seek in their prayer for state reimbursement of county expenses is, in the end, a reallocation of general revenues between the state and the county. Neither public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues. The Legislature has established a procedure by which the county may claim any revenues to which it believes it is entitled under [section 6](#). That test-claim statute expressly provides that not only the claimant, but also “any other interested organization or individual may participate” in the hearing before the Commission (§ 17555) at which the right to reimbursement of the costs of such mandate is to be determined. Procedures for receiving any claims must “provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, *and any other interested person.*” (§ 17553. Italics added.) Neither the county nor an interested individual is without an opportunity to be heard on these questions. These procedures are both adequate and exclusive.<sup>7</sup>

The alternative relief plaintiffs seek—reinstatement to Medi-Cal pending further action by the state—is not a remedy available under the statute, and thus is not one which this court may award. The remedy for the failure to fund a program is a declaration that the mandate is unenforceable. That relief is available only after the Commission has determined that a mandate exists [\\*336](#) and the Legislature has failed to include the cost in a local government claims bill, and only on petition by the county. (§ 17612.)<sup>8</sup>

Moreover, the judicial remedy approved by the Court of Appeal permits resolution of the issues raised in a state mandate claim without the participation of those officers and individuals the Legislature deems necessary to a full and fair exposition and resolution of the issues. Neither the Controller nor the Director of Finance was named a defendant in this action. The Treasurer and the Director of the Office of Planning and Research did not participate. All of these officers would have been involved in determining the

question as members of the Commission, as would the public member of the Commission. The judicial procedures were not equivalent to the public hearing required on test claims before the Commission by section 17555. Therefore, other affected departments, organizations, and individuals had no opportunity to be heard.<sup>9</sup>

Finally, since a determination that a state mandate has been created in a judicial proceeding rather than one before the Commission does not trigger the procedures for creating parameters and guidelines for payment of claims, or for inclusion of estimated costs in the state budget, there is no source of funds available for compliance with the judicial decision other than the appropriations for the Department of Health Services. Payment from those funds can only be at the expense of another program which the department is obligated to fund. No public policy supports, let alone requires, this result.

The superior court acted properly in dismissing this action.

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Panelli, J., Kennard, J., and Arabian, J., concurred.

#### **BROUSSARD, J.**

I dissent. For nine years the Legislature has defied the mandate of article XIII B of the California Constitution (hereafter article XIII B). Having transferred responsibility for the care of medically indigent adults (MIA's) to county governments, the Legislature has failed to provide the counties with sufficient money to meet this responsibility, yet the \*337 Legislature computes its own appropriations limit as if it fully funded the program. The majority, however, declines to remedy this violation because, it says, the persons most directly harmed by the violation—the medically indigent who are denied adequate health care—have no standing to raise the matter. I disagree, and will demonstrate that (1) plaintiffs have standing as citizens to seek a declaratory judgment to determine whether the state is complying with its constitutional duty under article XIII B; (2) the creation of an administrative remedy whereby counties and local districts can enforce article XIII B does not deprive the citizenry of its own independent right to enforce that provision; and (3) even if plaintiffs lacked standing, our recent decision in  *Dix v. Superior Court* (1991) 53 Cal.3d 442

[ 279 Cal.Rptr. 834, 807 P.2d 1063] permits us to reach and resolve any significant issue decided by the Court of Appeal and fully briefed and argued here. I conclude that we should reach the merits of the appeal.

On the merits, I conclude that the state has not complied with its constitutional obligation under article XIII B. To prevent the state from avoiding the spending limits imposed by [article XIII B, section 6](#) of that article prohibits the state from transferring previously state-financed programs to local governments without providing sufficient funds to meet those burdens. In 1982, however, the state excluded the medically indigent from its Medi-Cal program, thus shifting the responsibility for such care to the counties. Subvention funds provided by the state were inadequate to reimburse the counties for this responsibility, and became less adequate every year. At the same time, the state continued to compute its spending limit as if it fully financed the entire program. The result is exactly what [article XIII B](#) was intended to prevent: the state enjoys a falsely inflated spending limit; the county is compelled to assume a burden it cannot afford; and the medically indigent receive inadequate health care.

#### **I. Facts and Procedural History**

Plaintiffs—citizens, taxpayers, and persons in need of medical care—allege that the state has shifted its financial responsibility for the funding of health care for MIA's to the counties without providing the necessary funding and without any agreement transferring appropriation limits, and that as a result the state is violating [article XIII B](#). Plaintiffs further allege they and the class they claim to represent cannot, consequently, obtain adequate health care from the County of Alameda, which lacks the state funding to provide it. The county, although nominally a defendant, aligned \*338 itself with plaintiffs. It admits the inadequacy of its program to provide medical care for MIA's but blames the absence of state subvention funds.<sup>1</sup>

At hearings below, plaintiffs presented uncontradicted evidence regarding the enormous impact of these statutory changes upon the finances and population of Alameda County. That county now spends about \$40 million annually on health care for MIA's, of which the state reimburses about half. Thus, since [article XIII B](#) became effective, Alameda County's obligation for the health care of MIA's has risen from zero to more than \$20 million per year. The county has inadequate funds to discharge its new obligation

for the health care of MIA's; as a result, according to the Court of Appeal, uncontested evidence from medical experts presented below shows that, "The delivery of health care to the indigent in Alameda County is in a state of shambles; the crisis cannot be overstated ...." "Because of inadequate state funding, some Alameda County residents are dying, and many others are suffering serious diseases and disabilities, because they cannot obtain adequate access to the medical care they need ...." "The system is clogged to the breaking point. ... All community clinics ... are turning away patients." "The funding received by the county from the state for MIAs does not approach the actual cost of providing health care to the MIAs. As a consequence, inadequate resources available to county health services jeopardize the lives and health of thousands of people ...."

The trial court acknowledged that plaintiffs had shown irreparable injury, but denied their request for a preliminary injunction on the ground that they could not prevail in the action. It then granted the state's motion for summary judgment. Plaintiffs appealed from both decisions of the trial court.

The Court of Appeal consolidated the two appeals and reversed the rulings below. It concluded that plaintiffs had standing to bring this action to enforce the constitutional spending limit of [article XIII B](#), and that the action is not barred by the existence of administrative remedies available to counties. It then held that the shift of a portion of the cost of medical indigent care by the state to Alameda County constituted a state-mandated new program under the provisions of [article XIII B](#), which triggered that article's provisions requiring a subvention of funds by the state to reimburse Alameda <sup>\*339</sup> County for the costs of such program it was required to assume. The judgments denying a preliminary injunction and granting summary judgment for defendants were reversed. We granted review.

## II. Standing

### A. Plaintiffs have standing to bring an action for declaratory relief to determine whether the state is complying with [article XIII B](#).

Plaintiffs first claim standing as taxpayers under [Code of Civil Procedure section 526a](#), which provides that: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county ..., may be maintained against

any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. ...." As in [Common Cause v. Board of Supervisors](#) (1989) 49 Cal.3d 432, 439 [[261 Cal.Rptr. 574, 777 P.2d 610](#)], however, it is "unnecessary to reach the question whether plaintiffs have standing to seek an injunction under [Code of Civil Procedure section 526a](#), because there is an independent basis for permitting them to proceed." Plaintiffs here seek a declaratory judgment that the transfer of responsibility for MIA's from the state to the counties without adequate reimbursement violates [article XIII B](#). A declaratory judgment that the state has breached its duty is essentially equivalent to an action in mandate to compel the state to perform its duty. (See [California Assn. of Psychology Providers v. Rank](#) (1990) 51 Cal.3d 1, 9 [[270 Cal.Rptr. 796, 793 P.2d 2](#)], which said that a declaratory judgment establishing that the state has a duty to act provides relief equivalent to mandamus, and makes issuance of the writ unnecessary.) Plaintiffs further seek a mandatory injunction requiring that the state pay the health costs of MIA's under the Medi-Cal program until the state meets its obligations under [article XIII B](#). The majority similarly characterize plaintiffs' action as one comparable to mandamus brought to enforce [section 6 of article XIII B](#).

We should therefore look for guidance to cases that discuss the standing of a party seeking a writ of mandate to compel a public official to perform his or her duty.<sup>2</sup> Such an action may be brought by any person "beneficially interested" in the issuance of the writ. ([Code Civ. Proc., § 1086.](#)) In [Carsten \\*340 v. Psychology Examining Com.](#) (1980) 27 Cal.3d 793, 796 [[166 Cal.Rptr. 844, 614 P.2d 276](#)], we explained that the "requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." We quoted from Professor Davis, who said, "One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable." (Pp. 796-797, quoting 3 Davis, *Administrative Law Treatise* (1958) p. 291.) Cases applying this standard include [Stocks v. City of Irvine](#) (1981) 114 Cal.App.3d 520

[P] 170 Cal.Rptr. 724], which held that low-income residents of Los Angeles had standing to challenge exclusionary zoning laws of suburban communities which prevented the plaintiffs from moving there; [P] *Taschner v. City Council, supra*, 31 Cal.App.3d 48, which held that a property owner has standing to challenge an ordinance which may limit development of the owner's property; and *Felt v. Waughop* (1924) 193 Cal. 498 [225 P. 862], which held that a city voter has standing to compel the city clerk to certify a correct list of candidates for municipal office. Other cases illustrate the limitation on standing: [P] *Carsten v. Psychology Examining Com., supra*, 27 Cal.3d 793, held that a member of the committee who was neither seeking a license nor in danger of losing one had no standing to challenge a change in the method of computing the passing score on the licensing examination; [P] *Parker v. Bowron* (1953) 40 Cal.2d 344 [P] 254 P.2d 6] held that a union official who was neither a city employee nor a city resident had no standing to compel a city to follow a prevailing wage ordinance; and *Dunbar v. Governing Board* (1969) 275 Cal.App.2d 14 [79 Cal.Rptr. 662] held that a member of a student organization had standing to challenge a college district's rule barring a speaker from campus, but persons who merely planned to hear him speak did not.

No one questions that plaintiffs are affected by the lack of funds to provide care for MIA's. Plaintiffs, except for plaintiff Rabinowitz, are not merely citizens and taxpayers; they are medically indigent persons living in Alameda County who have been and will be deprived of proper medical care if funding of MIA programs is inadequate. Like the other plaintiffs here, \*341 plaintiff Kinlaw, a 60-year-old woman with diabetes and hypertension, has no health insurance. Plaintiff Spier has a chronic back condition; inadequate funding has prevented him from obtaining necessary diagnostic procedures and physiotherapy. Plaintiff Tsosie requires medication for allergies and arthritis, and claims that because of inadequate funding she cannot obtain proper treatment. Plaintiff King, an epileptic, says she was unable to obtain medication from county clinics, suffered seizures, and had to go to a hospital. Plaintiff "Doe" asserts that when he tried to obtain treatment for AIDS-related symptoms, he had to wait four to five hours for an appointment and each time was seen by a different doctor. All of these are people personally dependent upon the quality of care of Alameda County's MIA program; most have experienced inadequate care because the program was underfunded, and all can anticipate future deficiencies in care if the state continues its refusal to fund the program fully.

The majority, however, argues that the county has no duty to use additional subvention funds for the care of MIA's because under **Government Code section 17563** "[a]ny funds received by a local agency ... pursuant to the provisions of this chapter may be used for any public purpose." Since the county may use the funds for other purposes, it concludes that MIA's have no special interest in the subvention.<sup>3</sup>

This argument would be sound if the county were already meeting its obligations to MIA's under **Welfare and Institutions Code section 17000**. If that were the case, the county could use the subvention funds as it chose, and plaintiffs would have no more interest in the matter than any other county resident or taxpayer. But such is not the case at bar. Plaintiffs here allege that the county is not complying with its duty, mandated by **Welfare and Institutions Code section 17000**, to provide health care for the medically indigent; the county admits its failure but pleads lack of funds. Once the county receives adequate funds, it must perform its statutory duty under **section 17000 of the Welfare and Institutions Code**. If it refused, an action in mandamus would lie to compel performance. (See [P] *Mooney v. Pickett* (1971) 4 Cal.3d 669 [P] 94 Cal.Rptr. 279, 483 P.2d 1231].) In fact, the county has made clear throughout this litigation that it would use the subvention funds to provide care for MIA's. The majority's conclusion that plaintiffs lack a special, beneficial interest in the state's compliance with **article XIII B** ignores the practical realities of health care funding.

Moreover, we have recognized an exception to the rule that a plaintiff must be beneficially interested. "Where the question is one of public right \*342 and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." ([P] *Bd. of Soc. Welfare v. County of L. A.* (1945) 27 Cal.2d 98, 100-101 [P] 162 P.2d 627].) We explained in [P] *Green v. Obledo* (1981) 29 Cal.3d 126, 144 [P] 206, 624 P.2d 256], that this "exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. ... It has often been invoked by California courts. [Citations.]"

*Green v. Obledo* presents a close analogy to the present case. Plaintiffs there filed suit to challenge whether a state welfare regulation limiting deductibility of work-related expenses in determining eligibility for aid to families with dependent children (AFDC) assistance complied with federal requirements. Defendants claimed that plaintiffs were personally affected only by a portion of the regulation, and had no standing to challenge the balance of the regulation. We replied that “[t]here can be no question that the proper calculation of AFDC benefits is a matter of public right [citation], and plaintiffs herein are certainly citizens seeking to procure the enforcement of a public duty. [Citation.] It follows that plaintiffs have standing to seek a writ of mandate commanding defendants to cease enforcing [the regulation] in its entirety.” (29 Cal.3d at p. 145.)

We again invoked the exception to the requirement for a beneficial interest in *Common Cause v. Board of Supervisors, supra*, 49 Cal.3d 432. Plaintiffs in that case sought to compel the county to deputize employees to register voters. We quoted *Green v. Obledo, supra*, 29 Cal.3d 126, 144, and concluded that “[t]he question in this case involves a public right to voter outreach programs, and plaintiffs have standing as citizens to seek its vindication.” (49 Cal.3d at p. 439.) We should reach the same conclusion here.

**B. Government Code sections 17500-17630 do not create an exclusive remedy which bars citizen-plaintiffs from enforcing article XIII B.**

Four years after the enactment of article XIII B, the Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. These statutes create a quasi-judicial body called the Commission on State Mandates, consisting of the state Controller, state Treasurer, state Director of Finance, state Director of the Office of Planning and Research, and one public member. The commission has authority to “hear and decide upon [any] claim” by a local government that it “is entitled to be reimbursed by the state” for costs under article XIII B. (\*343 Gov. Code, § 17551, subd. (a).) Its decisions are subject to review by an action for administrative mandamus in the superior court. (See Gov. Code, § 17559.)

The majority maintains that a proceeding before the Commission on State Mandates is the exclusive means for enforcement of article XIII B, and since that remedy is

expressly limited to claims by local agencies or school districts (Gov. Code, § 17552), plaintiffs lack standing to enforce the constitutional provision.<sup>4</sup> I disagree, for two reasons.

First, Government Code section 17552 expressly addressed the question of exclusivity of remedy, and provided that “[t]his chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.” (Italics added.) The Legislature was aware that local agencies and school districts were not the only parties concerned with state mandates, for in Government Code section 17555 it provided that “any other interested organization or individual may participate” in the commission hearing. Under these circumstances the Legislature’s choice of words—“the sole and exclusive procedure by which a local agency or school district may claim reimbursement”—limits the procedural rights of those claimants only, and does not affect rights of other persons. *Expressio unius est exclusio alterius*—“the expression of certain things in a statute necessarily involves exclusion of other things not expressed.” (Henderson v. Mann Theatres Corp. (1976) 65 Cal.App.3d 397, 403 [135 Cal.Rptr. 266].)

The case is similar in this respect to *Common Cause v. Board of Supervisors, supra*, 49 Cal.3d 432. Here defendants contend that the counties’ right of action under Government Code sections 17551-17552 impliedly excludes \*344 any citizen’s remedy; in *Common Cause* defendants claimed the Attorney General’s right of action under Elections Code section 304 impliedly excluded any citizen’s remedy. We replied that “the plain language of section 304 contains no limitation on the right of private citizens to sue to enforce the section. To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing [citations], and our recognition of a ‘public interest’ exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings [citations].” (49 Cal.3d at p. 440, fn. omitted.) Likewise in this case the plain language of Government Code sections 17551-17552 contain no limitation on the right of private citizens, and to infer such a

right would contradict our long-standing approval of citizen actions to enforce public duties.

The United States Supreme Court reached a similar conclusion in [Rosado v. Wyman](#) (1970) 397 U.S. 397 [25 L.Ed.2d 442, 90 S.Ct. 1207]. In that case New York welfare recipients sought a ruling that New York had violated federal law by failing to make cost-of-living adjustments to welfare grants. The state replied that the statute giving the Department of Health, Education and Welfare authority to cut off federal funds to noncomplying states constituted an exclusive remedy. The court rejected the contention, saying that “[w]e are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program.” (P. 420 [[25 L.Ed.2d at p. 460](#)].) The principle is clear: the persons actually harmed by illegal state action, not only some administrator who has no personal stake in the matter, should have standing to challenge that action.

Second, [article XIII B](#) was enacted to protect taxpayers, not governments. [Sections 1 and 2 of article XIII B](#) establish strict limits on state and local expenditures, and require the refund of all taxes collected in excess of those limits. [Section 6 of article XIII B](#) prevents the state from evading those limits and burdening county taxpayers by transferring financial responsibility for a program to a county, yet counting the cost of that program toward the limit on state expenditures.

These provisions demonstrate a profound distrust of government and a disdain for excessive government spending. An exclusive remedy under which only governments can enforce [article XIII B](#), and the taxpayer-citizen can appear only if a government has first instituted proceedings, is inconsistent with the ethos that led to [article XIII B](#). The drafters of [article XIII B](#) and the voters who enacted it would not accept that the state Legislature—the principal body regulated by the article—could establish a procedure [\\*345](#) under which the only way the article can be enforced is for local governmental bodies to initiate proceedings before a commission composed largely of state financial officials.

One obvious reason is that in the never-ending attempts of state and local government to obtain a larger proportionate share of available tax revenues, the state has the power to coerce local governments into foregoing their rights to enforce [article XIII B](#). An example is the Brown-Presley

Trial Court Funding Act ([Gov. Code, § 77000 et seq.](#)), which provides that the county's acceptance of funds for court financing may, in the discretion of the Governor, be deemed a waiver of the counties' rights to proceed before the commission on all claims for reimbursement for state-mandated local programs which existed and were not filed prior to passage of the trial funding legislation.<sup>5</sup> The ability of state government by financial threat or inducement to persuade counties to waive their right of action before the commission renders the counties' right of action inadequate to protect the public interest in the enforcement of [article XIII B](#).

The facts of the present litigation also demonstrate the inadequacy of the commission remedy. The state began transferring financial responsibility for MIA's to the counties in 1982. Six years later no county had brought a proceeding before the commission. After the present suit was filed, two counties filed claims for 70 percent reimbursement. Now, nine years after the 1982 legislation, the counties' claims are pending before the Court of Appeal. After that court acts, and we decide whether to review its decision, the matter may still have to go back to the commission for hearings to [\\*346](#) determine the amount of the mandate—which is itself an appealable order. When an issue involves the life and health of thousands, a procedure which permits this kind of delay is not an adequate remedy.

In sum, effective, efficient enforcement of [article XIII B](#) requires that standing to enforce that measure be given to those harmed by its violation—in this case, the medically indigent—and not be vested exclusively in local officials who have no personal interest at stake and are subject to financial and political pressure to overlook violations.

**C. Even if plaintiffs lack standing this court should nevertheless address and resolve the merits of the appeal.** Although ordinarily a court will not decide the merits of a controversy if the plaintiffs lack standing (see [McKinny v. Board of Trustees](#) (1982) 31 Cal.3d 79, 90 [[181 Cal.Rptr. 549, 642 P.2d 460](#)]), we recognized an exception to this rule in our recent decision in [Dix v. Superior Court, supra](#), 53 Cal.3d 442 (hereafter *Dix*). In *Dix*, the victim of a crime sought to challenge the trial court's decision to recall a sentence under [Penal Code section 1170](#). We held that only the prosecutor, not the victim of the crime, had standing to raise that issue. We nevertheless went on to consider and decide questions raised by the victim concerning

the trial court's authority to recall a sentence under  Penal Code section 1170, subdivision (d). We explained that the sentencing issues "are significant. The case is fully briefed and all parties apparently seek a decision on the merits. Under such circumstances, we deem it appropriate to address [the victim's] sentencing arguments for the guidance of the lower courts. Our discretion to do so under analogous circumstances is well settled. [Citing cases explaining when an appellate court can decide an issue despite mootness.]" ( 53 Cal.3d at p. 454.) In footnote we added that "Under article VI, section 12, subdivision (b) of the California Constitution ..., we have jurisdiction to 'review the *decision of a Court of Appeal* in any cause.' (Italics added.) Here the Court of Appeal's decision addressed two issues—standing and merits. Nothing in **article VI, section 12(b)** suggests that, having rejected the Court of Appeal's conclusion on the preliminary issue of standing, we are foreclosed from 'review [ing]' the second subject addressed and resolved in its decision." (Pp. 454-455, fn. 8.)

I see no grounds on which to distinguish *Dix*. The present case is also one in which the Court of Appeal decision addressed both standing and merits. It is fully briefed. Plaintiffs and the county seek a decision on the merits. While the state does not seek a decision on the merits in this proceeding, its appeal of the superior court decision in the mandamus proceeding brought by the County of Los Angeles (see maj. opn., *ante*, p. 330, fn. 2*ante*, p. 330, fn. 2) shows that it is not opposed to an appellate decision on the merits. \*347

The majority, however, notes that various state officials—the Controller, the Director of Finance, the Treasurer, and the Director of the Office of Planning and Research—did not participate in this litigation. Then in a footnote, the majority suggests that this is the reason they do not follow the *Dix* decision. (Maj. opn., *ante*, p. 336, fn. 9*ante*, p. 336, fn. 9.) In my view, this explanation is insufficient. The present action is one for declaratory relief against the state. It is not necessary that plaintiffs also sue particular state officials. (The state has never claimed that such officials were necessary parties.) I do not believe we should refuse to reach the merits of this appeal because of the nonparticipation of persons who, if they sought to participate, would be here merely as *amici curiae*.<sup>6</sup>

The case before us raises no issues of departmental policy. It presents solely an issue of law which this court is competent to decide on the briefs and arguments presented. That issue is one of great significance, far more significant than any raised in *Dix*. Judges rarely recall sentencing under  Penal

Code section 1170, subdivision (d); when they do, it generally affects only the individual defendant. In contrast, the legal issue here involves immense sums of money and affect budgetary planning for both the state and counties. State and county governments need to know, as soon as possible, what their rights and obligations are; legislators considering proposals to deal with the current state and county budget crisis need to know how to frame legislation so it does not violate **article XIII B**. The practical impact of a decision on the people of this state is also of great importance. The failure of the state to provide full subvention funds and the difficulty of the county in filling the gap translate into inadequate staffing and facilities for treatment of thousands of persons. Until the constitutional issues are resolved the legal uncertainties may inhibit both levels of government from taking the steps needed to address this problem. A delay of several years until the Los Angeles case is resolved could result in pain, hardship, or even death for many people. I conclude that, whether or not plaintiffs have standing, this court should address and resolve the merits of the appeal.

#### **D. Conclusion as to standing.**

As I have just explained, it is not necessary for plaintiffs to have standing for us to be able to decide the merits of the appeal. Nevertheless, I conclude \*348 that plaintiffs have standing both as persons "beneficially interested" under **Code of Civil Procedure** section 1086 and under the doctrine of  *Green v. Obledo, supra*, 29 Cal.3d 126, to bring an action to determine whether the state has violated its duties under **article XIII B**. The remedy given local agencies and school districts by **Government Code** sections 17500- 17630 is, as  **Government Code** section 17552 states, the exclusive remedy by which those bodies can challenge the state's refusal to provide subvention funds, but the statute does not limit the remedies available to individual citizens.

### **III. Merits of the Appeal**

#### **A. State funding of care for MIA's.**

**Welfare and Institutions Code** section 17000 requires every county to "relieve and support" all indigent or incapacitated residents, except to the extent that such persons are supported or relieved by other sources.<sup>7</sup> From 1971 until 1982, and thus at the time **article XIII B** became effective, counties were not required to pay for the provision of health services to MIA's, whose health needs were met through the state-funded Medi-Cal program. Since the medical needs of MIA's were fully

met through other sources, the counties had no duty under **Welfare and Institutions Code section 17000** to meet those needs. While the counties did make general contributions to the Medi-Cal program (which covered persons other than MIA's) from 1971 until 1978, at the time **article XIII B** became effective in 1980 the counties were not required to make any financial contributions to Medi-Cal. It is therefore undisputed that the counties were not required to provide financially for the health needs of MIA's when **article XIII B** became effective. The state funded all such needs of MIA's.

In 1982, the Legislature passed Assembly Bill No. 799 (1981-1982 Reg. Sess.; Stats. 1982, ch. 328, pp. 1568-1609) (hereafter AB No. 799), which removed MIA's from the state-funded Medi-Cal program as of January 1, 1983, and thereby transferred to the counties, through the County Medical Services Plan which AB No. 799 created, the financial responsibility to provide health services to approximately 270,000 MIA's. AB No. 799 required that the counties provide health care for MIA's, yet appropriated only 70 percent of what the state would have spent on MIA's had those persons remained a state responsibility under the Medi-Cal program.

Since 1983, the state has only partially defrayed the costs to the counties of providing health care to MIA's. Such state funding to counties was \*349 initially relatively constant, generally more than \$400 million per year. By 1990, however, state funding had decreased to less than \$250 million. The state, however, has always included the full amount of its former obligation to provide for MIA's under the Medi-Cal program in the year preceding July 1, 1980, as part of its **article XIII B** "appropriations limit," i.e., as part of the base amount of appropriations on which subsequent annual adjustments for cost-of-living and population changes would be calculated. About \$1 billion has been added to the state's adjusted spending limit for population growth and inflation *solely* because of the state's inclusion of all MIA expenditures in the appropriation limit established for its base year, 1979-1980. The state has not made proportional increases in the sums provided to counties to pay for the MIA services funded by the counties since January 1, 1983.

### B. The function of **article XIII B**.

Our recent decision in **County of Fresno v. State of California** (1991) 53 Cal.3d 482, 486-487 [280 Cal.Rptr. 92, 808 P.2d 235] (hereafter *County of Fresno*), explained the

function of **article XIII B** and its relationship to article XIII A, enacted one year earlier:

"At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new 'special taxes.' ( **Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization** (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. ( **City of Sacramento v. State of California** (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*)).

"At the November 6, 1979, Special Statewide Election, **article XIII B** was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

" 'Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes.' ( **City of Sacramento, supra**, 50 Cal.3d at p. 59, fn. 1.)

"Article XIII B of the Constitution was intended ... to provide 'permanent protection for taxpayers from excessive taxation' and 'a reasonable way to provide discipline in tax spending at state and local levels.' (See **County of Placer v. Corin** (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument \*350 in favor of Prop. 4, p. 18.) To this end, it establishes an 'appropriations limit' for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no 'appropriations subject to limitation' in excess thereof (*id.*, § 2).<sup>8</sup> (See **County of Placer v. Corin, supra**, 113 Cal.App.3d at p. 446.) It defines the relevant 'appropriations subject to limitation' as 'any authorization to expend during a fiscal year the proceeds of taxes ....' (Cal. Const., art. XIII B, § 8, subd. (b).)" ( **County of Fresno, supra**, 53 Cal.3d at p. 486.)

Under section 3 of **article XIII B** the state may transfer financial responsibility for a program to a county if the state

and county mutually agree that the appropriation limit of the state will be decreased and that of the county increased by the same amount.<sup>9</sup> Absent such an agreement, however, **section 6 of article XIII B** generally precludes the state from avoiding the spending limits it must observe by shifting to local governments programs and their attendant financial burdens which were a state responsibility prior to the effective date of **article XIII B**. It does so by requiring that "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the cost of such program or increased level of service ...."<sup>10</sup>

"**Section 6** was included in **article XIII B** in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See  *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 61 [ 233 Cal.Rptr. 38, 729 P.2d 202].)

The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see  *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax \*351 revenues of local governments from state mandates that would require expenditure of such revenues." (*County of Fresno, supra*, 53 Cal.3d at p. 487.)

**C. Applicability of article XIII B to health care for MIA's.** The state argues that care of the indigent, including medical care, has long been a county responsibility. It claims that although the state undertook to fund this responsibility from 1979 through 1982, it was merely temporarily (as it turned out) helping the counties meet their responsibilities, and that the subsequent reduction in state funding did not impose any "new program" or "higher level of service" on the counties within the meaning of **section 6 of article XIII B**. Plaintiffs respond that the critical question is not the traditional roles of the county and state, but who had the fiscal responsibility on November 6, 1979, when **article XIII B** took effect. The purpose of **article XIII B** supports the plaintiffs' position.

As we have noted, article XIII A of the Constitution (Proposition 13) and **article XIII B** are complementary measures. The former radically reduced county revenues, which led the state to assume responsibility for programs previously financed by the counties. **Article XIII B**, enacted

one year later, froze both state and county appropriations at the level of the 1978-1979 budgets—a year when the budgets included state financing for the prior county programs, but not county financing for these programs. **Article XIII B** further limited the state's authority to transfer obligations to the counties. Reading the two together, it seems clear that **article XIII B** was intended to limit the power of the Legislature to retransfer to the counties those obligations which the state had assumed in the wake of Proposition 13.

Under **article XIII B**, both state and county appropriations limits are set on the basis of a calculation that begins with the budgets in effect when **article XIII B** was enacted. If the state could transfer to the county a program for which the state at that time had full financial responsibility, the county could be forced to assume additional financial obligations without the right to appropriate additional moneys. The state, at the same time, would get credit toward its appropriations limit for expenditures it did not pay. County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further; state taxpayers would discover that the state, by counting expenditures it did not pay, had acquired an actual revenue surplus while avoiding its obligation to refund revenues in excess of the appropriations limit. Such consequences are inconsistent with the purpose of **article XIII B**.

Our decisions interpreting **article XIII B** demonstrate that the state's subvention requirement under **section 6** is not vitiated simply because the \*352 "program" existed before the effective date of **article XIII B**. The alternate phrase of **section 6 of article XIII B**, " 'higher level of service[,]' ... must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that *the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.'*

" ( *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [ 233 Cal.Rptr. 38, 729 P.2d 202], italics added.)

 *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830, presents a close analogy to the present case. The state Department of Education operated schools for severely handicapped students, but prior to 1979 *school districts were required by statute to contribute* to education of those students from the district at the state schools. In 1979, in response to the restrictions on school district revenues

imposed by Proposition 13, the statutes requiring such district contributions were repealed and the state assumed full responsibility for funding. The state funding responsibility continued until June 28, 1981, when [Education Code section 59300](#) (hereafter [section 59300](#)), requiring school districts to share in these costs, became effective.

The plaintiff districts filed a test claim before the commission, contending they were entitled to state reimbursement under [section 6 of article XIII B](#). The commission found the plaintiffs were not entitled to state reimbursement, on the rationale that the increase in costs to the districts compelled by [section 59300](#) imposed no new program or higher level of services. The trial and intermediate appellate courts affirmed on the ground that [section 59300](#) called for only an "'adjustment of costs'" of educating the severely handicapped, and that "*a shift in the funding of an existing program is not a new program or a higher level of service*" within the meaning of [article XIII B](#). (  [Lucia Mar Unified School Dist. v. Honig, supra](#), 44 Cal.3d at p. 834, italics added.)

We reversed, rejecting the state's theories that the funding shift to the county of the subject program's costs does not constitute a new program. "[T]here can be no] doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are concerned, since *at the time section 59300 became effective* they were not required to contribute to the education of students from their districts at such schools. [¶] ... To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying [section 6 of article XIII B](#). That article imposed spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIII A, which severely limited the taxing \*353 power of local governments. ... [¶] The intent of the section would plainly be violated if the state could, while retaining administrative control<sup>11</sup> of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate [section 6 of article XIII B](#) because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of [article XIII B](#), the result seems equally violative of the fundamental purpose underlying [section 6](#) of that

article." (  [Lucia Mar Unified School Dist. v. Honig, supra](#), 44 Cal.3d at pp. 835- 836, fn. omitted, italics added.)

The state seeks to distinguish *Lucia Mar* on the ground that the education of handicapped children in state schools had never been the responsibility of the local school district, but overlooks that the local district had previously been required to contribute to the cost. Indeed the similarities between *Lucia Mar* and the present case are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-1979 the state and county shared the cost of caring for MIA's under the Medi-Cal program. In 1979, following enactment of Proposition 13, the state took full responsibility for both programs. Then in 1981 (for handicapped children) and 1982 (for MIA's), the state sought to shift some of the burden back to the counties. To distinguish these cases on the ground that care for MIA's is a county program but education of handicapped children a state program is to rely on arbitrary labels in place of financial realities.

The state presents a similar argument when it points to the following emphasized language from  [Lucia Mar Unified School Dist. v. Honig, supra](#), 44 Cal.3d 830: "[B]ecause [section 59300](#) shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts—*an obligation the school districts did not have at the time article XIII B was adopted*—it calls for plaintiffs to support a 'new program' within the meaning of [section 6](#)." (P. 836, fn. omitted, italics added.) It urges *Lucia Mar* reached its result *only* because the "program" requiring school district funding in that case *was not required by statute* at the effective date of \*354 [article XIII B](#). The state then argues that the case at bench is distinguishable because it contends Alameda County had a continuing obligation *required by statute* antedating that effective date, which had only been "temporarily"<sup>12</sup> suspended when [article XIII B](#) became effective. I fail to see the distinction between a case—*Lucia Mar*—in which no existing statute as of 1979 imposed an obligation on the local government and one—this case—in which the statute existing in 1979 imposed no obligation on local government.

The state's argument misses the salient point. As I have explained, the application of [section 6 of article XIII B](#) does not depend upon when the program was created, but upon who had the burden of funding it when [article XIII B](#) went into effect. Our conclusion in *Lucia Mar* that the

educational program there in issue was a “new” program as to the school districts was not based on the presence or absence of any antecedent statutory obligation therefor. *Lucia Mar* determined that whether the program was new *as to the districts* depended on *when* they were compelled to assume the obligation to partially fund an existing program which they had not funded at the time [article XIII B](#) became effective.

The state further relies on two decisions, [Madera Community Hospital v. County of Madera](#) (1984) 155 Cal.App.3d 136 [[201 Cal.Rptr. 768](#)] and [Cooke v. Superior Court](#) (1989) 213 Cal.App.3d 401 [[261 Cal.Rptr. 706](#)], which hold that the county has a statutory obligation to provide medical care for indigents, but that it need not provide precisely the same level of services as the state provided under Medi-Cal.<sup>13</sup> Both are correct, but irrelevant to this case.<sup>14</sup> The county's obligation to MIA's is defined by [Welfare and Institutions Code section 17000](#), not by the former Medi-Cal program.<sup>15</sup> If the \*355 state, in transferring an obligation to the counties, permits them to provide less services than the state provided, the state need only pay for the lower level of services. But it cannot escape its responsibility entirely, leaving the counties with a state-mandated obligation and no money to pay for it.

The state's arguments are also undercut by the fact that it continues to use the approximately \$1 billion in spending authority, generated by its previous total funding of the health

care program in question, as a portion of its initial *base spending limit* calculated pursuant to [sections 1 and 3 of article XIII B](#). In short, the state may maintain here that care for MIA's is a county obligation, but when it computes its appropriation limit it treats the entire cost of such care as a state program.

#### IV. Conclusion

This is a time when both state and county governments face great financial difficulties. The counties, however, labor under a disability not imposed on the state, for article XIII A of the Constitution severely restricts their ability to raise additional revenue. It is, therefore, particularly important to enforce the provisions of [article XIII B](#) which prevent the state from imposing additional obligations upon the counties without providing the means to comply with these obligations.

The present majority opinion disserves the public interest. It denies standing to enforce [article XIII B](#) both to those persons whom it was designed to protect—the citizens and taxpayers—and to those harmed by its violation—the medically indigent adults. And by its reliance on technical grounds to avoid coming to grips with the merits of plaintiffs' appeal, it permits the state to continue to violate [article XIII B](#) and postpones the day when the medically indigent will receive adequate health care.

Mosk, J., concurred. \*356

#### Footnotes

- 1 The complaint also sought a declaration that the county was obliged to provide health care services to indigents that were equivalent to those available to nonindigents. This issue is not before us. The County of Alameda aligned itself with plaintiffs in the superior court and did not oppose plaintiffs' effort to enforce [section 6](#).
- 2 On November 23, 1987, the County of Los Angeles filed a test claim with the Commission. San Bernardino County joined as a test claimant. The Commission ruled against the counties, concluding that no state mandate had been created. The Los Angeles County Superior Court subsequently granted the counties' petition for writ of mandate ([Code Civ. Proc., § 1094.5](#)), reversing the Commission, on April 27, 1989. (No. C-731033.) An appeal from that judgment is presently pending in the Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.)

3 Plaintiffs argue that they seek only a declaration that AB 799 created a state mandate and an injunction against the shift of costs until the state decides what action to take. This is inconsistent with the prayer of their complaint which sought an injunction requiring defendants to restore Medi-Cal eligibility to all medically indigent adults until the state paid the cost of full health services for them. It is also unavailing.

An injunction against enforcement of a state mandate is available only after the Legislature fails to include funding in a local government claims bill following a determination by the Commission that a state mandate exists. (Gov. Code, § 17612.) Whether plaintiffs seek declaratory relief and/or an injunction, therefore, they are seeking to enforce [section 6](#).

All further statutory references are to the Government Code unless otherwise indicated.

4 The test claim by the County of Los Angeles was filed prior to that proposed by Alameda County. The Alameda County claim was rejected for that reason. (See § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the issues the majority elects to address instead in this proceeding. Los Angeles County declined a request from Alameda County that it be included in the test claim because the two counties' systems of documentation were so similar that joining Alameda County would not be of any benefit. Alameda County and these plaintiffs were, of course, free to participate in the Commission hearing on the test claim. (§ 17555.)

5 "Local agency" means any city, county, special district, authority, or other political subdivision of the state." (§ 17518.)

6 "School district" means any school district, community college district, or county superintendent of schools." (§ 17519.)

7 Plaintiffs' argument that the Legislature's failure to make provision for individual enforcement of [section 6](#) before the Commission demonstrates an intent to permit legal actions, is not persuasive. The legislative statement of intent to relegate all mandate disputes to the Commission is clear. A more likely explanation of the failure to provide for test cases to be initiated by individuals lies in recognition that (1) because [section 6](#) creates rights only in governmental entities, individuals lack sufficient beneficial interest in either the receipt or expenditure of reimbursement funds to accord them standing; and (2) the number of local agencies having a direct interest in obtaining reimbursement is large enough to ensure that citizen interests will be adequately represented.

8 Plaintiffs are not without a remedy if the county fails to provide adequate health care, however. They may enforce the obligation imposed on the county by [Welfare and Institutions Code sections 17000](#) and [17001](#), and by judicial action. (See, e.g.,  *Mooney v. Pickett* (1971) 4 Cal.3d 669  94 Cal.Rptr. 279, 483 P.2d 1231.)

9 For this reason, it would be inappropriate to address the merits of plaintiff's claim in this proceeding. (Cf.  *Dix v. Superior Court* (1991) 53 Cal.3d 442  279 Cal.Rptr. 834, 807 P.2d 1063.) Unlike the dissent, we do not assume that in representing the state in this proceeding, the Attorney General necessarily represented the interests and views of these officials.

1 The majority states that "Plaintiffs are not without a remedy if the county fails to provide adequate health care .... They may enforce the obligation imposed on the county by [Welfare and Institutions Code sections 17000](#) and [17001](#), and by judicial action." (Maj. opn., *ante*, p. 336, fn. 8*ante*, p. 336, fn. 8)

The majority fails to note that plaintiffs have already tried this remedy, and met with the response that, owing to the state's inadequate subvention funds, the county cannot afford to provide adequate health care.

2 It is of no importance that plaintiffs did not request issuance of a writ of mandate. In [Taschner v. City Council](#) (1973) 31 Cal.App.3d 48, 56 [[107 Cal.Rptr. 214](#)] (overruled on other grounds in [Associated Home Builders etc., Inc. v. City of Livermore](#) (1976) 18 Cal.3d 582, 596 [[135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038](#)]), the court said that "[a]s against a general demurrer, a complaint for declaratory relief may be treated as a petition for mandate [citations], and where a complaint for declaratory relief alleges facts sufficient to entitle plaintiff to mandate, it is error to sustain a general demurrer without leave to amend."

In the present case, the trial court ruled on a motion for summary judgment, but based that ruling not on the evidentiary record (which supported plaintiffs' showing of irreparable injury) but on the issues as framed by the pleadings. This is essentially equivalent to a ruling on demurrer, and a judgment denying standing could not be sustained on the narrow ground that plaintiffs asked for the wrong form of relief without giving them an opportunity to correct the defect. (See [Residents of Beverly Glen, Inc. v. City of Los Angeles](#) (1973) 34 Cal.App.3d 117, 127-128 [[109 Cal.Rptr. 724](#)].)

3 The majority's argument assumes that the state will comply with a judgment for plaintiffs by providing increased subvention funds. If the state were instead to comply by restoring Medi-Cal coverage for MIA's, or some other method of taking responsibility for their health needs, plaintiffs would benefit directly.

4 The majority emphasizes the statement of purpose of [Government Code section 17500](#): "The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under [section 6 of article XIII B of the California Constitution](#). The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary, and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs."

The "existing system" to which [Government Code section 17500](#) referred was the Property Tax Relief Act of 1972 ([Rev. & Tax. Code, §§ 2201-2327](#)), which authorized local agencies and school boards to request reimbursement from the state Controller. Apparently dissatisfied with this remedy, the agencies and boards were bypassing the Controller and bringing actions directly in the courts. (See, e.g., [County of Contra Costa v. State of California](#) (1986) 177 Cal.App.3d 62 [[222 Cal.Rptr. 750](#)].) The legislative declaration refers to this phenomena. It does not discuss suits by individuals.

5 "(a) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of all claims for reimbursement for state-mandated local programs not theretofore approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered, which is filed in acceptable form on or before the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent

notification to continue in the program shall not constitute a waiver. [¶] (b) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987." (¶ [Gov. Code, § 77203.5](#), italics added.)

"As used in this chapter, 'state-mandated local program' means any and all reimbursements owed or owing by operation of either [Section 6 of Article XIII B of the California Constitution](#), or [Section 17561 of the Government Code](#), or both." ([Gov. Code, § 77005](#), italics added.)

- 6 It is true that these officials would participate in a proceeding before the Commission on State Mandates, but they would do so as members of an administrative tribunal. On appellate review of a commission decision, its members, like the members of the Public Utilities Commission or the Workers' Compensation Appeals Board, are not respondents and do not appear to present their individual views and positions. For example, in [Lucia Mar Unified School Dist. v. Honig](#) (1988) 44 Cal.3d 830 [¶ 244 Cal.Rptr. 677, 750 P.2d 318], in which we reviewed a commission ruling relating to subvention payments for education of handicapped children, the named respondents were the state Superintendent of Public Instruction, the Department of Education, and the Commission on State Mandates. The individual members of the commission were not respondents and did not participate.
- 7 [Welfare and Institutions Code section 17000](#) provides that "[e]very county ... shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions."
- 8 ¶ [Article XIII B, section 1](#) provides: "The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article."
- 9 [Section 3 of article XIII B](#) reads in relevant part: "The appropriations limit for any fiscal year ... shall be adjusted as follows:
  - (a) In the event that the financial responsibility of providing services is transferred, in whole or in part ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriation limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount. ..."
- 10 [Section 6 of article XIII B](#) further provides that the "Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." None of these exceptions apply in the present case.
- 11 The state notes that, in contrast to the program at issue in *Lucia Mar*, it has not retained administrative control over aid to MIA's. But the quoted language from *Lucia Mar*, while appropriate to the facts of that case, was not intended to establish a rule limiting [article XIII B, section 6](#), to instances in which the state retains administrative control over the program that it requires the counties to fund. The constitutional language admits of no such limitation, and its recognition would permit the Legislature to evade the constitutional requirement.

12 The state's repeated emphasis on the "temporary" nature of its funding is a form of post hoc reasoning. At the time [article XIII B](#) was enacted, the voters did not know which programs would be temporary and which permanent.

13 It must, however, provide a *comparable* level of services. (See [Board of Supervisors v. Superior Court](#) (1989) 207 Cal.App.3d 552, 564 [[254 Cal.Rptr. 905](#)].)

14 Certain language in [Madera Community Hospital v. County of Madera, supra](#), 155 Cal.App.3d 136, however, is questionable. That opinion states that the "Legislature intended that County bear an obligation to its poor and indigent residents, *to be satisfied from county funds*, notwithstanding federal or state programs which exist concurrently with County's obligation and alleviate, to a greater or lesser extent, County's burden." (P. 151.) [Welfare and Institutions Code section 17000](#) by its terms, however, requires the county to provide support to residents only "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Consequently, to the extent that the state or federal governments provide care for MIA's, the county's obligation to do so is reduced *pro tanto*.

15 The county's right to subvention funds under [article XIII B](#) arises because its duty to care for MIA's is a state-mandated responsibility; if the county had no duty, it would have no right to funds. No claim is made here that the funding of medical services for the indigent shifted to Alameda County is not a program "mandated" by the state; i.e., that Alameda County has any option other than to pay these costs. ([Lucia Mar Unified School Dist. v. Honig, supra](#), 44 Cal.3d at pp. 836-837.)

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 2. Government of the State of California  
Division 4. Fiscal Affairs (Refs & Annos)  
Part 7. State-Mandated Local Costs (Refs & Annos)  
Chapter 1. Legislative Intent (Refs & Annos)

West's Ann.Cal.Gov.Code § 17500

§ 17500. Legislative findings and declarations

Effective: January 1, 2005

Currentness

The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under [Section 6 of Article XIIIIB of the California Constitution](#). The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.

It is the intent of the Legislature in enacting this part to provide for the implementation of [Section 6 of Article XIIIIB of the California Constitution](#). Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of [Section 6 of Article XIIIIB of the California Constitution](#).

#### Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.2004, c. 890 (A.B.2856), § 2.)

#### Notes of Decisions (10)

West's Ann. Cal. Gov. Code § 17500, CA GOVT § 17500

Current with all laws through Ch. 997 of 2022 Reg.Sess.

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[Division 4. Fiscal Affairs \(Refs & Annos\)](#)

[Part 7. State-Mandated Local Costs \(Refs & Annos\)](#)

[Chapter 2. General Provisions \(Refs & Annos\)](#)

West's Ann.Cal.Gov.Code § 17514

## § 17514. Costs mandated by the state

[Currentness](#)

“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIIIIB of the California Constitution](#).

### Credits

(Added by Stats.1984, c. 1459, § 1.)

### Notes of Decisions (16)

West's Ann. Cal. Gov. Code § 17514, CA GOVT § 17514

Current with urgency legislation through Ch. 17 of 2021 Reg.Sess

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 KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional by [California School Boards Assn. v. State of California](#), Cal.App. 3 Dist., Mar. 09, 2009

West's Annotated California Codes

Government Code (Refs & Annos)

Title 2. Government of the State of California

Division 4. Fiscal Affairs (Refs & Annos)

Part 7. State-Mandated Local Costs (Refs & Annos)

Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)

Article 1. Commission Procedure (Refs & Annos)

West's Ann.Cal.Gov.Code § 17556

§ 17556. Findings; costs not mandated upon certain conditions

Effective: October 19, 2010

Currentness

The commission shall not find costs mandated by the state, as defined in [Section 17514](#), in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

- (a) The claim is submitted by a local agency or school district that requests or previously requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the statute or executive order was enacted or issued.
- (b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.
- (c) 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, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.
- (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(e) 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 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. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

#### Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1; Stats.2004, c. 895 (A.B.2855), § 14; Stats.2005, c. 72 (A.B.138), § 7, eff. July 19, 2005; Stats.2006, c. 538 (S.B.1852), § 279; Stats.2010, c. 719 (S.B.856), § 31, eff. Oct. 19, 2010.)

#### Editors' Notes

##### VALIDITY

*A prior version of this section was held unconstitutional as impermissibly broad, in the decision of California School Boards Assn. v. State of California (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.*

#### Notes of Decisions (35)

West's Ann. Cal. Gov. Code § 17556, CA GOVT § 17556  
Current with all laws through Ch. 997 of 2022 Reg.Sess.

## DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 18, 2025, I served the:

- **Current Mailing List dated February 4, 2025**
- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued February 18, 2025**
- **Test Claim filed by the County of Los Angeles on December 20, 2024**

*Stops: Notification by Peace Officers, 24-TC-03*

Statutes 2022, Chapter 805, Section 5 (AB 2773); Vehicle Code Section 2806.5  
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on 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 February 18, 2025 at Sacramento, California.

  
\_\_\_\_\_  
Jill Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/4/25

**Claim Number:** 24-TC-03

**Matter:** Stops: Notification by Peace Officers

**Claimant:** County of Los Angeles

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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March 18, 2025

RECEIVED  
March 18, 2025  
Commission on  
State Mandates

Juliana Gmur  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

### **Test Claim 24-TC-03, Stops: Notification by Peace Officers**

Dear Director Gmur:

The Department of Finance (Finance) has completed its review of test claim 24-TC-03 submitted to the Commission on State Mandates (Commission) by the County of Los Angeles (Claimant), in which the Claimant alleges it incurred reimbursable, state-mandated costs associated with Chapter 805, Statutes of 2022 (Assembly Bill 2773).

Prior to 2024, peace officers were not required to state the reason for a traffic or pedestrian stop before engaging in questioning. Existing law, Chapter 466, Statutes of 2015 (AB 953), requires each state and local law enforcement agency to annually report to the California Department of Justice (DOJ) on all stops conducted by the agency's peace officers for the preceding calendar year.

Effective January 1, 2024, AB 2773 added section 2806.5 to the Vehicle Code to require peace officers making a traffic or pedestrian stop to state the reason for the stop before engaging in any questioning, unless the officer reasonably believes that doing so presents an imminent threat. AB 2773 requires the peace officer to document the reason for the stop on any citation or police report resulting from the stop, and also requires the law enforcement agency to include this information in the annual report to the DOJ noted above.

The Claimant alleges it incurred \$111,649.19 in state-mandated, reimbursable costs in fiscal year 2023-24 to comply with Vehicle Code section 2806.5(a) and estimates \$37,036.14 in such costs in 2024-25. The claimed costs are for the following purposes:

#### Printing New Citation Forms:

The Claimant alleges it incurred costs of \$13,618.75 in 2023-24 to print new versions of the citation form. Finance contends these are one-time costs and notes that the Claimant has always been required to print out citation forms. If the Commission deems the costs to be state-mandated, the costs should not be considered ongoing.

Develop Procedures and Train Officers:

The Claimant alleges it incurred costs of \$84,412.87 in 2023-24 to develop procedures, train officers, and brief officers about the duration of a stop. Finance contends that these are one-time costs and notes that the Claimant has always had to train officers and maintain written procedures. These changes would be incorporated into the Claimant's regular training. If the Commission deems the costs to be state-mandated, the costs should not be considered ongoing.

Traffic Stops:

The Claimant alleges it incurred costs of \$13,662.57 in 2023-24 to conduct traffic stops. Finance contends that officers were already conducting traffic stops and already know the reason for the stop, and that providing the reason for the stop verbally is not a new or higher level of service. Further, the costs to provide this verbal notice cannot be reasonably quantified or distinguished from activities occurring before the passage of AB 2773.

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

Sincerely,

*Teresa Calvert*

TERESA CALVERT  
Program Budget Manager

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 18, 2025, I served the:

- **Current Mailing List dated February 28, 2025**
- **Finance's Comments on the Test Claim filed March 18, 2025**

*Stops: Notification by Peace Officers, 24-TC-03*

Statutes 2022, Chapter 805, Section 5 (AB 2773); Vehicle Code Section 2806.5  
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on 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 March 18, 2025 at Sacramento, California.

  
\_\_\_\_\_  
Jill Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/28/25

**Claim Number:** 24-TC-03

**Matter:** Stops: Notification by Peace Officers

**Claimant:** County of Los Angeles

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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**OSCAR VALDEZ**  
AUDITOR-CONTROLLER

**CONNIE YEE**  
CHIEF DEPUTY AUDITOR-CONTROLLER

**RECEIVED**  
April 07, 2025  
*Commission on  
State Mandates*

**Exhibit C**

ASSISTANT AUDITOR-CONTROLLERS

MAJIDA ADNAN  
RACHELLE ANEMA  
ROBERT G. CAMPBELL

April 7, 2025

**Via Drop Box**

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

Dear Ms. Halsey:

**RESPONSE TO THE DEPARTMENT OF FINANCE  
COMMENTS ON THE COUNTY'S STOPS: NOTIFICATION  
BY PEACE OFFICERS TEST CLAIM**

The County of Los Angeles ("Claimant") submits the attached Comments in response to the Department of Finance's comments on our *Stops: Notification by Peace Officers, 24-TC-03 Test Claim*.

If you have any questions please call me, or your staff may contact Fernando Lemus at (213) 974-0324 or via e-mail at [flemus@auditor.lacounty.gov](mailto:flemus@auditor.lacounty.gov).

Very truly yours,

Oscar Valdez  
Auditor-Controller

OV:CY:RA:RC:FL

Attachment

**RESPONSE TO THE DEPARTMENT OF FINANCE  
COMMENTS ON THE COUNTY'S STOPS: NOTIFICATION  
BY PEACE OFFICERS TEST CLAIM**

The County of Los Angeles (Claimant) has reviewed the comments from the Department of Finance (Finance) related to Test Claim 24-TC-03.

Assembly Bill (AB) 2773 requires local law enforcement agencies to modify their traffic stop procedures to include providing the reason for the stop to the person stopped and documenting the reason on any citation or report. Claimant has incurred costs to implement AB 2773 and has determined that the \$13,618.75 in costs related to printing new citation forms and the \$84,412.87 in costs related to training and developing procedures are one-time costs. Claimant agrees with Finance that these costs should not be considered ongoing.

Finance states that the \$13,662.57 in costs related to stating the reason for the stop and documenting the reason on the citation is not a new or higher level of service. This contradicts the plain reading of AB 2773 as codified in Vehicle Code § 2806.5, which requires the officer to state the reason for the stop, before engaging in questioning, and to document the reason given. Claimant was not required to perform these activities and did not perform these activities until AB 2773 became effective. Furthermore, Claimant has been able to reasonably quantify and distinguish these new activities from the previous activities prior to AB 2773 through the use of body-worn cameras.

Claimant requests that the Commission grant this test claim. AB 2773 imposed one-time costs on Claimant for the implementation of new traffic procedures and citations. In addition, Claimant has and will continue to have ongoing costs resulting from the actual traffic stop and the activities required in AB 2773 to state the reason for the stop and document the stop accordingly on the citation.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 8, 2025, I served the:

- **Current Mailing List dated February 28, 2025**
- **Claimant's Rebuttal Comments filed April 7, 2025**

*Stops: Notification by Peace Officers, 24-TC-03*

Statutes 2022, Chapter 805, Section 5 (AB 2773); Vehicle Code Section 2806.5  
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on 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 April 8, 2025 at Sacramento, California.

  
\_\_\_\_\_  
David Chavez  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/28/25

**Claim Number:** 24-TC-03

**Matter:** Stops: Notification by Peace Officers

**Claimant:** County of Los Angeles

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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RECEIVED  
April 16, 2025  
Commission on  
State Mandates

April 16, 2025

## Exhibit D

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Executive Director  
Commission on State Mandates  
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Sacramento, CA 95814

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Rebuttal to the Department of Finance**  
*Notification by Peace Officers, 24-TC-03*  
Statutes 2022, Chapter 805, Section 5 (AB 2773); Vehicle Code Section  
2806.5  
County of Los Angeles, Claimant

Dear Director Gmur:

The County of Santa Clara (“County”) files its rebuttal to the Commission on State Mandates (“Commission”) in response to the Department of Finance (“DOF”), which commented on test claim 24-TC-03 (“Test Claim”), concerning peace officer stops. The Test Claim asserts that AB 2773, which adds section 2806.5 to the Vehicle Code, imposes an unfunded mandate on counties and thus requires subvention pursuant to article XIII B, section 6 of the California Constitution (“Section 6”).

In response to the Claimants legal argument and account of costs concerning “Traffic Stops,” DOF “contends that officers were already conducting traffic stops and already know the reason for the stop, and that providing the reason for the stop verbally is not a new or higher level of service.” (DOF Comment, at p. 2.) The County respectfully disagrees and urges the Commission to find that AB 2773, through the addition of Vehicle Code section 2806.5, imposes a new or higher level of service.

Letter to: Commission on State Mandates  
Re: Rebuttal to Department of Finance, 24-TC-03  
Date: April 16, 2025  
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The actions compelled by Vehicle Code section 2806.5 impose a new program or higher level of service because “the requirements are new in comparison with the preexisting scheme in view of the circumstance that they did not exist prior to the enactment of [AB 2773]” and “the requirements were intended to provide an enhanced service to the public.” (*San Diego Unified Sch. Dist. v. Comm'n on State Mandates* (2004) 33 Cal. 4th 859, 878.)

To start, DOF itself recognizes earlier in its comment that “[p]rior to 2024, peace officers were not required to state the reason for a traffic or pedestrian stop before engaging in questioning.” (DOF Comment, at p. 1.) This observation is consistent with the text of AB 2773 and the Legislature’s understanding of the bill in committee reports, neither of which convey that AB 2773 is declaratory of existing law. Subdivision (c) of Vehicle Code section 2806.5 states that the “section shall become operative on January 1, 2024.” It would be unnecessary to set a future effective date if the statute merely declared existing law. Further, both the Senate Floor Analysis and the Assembly Concurrence Report make the same distinction between then-existing law and AB 2773, stating that the bill newly introduces a requirement for a peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, to state the reason for the stop, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat. (Sen. Floor Analysis, Bill No. 2773 (2021-2022 Reg. Sess., pp. 3-4; Assem. Concurrence in Senate Amendments, Bill No. 2773 (2021-2022 Reg. Sess.), p. 1.)

Moreover, the requirement to state the reason for traffic and pedestrian stops provides an enhanced service to stopped individuals and the broader public. Prior to the enactment of AB 2773, an individual motorist or pedestrian stopped by a peace officer might not be given a reason and might instead be asked by the officer if the *individual* knew why they were being stopped. The requirement under AB2773 thus enhances the likelihood of a lawful stop.

These benefits extend to the broader public. As captured in the Senate Floor Analysis for AB 2773, the bill author intended “to promote equity and accountability in communities across California,” and “bring[] transparency to [the] service of protecting our public.” (Sen. Floor Analysis, at p. 4.) In particular, the notification requirement added via Vehicle Code section 2806.5 addresses the many criticisms associated with law enforcement practice in the wake of *Whren v. United States* (1996) 517 U.S. 806, which found no Fourth Amendment violation by peace officers who temporarily detain individuals where an officer has probable cause to believe the individual has violated traffic laws. (*Ibid.*) As the legislative material explains, “*Whren* has given rise to what have been dubbed ‘pretext stops,’ a practice in which a law enforcement officer uses a minor traffic violation as a pretext to stop a vehicle in order to investigate other possible crimes.” (*Ibid.*) Critics claim that pretext stops drive “racial bias in law enforcement”

Letter to: Commission on State Mandates  
Re: Rebuttal to Department of Finance, 24-TC-03  
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and give “officers carte blanche to stop a vehicle.” (*Ibid.*) To address these “racial disparities in police stops and in an effort to improve police accountability,” the bill author introduced AB 2773 to require officers to communicate and document the reason for their stop. (*Id.* at pp. 5-6.) These aims of AB 2773 reflect the California Supreme Court’s view that enhanced services promote a social good. (See *San Diego Unified Sch. Dist.*, *supra*, 33 Cal. 4th at p. 878 [highlighting the benefits of “safer schools for the vast majority of students”].)

By mandating that peace officers provide a reason for certain traffic or pedestrian stops, AB 2773 thus imposes a new or higher level of service. The County urges the Commission to find that the new and modified activities as outlined by the County of Los Angeles constitute a reimbursable mandate in the meaning of Section 6 of Article XIII B of the California Constitution.

Certification

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or based on information and belief and that I am authorized and competent to do so.

Very truly yours,  
TONY LOPRESTI  
County Counsel



RAJIV NARAYAN  
Deputy County Counsel

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 17, 2025, I served the:

- **Current Mailing List dated April 10, 2025**
- **County of Santa Clara's Rebuttal Comments filed April 16, 2025**

*Stops: Notification by Peace Officers, 24-TC-03*

Statutes 2022, Chapter 805, Section 5 (AB 2773); Vehicle Code Section 2806.5  
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on 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 April 17, 2025 at Sacramento, California.



David Chavez  
Commission on State Mandates  
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## COMMISSION ON STATE MANDATES

### Mailing List

**Last Updated:** 4/10/25

**Claim Number:** 24-TC-03

**Matter:** Stops: Notification by Peace Officers

**Claimant:** County of Los Angeles

#### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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October 6, 2025

## Exhibit E

Mr. Chris Hill  
Department of Finance  
915 L Street, 8th Floor  
Sacramento, CA 95814

Mr. Fernando Lemus  
County of Los Angeles  
500 West Temple Street, Room 603  
Los Angeles, CA 90012

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**

*Stops: Notification by Peace Officers, 24-TC-03*

Statutes 2022, Chapter 805, Section 5 (AB 2773); Vehicle Code Section 2806.5  
County of Los Angeles, Claimant

Dear Mr. Hill and Mr. Lemus:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

**Written Comments:** Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on October 27, 2025**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

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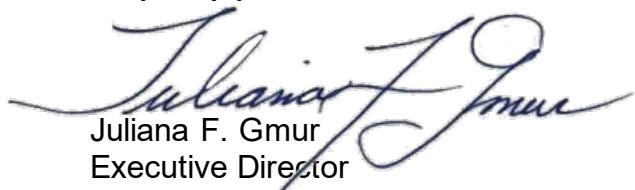
<sup>1</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

**Hearing:** This matter is set for hearing on **Friday, February 13, 2026** at 10:00 a.m. The Proposed Decision will be issued on or about January 30, 2026.

If you plan to address the Commission on this item, please notify the Commission Office not later than noon on the Tuesday prior to the hearing, **February 10, 2026**. Please also include the names of the people who will be speaking for inclusion on the witness list and the names and emails addresses of the people who will be speaking both in person and remotely to receive a hearing panelist link in Zoom. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Very truly yours,



Juliana F. Gmur  
Executive Director

**ITEM \_\_\_\_**  
**TEST CLAIM**  
**DRAFT PROPOSED DECISION**

Vehicle Code Section 2806.5

Statutes 2022, Chapter 805, AB 2773

*Stops: Notification by Peace Officers*

24-TC-03

County of Los Angeles, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

The Test Claim alleges new state-mandated activities and costs resulting from Vehicle Code section 2806.5, added by Statutes 2022, chapter 805, effective January 1, 2023. The test claim statute requires a peace officer making a traffic or pedestrian stop, before engaging in questioning about a criminal investigation or traffic violation, to state the reason for the stop, and also to document the reason on any resulting citation or police report, beginning on the statute's delayed operative date, January 1, 2024. These activities are not required when the officer reasonably believes withholding the reason for the stop is necessary to protect life or property from imminent threat, such as in cases of terrorism or kidnapping.

Staff finds the test claim statute is a reimbursable state-mandate within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

**Procedural History**

The claimant filed the Test Claim on December 20, 2024.<sup>1</sup> The Department of Finance (Finance) filed comments on the Test Claim on March 18, 2025.<sup>2</sup> The claimant filed rebuttal comments on April 7, 2025.<sup>3</sup> The County of Santa Clara filed comments on April 16, 2025.<sup>4</sup>

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<sup>1</sup> Exhibit A, Test Claim, page 1.

<sup>2</sup> Exhibit B, Finance's Comments on the Test Claim, page 1.

<sup>3</sup> Exhibit C, Claimant's Rebuttal Comments, page 1.

<sup>4</sup> Exhibit D, County of Santa Clara's Comments, page 1.

Commission staff issued the Draft Proposed Decision on October 6, 2025.<sup>5</sup>

## **Commission Responsibilities**

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state.<sup>6</sup> Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>7</sup>

## **Claims**

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

<b>Issue</b>	<b>Description</b>	<b>Staff Recommendation</b>
Was the Test Claim timely filed?	Government Code section 17551(c) requires test claims “be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines “12 months” as 365 days.	Yes.  The test claim statute became effective on January 1, 2023, and has an operative date of January 1, 2024. <sup>8</sup>  The Test Claim was filed on December 20, 2024, <sup>9</sup> more than one year from the statute’s effective date. However, the claimant submitted evidence it began to incur increased costs under the statute on

<sup>5</sup> Exhibit E, Draft Proposed Decision.

<sup>6</sup> Government Code section 17521.

<sup>7</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281 citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>8</sup> Vehicle Code section 2806.5, as added by Statutes 2022, chapter 805.

<sup>9</sup> Exhibit A, Test Claim, page 1.

Issue	Description	Staff Recommendation
	<p>Government Code section 17557(e) requires: “A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that year.”</p>	<p>January 1, 2024.<sup>10</sup> The Test Claim is timely filed. Because the Test Claim was filed on December 20, 2024, the potential period of reimbursement begins on July 1, 2023.</p>
<p>Does Vehicle Code 2806.5, as added by Statutes 2022, chapter 805, impose a reimbursable state-mandated program?</p>	<p>The test claim statute, Vehicle Code section 2806.5 reads:</p> <p>(a) A peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, shall state the reason for the stop. The officer shall document the reason for the stop on any citation or police report resulting from the stop.</p> <p>(b) Subdivision (a) does not apply when the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including, but not limited to, cases of terrorism or kidnaping.</p> <p>(c) This section shall become operative on January 1, 2024.</p>	<p>Yes, approve, with a period of reimbursement beginning July 1, 2023.</p> <p>Staff finds that Vehicle Code section 2806.5, as added by Statutes 2022, chapter 805, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, for a county or city peace officer to do the following beginning January 1, 2024, when the officer makes a traffic or pedestrian stop:</p> <ul style="list-style-type: none"> <li>• State the reason for the stop before engaging in questioning related to a criminal investigation or traffic violation.</li> <li>• Document the reason for the stop on any citation or police report resulting from the stop.</li> </ul> <p>These activities are not required or mandated by the state when the officer reasonably believes that</p>

<sup>10</sup> Exhibit A, Test Claim, page 16, paragraph 5 (Declaration of Jason Lynn, Deputy Sheriff Generalist, Risk Management Bureau, Field Operations Support Service, Office of Constitutional Policing).

Issue	Description	Staff Recommendation
		<p>withholding the reason for the stop is necessary to protect life or property from imminent threat, including, but not limited to, cases of terrorism or kidnapping.</p> <p>In addition, documenting the reason for a stop is not new and does not mandate a new program or higher level of service when the officer's grounds for belief that the person violated Vehicle Code section 23136, 23140, 23152, or 23153 relating to DUI offenses, were the reason for the stop and that stop resulted in a suspension or arrest per Vehicle Code section 13380(a).</p>

### Staff Analysis

This Test Claim alleges new state-mandated activities and costs from Vehicle Code section 2806.5, as added by Statutes 2022, chapter 805. The test claim statute requires peace officers who make a traffic or pedestrian stop to state the reason for the stop before engaging in questioning about a criminal investigation or traffic violation and to document the reason on any citation or police report.<sup>11</sup> However, if the officer believes withholding the reason for the stop is necessary to protect life or property from imminent threat, including terrorism and kidnapping, then the activities of stating the reason for the stop and documenting the reason on the any citation or police report are not required.<sup>12</sup> These requirements are triggered by decisions of the officer to make a traffic or pedestrian stop and to engage in questioning.

Vehicle Code section 2806.5 was added in response to concern about “pretext stops,” in which a peace officer uses a minor traffic violation or other allowed reason for a stop as a pretext to investigate other crimes for which they did not have reasonable suspicion. In 1996, the U.S. Supreme Court, upheld this practice in *Whren v. United States*. The Court said:

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<sup>11</sup> Vehicle Code section 2806.5(a), as added by Statutes 2022, chapter 805.

<sup>12</sup> Vehicle Code section 2806.5(b), as added by Statutes 2022, chapter 805.

[T]he temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, and "the constitutional reasonableness of traffic stops" does not depend "on the actual motivations of the individual officers involved.<sup>13</sup>

Use of the pretext stop as an investigative tool became "widespread" since the 1996 decision.<sup>14</sup> But pretext stops are widely criticized as a driver of racial bias in law enforcement.<sup>15</sup> In response to their growing use in California, the stated goal of the test claim statute is "equity and accountability in communities across California" and "transparency [in the] service of protecting our public."<sup>16</sup>

Staff finds that the Test Claim was timely filed with a potential period of reimbursement beginning July 1, 2023.

Staff finds the requirements are new and must be implemented on the statute's operative date of January 1, 2024.<sup>17</sup>

Staff further finds that the test claim statute imposes new requirements on local government peace officers who make a traffic or pedestrian stop to first state the reason for the stop before engaging in questioning about a criminal investigation or traffic violation and to document the reason on any citation or police report. However, documenting the reason for a stop is not new when the officer's grounds for belief that the person violated Vehicle Code section 23136, 23140, 23152, or 23153 relating to DUI offenses, were the reason for the stop and that stop resulted in a suspension or arrest per Vehicle Code section 13380(a) and a sworn report.

Staff further finds the new requirements are mandated by the state. The new requirements are not legally compelled by state law since the decision to stop the individual, engage in questioning, and in some cases to issue a citation or police report is made at the local level.<sup>18</sup> Nevertheless, the decisions to stop the individual and

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<sup>13</sup> *Whren v. United States* (1996) 517 U.S. 806, 813.

<sup>14</sup> Exhibit X (5), Senate Rules Committee, Office of Senate Floor Analyses, August 15, 2022, AB 2773, as amended August 11, 2022, page 4.

<sup>15</sup> Exhibit X (4), Senate Committee on Public Safety, June 21, 2022, AB 2773, as amended May 19, 2022, pages 3-4.

<sup>16</sup> Exhibit X (4), Senate Committee on Public Safety, June 21, 2022, AB 2773, as amended May 19, 2022, page 3.

<sup>17</sup> *People v. Valle* (2024) 105 Cal.App.5th 195, 203-204; Vehicle Code section 2806.5(c).

<sup>18</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 741 (This [legal compulsion] standard is similar to the showing necessary to obtain a traditional writ of mandate, which requires the petitioning party to establish the respondent has "a clear, present, and usually ministerial duty to act. ... Mandate will not issue if the duty is ... mixed with discretionary power."); *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800,

engage in questioning about a criminal investigation or traffic violation are not truly voluntary within the meaning of article XIII B, section 6 and the requirements to first state the reason for the stop and to document the reason for the stop on any citation or police report resulting therefrom are thus mandated by the state.

Staff further finds that the test claim statute imposes a new program or higher level of service which the California Supreme Court defined for purposes of article XIII B, section 6 as activities that carry 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>19</sup> The new state-mandated requirements imposed by the test claim statute apply uniquely to law enforcement, a peculiarly governmental function.<sup>20</sup> And the statute was intended to provide a service to the public: to “promote equity and accountability in communities across California” and “transparency to [the] service of protecting our public.”<sup>21</sup>

Finally, staff finds that the test claim statute results in costs mandated by the state. The claimant has provided evidence of increased costs exceeding \$1,000, as required by Government Code section 17564. Staff also finds that no exceptions to reimbursement in Government Code section 17556 apply. The test claim statute is aimed at peace officer behavior and does not create a new crime or infraction, eliminate a crime or infraction, or change the penalty for a crime or infraction within the meaning of Government Code section 17556(g) or article XIII B, section 6(a)(2) of the California Constitution.

Based on the foregoing, staff recommends that the Commission approve this Test Claim for the period of reimbursement beginning July 1, 2023, and find that Vehicle Code section 2806.5, as added by Statutes 2022, chapter 805, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, for a county or city peace officer to do the following beginning January 1, 2024, when the officer makes a traffic or pedestrian stop:

- State the reason for the stop before engaging in questioning related to a criminal investigation or traffic violation.
- Document the reason for the stop on any citation or police report resulting from the stop.

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815 (“[A] local entity's voluntary or discretionary decision to undertake an activity cannot be said to be legally compelled, even if that decision results in certain mandatory actions.”).

<sup>19</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>20</sup> *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

<sup>21</sup> Exhibit X (4), Senate Committee on Public Safety, June 21, 2022, AB 2773, as amended May 19, 2022, page 3.

These activities are not required or mandated by the state when the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including, but not limited to, cases of terrorism or kidnapping.

In addition, documenting the reason for a stop is not new and does not mandate a new program or higher level of service when the officer's grounds for belief that the person violated Vehicle Code section 23136, 23140, 23152, or 23153 relating to DUI offenses, were the reason for the stop and that stop resulted in a suspension or arrest per Vehicle Code section 13380(a).

### **Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to approve the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM  Vehicle Code Section 2806.5  Statutes 2022, Chapter 805, AB 2773   Filed on December 20, 2024 County of Los Angeles, Claimant	Case No.: 24-TC-03  <i>Stops: Notification by Peace Officers</i>  DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.  <i>(Adopted February 13, 2026)</i>
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**DECISION**

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on February 13, 2026. [Witness list will be included in the adopted Decision.]

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

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller, Vice Chairperson	
Karen Green Ross, Public Member	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer	
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	
Alexander Powell, Representative of the Director of the Office of Land Use and Climate Innovation	

**Summary of the Findings**

This Test Claim alleges new state-mandated activities and costs from Vehicle Code section 2806.5, as added by Statutes 2022, chapter 805. The test claim statute

requires peace officers who make a traffic or pedestrian stop to state the reason for the stop before engaging in questioning about a criminal investigation or traffic violation and to document the reason on any citation or police report.<sup>22</sup> However, if the officer believes withholding the reason for the stop is necessary to protect life or property from imminent threat, including terrorism and kidnapping, then the activities of stating the reason for the stop and documenting the reason on any citation or police report are not required.<sup>23</sup> These requirements are triggered by decisions of the officer to make a traffic or pedestrian stop and to engage in questioning.

Vehicle Code section 2806.5 was added in response to concern about “pretext stops,” in which a peace officer uses a minor traffic violation or other allowed reason for a stop as a pretext to investigate other crimes for which they did not have reasonable suspicion. In 1996, the U.S. Supreme Court, upheld this practice in *Whren v. United States*. The Court said:

[T]he temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment’s prohibition against unreasonable seizures, and “the constitutional reasonableness of traffic stops” does not depend “on the actual motivations of the individual officers involved.”<sup>24</sup>

Use of the pretext stop as an investigative tool became “widespread” since the 1996 decision.<sup>25</sup> But pretext stops are widely criticized as a driver of racial bias in law enforcement.<sup>26</sup> In response to their growing use in California, the stated goal of the test claim statute is “equity and accountability in communities across California” and “transparency [in the] service of protecting our public.”<sup>27</sup>

The Commission finds that the Test Claim was timely filed with a potential period of reimbursement beginning July 1, 2023.

The requirements are new and must be implemented on the statute’s operative date of January 1, 2024.<sup>28</sup>

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<sup>22</sup> Vehicle Code section 2806.5(a), as added by Statutes 2022, chapter 805.

<sup>23</sup> Vehicle Code section 2806.5(b), as added by Statutes 2022, chapter 805.

<sup>24</sup> *Whren v. United States* (1996) 517 U.S. 806, 813.

<sup>25</sup> Exhibit X (5), Senate Rules Committee, Office of Senate Floor Analyses, August 15, 2022, AB 2773, as amended August 11, 2022, page 4.

<sup>26</sup> Exhibit X (4), Senate Committee on Public Safety, June 21, 2022, AB 2773, as amended May 19, 2022, pages 3-4.

<sup>27</sup> Exhibit X (4), Senate Committee on Public Safety, June 21, 2022, AB 2773, as amended May 19, 2022, page 3.

<sup>28</sup> *People v. Valle* (2024) 105 Cal.App.5th 195, 203-204; Vehicle Code section 2806.5(c).

The Commission finds that the test claim statute imposes new requirements on local government peace officers who make a traffic or pedestrian stop to first state the reason for the stop before engaging in questioning about a criminal investigation or traffic violation and to document the reason on any citation or police report. However, documenting the reason for a stop is not new when the officer's grounds for belief that the person violated Vehicle Code section 23136, 23140, 23152, or 23153 relating to DUI offenses, were the reason for the stop and that stop resulted in a suspension or arrest per Vehicle Code section 13380(a) and a sworn report.

The Commission also finds the new requirements are mandated by the state. The new requirements are not legally compelled by state law since the decision to stop the individual, engage in questioning, and in some cases to issue a citation or police report is made at the local level.<sup>29</sup> Nevertheless, the decisions to stop the individual and engage in questioning about a criminal investigation or traffic violation are not truly voluntary within the meaning of article XIII B, section 6 and the requirements to first state the reason for the stop and to document the reason for the stop on any citation or police report resulting therefrom are thus mandated by the state.

The Commission also finds that the test claim statute imposes a new program or higher level of service which the California Supreme Court defined for purposes of article XIII B, section 6 as activities that carry 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>30</sup> The new state-mandated requirements imposed by the test claim statute apply uniquely to law enforcement, a peculiarly governmental function.<sup>31</sup> And the statute was intended to provide a service to the public: to "promote equity and accountability in communities across California" and "transparency to [the] service of protecting our public."<sup>32</sup>

Finally, the Commission finds that the test claim statute results in costs mandated by the state. The claimant has provided evidence of increased costs exceeding \$1,000, as

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<sup>29</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 741 (This [legal compulsion] standard is similar to the showing necessary to obtain a traditional writ of mandate, which requires the petitioning party to establish the respondent has "a clear, present, and usually ministerial duty to act. ... Mandate will not issue if the duty is ... mixed with discretionary power."); *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815 ("[A] local entity's voluntary or discretionary decision to undertake an activity cannot be said to be legally compelled, even if that decision results in certain mandatory actions.").

<sup>30</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>31</sup> *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

<sup>32</sup> Exhibit X (4), Senate Committee on Public Safety, June 21, 2022, AB 2773, as amended May 19, 2022, page 3.

required by Government Code section 17564. The Commission further finds that no exceptions to reimbursement in Government Code section 17556 apply. The test claim statute is aimed at peace officer behavior and does not create a new crime or infraction, eliminate a crime or infraction, or change the penalty for a crime or infraction within the meaning of Government Code section 17556(g) or article XIII B, section 6(a)(2) of the California Constitution.

Based on the foregoing, the Commission approves this Test Claim for the period of reimbursement beginning July 1, 2023, and finds that Vehicle Code section 2806.5, as added by Statutes 2022, chapter 805, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, for a county or city peace officer to do the following beginning January 1, 2024, when the officer makes a traffic or pedestrian stop:

- State the reason for the stop before engaging in questioning related to a criminal investigation or traffic violation.
- Document the reason for the stop on any citation or police report resulting from the stop.

These activities are not required or mandated by the state when the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including, but not limited to, cases of terrorism or kidnapping.

In addition, documenting the reason for a stop is not new and does not mandate a new program or higher level of service when the officer's grounds for belief that the person violated Vehicle Code section 23136, 23140, 23152, or 23153 relating to DUI offenses, were the reason for the stop and that stop resulted in a suspension or arrest per Vehicle Code section 13380(a).

## **COMMISSION FINDINGS**

### **I. Chronology**

01/01/2023 Vehicle Code section 2806.5, Statutes 2022, chapter 805, became effective, and became operative on January 1, 2024.

12/20/2024 The claimant filed the Test Claim.<sup>33</sup>

03/18/2025 The Department of Finance (Finance) filed comments on the Test Claim.<sup>34</sup>

04/07/2025 The claimant filed rebuttal comments.<sup>35</sup>

04/16/2025 The County of Santa Clara filed comments.<sup>36</sup>

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<sup>33</sup> Exhibit A, Test Claim.

<sup>34</sup> Exhibit B, Finance's Comments on the Test Claim.

<sup>35</sup> Exhibit C, Claimant's Rebuttal Comments.

<sup>36</sup> Exhibit D, County of Santa Clara's Comments.

10/06/2025 Commission staff issued the Draft Proposed Decision.<sup>37</sup>

## II. Background

### A. Prior Law

Traffic and pedestrian stop laws start with the Fourth Amendment. The Fourth Amendment to the U.S. Constitution provides that the right of the people to be secure against unreasonable searches and seizures shall not be violated. A traffic or pedestrian stop is a detention and therefore a seizure under the Fourth Amendment.<sup>38</sup>

Under Fourth Amendment law since the 1968 U. S. Supreme Court case of *Terry v. Ohio*,<sup>39</sup> to initiate a traffic or pedestrian stop, most often police must have a reasonable suspicion of criminal activity or the stopped person must consent to further detention.<sup>40</sup> “To support reasonable suspicion, an officer must put forth ‘specific and articulable facts that demonstrate at least a minimal level of objective justification for the belief that criminal activity is afoot.’”<sup>41</sup> Peace officers may only initiate a stop *without* reasonable

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<sup>37</sup> Exhibit E, Draft Proposed Decision.

<sup>38</sup> *Terry v. Ohio* (1968) 392 U.S. 1, 16 (“It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person.”).

<sup>39</sup> *Terry v. Ohio* (1968) 392 U.S. 1, 2 (“And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”).

<sup>40</sup> *U.S. v. Foreman* (2004) 369 F.3d 776, 780-781. *People v. Wells* (2006) 38 Cal.4th 1078, 1083. According to the *Foreman* case:

The standard of “reasonable suspicion” as used to evaluate the constitutionality of a *Terry* stop is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act. *Ornelas v. United States*, 517 U.S. 690, 695–96, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996). The reasonable suspicion standard, like the probable cause standard, is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed. *Id.*

[¶] . . . [¶]

Notably, the reasonable suspicion standard “is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.” *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). However, the *Terry* reasonable suspicion standard does require “a minimal level of objective justification” for the police action. *Id.*

<sup>41</sup> *United States v. Miller* (2022) 54 F.4th 219, 228 citing *United States v. Bowman* (2018) 884 F.3d 200, 213.

suspicion if there is “some special need ‘beyond the normal need’ for criminal law enforcement,” such as a mobile DUI (sobriety) checkpoint.<sup>42</sup> Another possibility is a vehicle safety hazard.<sup>43</sup> But in such circumstances, the detention is still a Fourth Amendment seizure subject to reasonableness.<sup>44</sup> Peace officers may take the additional step in any stop of requesting to see a driver’s license and vehicle registration as well.<sup>45</sup> “Any further investigative detention, however, is beyond the scope of the *Terry* stop and, therefore, illegal unless the officer has a reasonable suspicion of other criminal activity or the individual consents to the further detention.”<sup>46</sup> If the detainee receives a traffic citation and there is no reasonable suspicion of other criminal activity or consent to further detention, they must be released from custody upon signing (or placing a thumbprint upon) the citation.<sup>47</sup> As the courts summarize:

If a traffic offender provides proper identification, “the officer must simply prepare a written notice to appear (i.e., a citation or ‘ticket’) reciting the particulars of the violation (Veh. Code, § 40500, subd. (a)), and must release the offender when he signs a written promise to appear (*id.*, § 40504, subd. (a)).” (*McGaughran*, p. 583, 159 Cal.Rptr. 191, 601 P.2d 207, fn. omitted.) Accordingly, a driver stopped for a minor traffic infraction cannot be physically restrained absent “‘specific and articulable facts’ that could support a rational suspicion that [the driver was] involved in ‘some activity relating to crime.’ [Citation.]”.<sup>48</sup>

While detained, any questioning is neither a search nor a seizure so long as the detention is not unreasonably prolonged beyond the time necessary to address the violation.<sup>49</sup> This remains true for investigations not directly related to the purpose of the stop.<sup>50</sup>

The many potential justifications for a stop have led to the controversial practice of the “pretext stop,” in which a peace officer uses a minor traffic violation or other allowed reason for a stop as a pretext to investigate other crimes for which they did not have reasonable suspicion. In 1996, the U.S. Supreme Court, upheld this practice in *Whren*

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<sup>42</sup> *Michigan Department of State Police v. Sitz* (1990) 496 U.S. 444, 450; Vehicle Code section 2814.2.

<sup>43</sup> Vehicle Code section 2806.

<sup>44</sup> *Michigan Department of State Police v. Sitz* (1990) 496 U.S. 444, 450.

<sup>45</sup> *U.S. v. Foreman* (2004) 369 F.3d 776, 781; *People v. Saunders* (2006) 38 Cal.4th 1129, 1135. Vehicle Code sections 4462(a) and 12951(b).

<sup>46</sup> *U.S. v. Foreman* (2004) 369 F.3d 776, 781.

<sup>47</sup> Vehicle Code sections 40504(a) and 40303.5.

<sup>48</sup> *People v. Medina* (2003) 110 Cal.App.4th 171, 176.

<sup>49</sup> *People v. Gallardo* (2005) 130 Cal.App.4th 234, 239.

<sup>50</sup> *Arizona v. Johnson* (2009) 555 U.S. 323, 333; *People v. Esparza* (2023) 95 Cal.App.5th 1084, 1094-1095.

v. *United States*. The Court held that the temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, and "the constitutional reasonableness of traffic stops" does not depend "on the actual motivations of the individual officers involved."<sup>51</sup>

In short, pretext stops are allowed because the subjective intent of the officer is irrelevant under the Fourth Amendment.<sup>52</sup> As long as the questioning does not unnecessarily extend the duration of the stop, there is no violation.<sup>53</sup>

Use of the pretext stop as an investigative tool has become "widespread" since the 1996 decision.<sup>54</sup> But pretext stops are widely criticized as a driver of racial bias in law enforcement.<sup>55</sup>

In one attempt to address racial bias in law enforcement, California peace officers have been prohibited since 2000 from engaging in racial profiling, as defined.<sup>56</sup> To promote this, the Legislature required training for every peace officer in the state.<sup>57</sup>

In 2015, the Legislature became more specific. It found and declared that pedestrians, users of public transit, and vehicle occupants who have been stopped, searched, interrogated, and subjected to a property seizure by a peace officer for no reason other than the color of their skin, national origin, religion, gender identity or expression, housing status, sexual orientation, or mental or physical disability are the victims of discriminatory practices.<sup>58</sup> It further found that "[r]acial or identity profiling alienates people from law enforcement, hinders community policing efforts, and causes law enforcement to lose credibility and trust among the people whom law enforcement is sworn to protect and serve."<sup>59</sup>

In 2015, the Legislature also required reporting on the nature of stops. It enacted the Racial and Identity Profiling Act (RIPA) requiring state and local agencies that employ peace officers to annually report data to the Attorney General on all stops conducted by

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<sup>51</sup> *Whren v. United States* (1996) 517 U.S. 806, 813.

<sup>52</sup> *People v. Esparza* (2023) 95 Cal.App.5th 1084, 1094.

<sup>53</sup> *Arizona v. Johnson* (2009) 555 U.S. 323, 333.

<sup>54</sup> Exhibit X (5), Senate Rules Committee, Office of Senate Floor Analyses, August 15, 2022, AB 2773, as amended August 11, 2022, page 4.

<sup>55</sup> Exhibit X (4), Senate Committee on Public Safety, June 21, 2022, AB 2773, as amended May 19, 2022, pages 3-4.

<sup>56</sup> Penal Code section 13519.4(e), as added by Statutes 2000, chapter 684, section 1.

<sup>57</sup> Penal Code section 13519.4(f), as added by Statutes 2000, chapter 684, section 1.

<sup>58</sup> Penal Code section 13519.4(d)(4), as added by Statutes 2015, chapter 466, section 4.

<sup>59</sup> Penal Code section 13519.4(d)(3), as added by Statutes 2015, chapter 466, section 4.

that agency's peace officers for the preceding calendar year.<sup>60</sup> "Stop" is defined for purposes of RIPA as "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control."<sup>61</sup> The submitted reports had to include, at a minimum:

- The time, date, and location of the stop.
- The reason for the stop.
- The result of the stop, such as no action, warning, citation, arrest, etc.
- If a warning or citation was issued, the warning provided or the violation cited.
- If an arrest was made, the offense charged.
- The perceived race or ethnicity, gender, and approximate age of the person stopped. For motor vehicle stops, this paragraph only applies to the driver unless the officer took actions with regard to the passenger.
- Actions taken by the peace officer, as specified.<sup>62</sup>

## **B. The Test Claim Statute**

The claimant pleads section five of the test claim statute, Statutes 2022, Chapter 805 (AB 2773), which added section 2806.5 to the Vehicle Code as follows:

- (a) A peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, shall state the reason for the stop. The officer shall document the reason for the stop on any citation or police report resulting from the stop.
- (b) Subdivision (a) does not apply when the officer reasonably believes that withholding the reason for the stop is necessary to protect life or

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<sup>60</sup> Government Code section 12525.5(a)(1), as added by Statutes 2015, chapter 466, section 2. The Commission partially approved a Test Claim on the Racial Identity and Profiling Act (RIPA), including this code section. See Commission on State Mandates, Test Claim Decision on *Racial and Identity Profiling*, 18-TC-02, adopted May 22, 2020, [https://csm.ca.gov/decisions/18tc02\\_052220.pdf](https://csm.ca.gov/decisions/18tc02_052220.pdf) (accessed on September 25, 2025), pages 3-8. In that Test Claim, the reason for a stop was required to be reported to the Department of Justice. See Government Code section 15252.5(b)(2), as added by Statutes 2015, chapter 466, section 2.

<sup>61</sup> Government Code section 12525.5(g)(2), as added by Statutes 2015, chapter 466, section 2.

<sup>62</sup> Government Code section 12525.5(b)(1)-(7), as added by Statutes 2015, chapter 466, section 2. The test claim statute added to this code section a requirement to report the "reason given to the person stopped at the time of the stop." (Stats. 2022, ch. § 2.) A test claim has not been filed on Government Code section 12525.5, as amended by the 2022 statute.

property from imminent threat, including, but not limited to, cases of terrorism or kidnap[ping].

(c) This section shall become operative on January 1, 2024.

Building on prior law discussed above, this code section is concerned with racism and the “spirit” of the Fourth Amendment’s protection against unlawful searches and seizures in traffic and pedestrian stops.<sup>63</sup> Despite being constitutionally allowed, pretext stops “have been widely criticized” for their use as racial profiling and discrimination.<sup>64</sup> The test claim statute’s intent is to deter peace officers from operating on the premise that they might more easily stop someone and later fabricate a “legitimate justification for the stop.”<sup>65</sup>

While its broadly stated goal is “equity and accountability in communities across California” and “transparency [in the] service of protecting the public,”<sup>66</sup> legislative history also provides statistical information on racism in traffic stops. The statistical information includes the following from the California Public Defenders’ Association:

It is a common experience for community members to be stopped on our streets and highways by peace officers for minor traffic violations and pedestrian offenses. Those community members are obliged to stop for the officer, and failure to do so is at least a misdemeanor, which could subject them to a custodial arrest. Most people are nervous and apprehensive after being stopped by an officer who can deprive them of their liberty.

In October of 2021, the Public Policy Institute of California (PPIC) published a report entitled, 'Racial Disparities in Law Enforcement Stops.' In its report, which analyzed data for almost four million stops by California's 15 largest law enforcement agencies in 2019 it found the following:

Black Californians are significantly more likely to be stopped than white individuals.

Black individuals are more than twice as likely to be searched as white individuals.

Black people are at least twice as likely as whites to experience so-called intrusive outcomes, ranging from being asked to step out of a vehicle, to

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<sup>63</sup> Exhibit X (4), Senate Committee on Public Safety, June 21, 2022, AB 2773, as amended May 19, 2022, page 3.

<sup>64</sup> Exhibit X (6), Senate Committee on Appropriations, August 1, 2022, AB 2773, as amended June 13, 2022, page 2.

<sup>65</sup> Exhibit X (6), Senate Committee on Appropriations, August 1, 2022, AB 2773, as amended June 13, 2022, page 2.

<sup>66</sup> Exhibit X (4), Senate Committee on Public Safety, June 21, 2022, AB 2773, as amended May 19, 2022, page 3.

being handcuffed, to the stop involving a weapon. Stops of Black individuals are three times more likely to involve a weapon than stops of white individuals. In CHP stops for traffic violations, almost everyone, Black or white, receives at least a warning, 98.5% and 98.6%, respectively. While being stopped for a traffic violation rarely results in a booking, both state and local law enforcement agencies book Black drivers more often than white, about 3.5% and 2.5% respectively.<sup>67</sup>

Legislative history also cites the Stanford Open Policing Project:

In 2020, the Stanford Open Policing Project published an analysis of almost 100 million police traffic stops conducted between 2011 and 2017 by 21 state patrol agencies (including the California Highway Patrol) and 29 municipal police departments nationwide. One of the study's central findings was that "police stopped and searched black and Hispanic drivers on the basis of less evidence used in stopping white drivers, who are searched less but are more likely to be found with illegal items."

Moreover, these stops based on routine traffic violations often turn violent. A 2021 New York Times investigation found that in the preceding 5 years, police officers killed at least more than 400 unarmed drivers and passengers who were not under pursuit for a violent crime, while about 60 officers died at the hands of motorists who had been pulled over.<sup>68</sup>

Legislative history also shows that the purpose of the bill was to reduce the use of pretext stops by requiring peace officers to state the reason for the stop before "any interaction with the person being stopped."<sup>69</sup> In 2024, the First District Court of Appeal, in *People v. Valle*, cited the legislative history to further clarify that the test claim statute does not *ban* pretext stops, but requires notice and documentation regarding the objective reason for a stop:

Whether the officer also had additional reasons [beyond a traffic or vehicle violation] for conducting the traffic stop does not eliminate an otherwise reasonable suspicion that a driver was violating the law. (*Whren, supra*, 517 U.S. at pp. 812-813, 116 S.Ct. 1769 [noting that in *United States v. Villamonte-Marquez* (1983) 462 U.S. 579, 103 S.Ct. 2573, 77 L.Ed.2d 22, it "flatly dismissed the idea that an ulterior motive might serve to strip the agents of their legal justification"].) In other words, "[p]retextual stops are

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<sup>67</sup> Exhibit X (1), Assembly Floor Analysis, August 29, 2022, AB 2773, as amended August 11, 2022, pages 1-2.

<sup>68</sup> Exhibit X (5), Senate Rules Committee, Office of Senate Floor Analyses, August 15, 2022, AB 2773, as amended August 11, 2022, page 5.

<sup>69</sup> Exhibit X (6), Senate Committee on Appropriations, August 1, 2022, AB 2773, as amended June 13, 2022, page 2 ("This bill seeks to reduce the use of pretext stops by requiring a peace officer to state the reason for a stop prior to any interaction with the person being stopped."); Exhibit X (7) Assembly Committee on Public Safety, April 5, 2022, AB 2773, as introduced February 18, 2022, page 4.

tolerated—so long as the lawful bounds that justify the stop are observed.” [Citation omitted.] . . .

Nothing in Assembly Bill No. 2773 (2021–2022) (Assembly Bill 2773), which contains new section 2806.5 (Stats. 2022, ch. 805, § 5), alters this Fourth Amendment jurisprudence. It is true that the legislation was originally introduced in response to concerns that the United States Supreme Court’s decision in *Whren* had led to the widespread use of pretext stops and that such stops were often conducted in a racially biased manner. (Assem. Com. on Pub. Safety, Analysis of Assem. Bill 2773, Apr. 5, 2022, pp. 3–4.) . . .

Thus, as enacted, section 2806.5 merely requires notice from the police to the detainee regarding the objective reason for a stop. Under the circumstances, it appears the purposes of section 2806.5 were best articulated by the Public Defender’s Association, which stated in support of the legislation: Assembly Bill 2773 “‘would increase transparency and public confidence in law enforcement by requiring an officer to immediately reassure the individual of the reason for the stop. Unfortunately, some officers launch into a series of questions that may have no apparent relationship to any basis for the stop. The longer the questioning goes on the more apprehensive the individual becomes of the officer’s true motives. However, when confronted by an officer they may feel compelled to answer the questions when in fact they are not required to do so. If informed at the outset of the basis for the stop, the individual would know if any subsequent questions are legitimate or an attempt to elicit incriminating statements or acquiescence to a search.’” (Concurrence in Sen. Amends. to Assem. Bill 2773, as amended Aug. 11, 2022, p. 2.)<sup>70</sup>

Thus, to increase transparency and reduce extraneous conversation by reassuring individuals of the reason for the stop upfront, Vehicle Code section 2806.5 requires two new activities, assuming no imminent threat to life or property: (1) that the peace officer verbally declare the reason for the stop before questioning an individual regarding any criminal activity or a traffic violation; and (2) that the peace officer document the reason for the stop on any citation or police report resulting from the stop.

### III. Positions of the Parties

#### A. County of Los Angeles

The claimant maintains that the test claim statute imposes a reimbursable state mandated program within the meaning of article XIII B, section 6, first arguing that the requirements are new: “Prior to AB 2773, peace officers were not required to disclose to the person stopped the reason for the stop prior to questioning. Peace officers were

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<sup>70</sup> *People v. Valle* (2024) 105 Cal.App.5th 195, 203-204.

not required to document the reason given on any citation or police report.<sup>71</sup> The claimant also states that the test claim statute imposes a “program” as defined by the Supreme Court in that it carries out a governmental function of providing services to the public, or is a law that implements State policy that imposes unique requirements on local governments that do not apply to the entire state.<sup>72</sup> And the claimant asserts that there are no funding sources for the test claim statute, including no local fee authority,<sup>73</sup> and none of the exceptions in Government Code section 17556 apply.<sup>74</sup>

The claimant requests reimbursement for the activities of disclosing the reason for a stop and documenting the reason for a stop.<sup>75</sup> Specifically, the claimant requests reimbursement for the activities of approximately 3,477 sworn officers using new citation forms daily, as well as the printing of the new forms, development of procedures, and training of officers.<sup>76</sup>

In rebuttal comments, the claimant agrees with Finance that costs for printing new citation forms and for training and developing procedures should not be considered ongoing.<sup>77</sup> The claimant *disagrees* with Finance that costs for stating the reason(s) for a stop is not a new program or higher level of service, arguing that it was not required to perform these activities before the test claim statute. The claimant asserts that it “has been able to reasonably quantify and distinguish these new activities from the previous activities” before the test claim statute using body-worn cameras.<sup>78</sup>

## **B. Department of Finance**

Finance acknowledges that before the test claim statute, peace officers were not required to state the reason for a traffic or pedestrian stop, but now AB 2773 requires it, as well as requiring peace officers to document the reason for the stop on any citation or police report.<sup>79</sup>

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<sup>71</sup> Exhibit A, Test Claim, page 10.

<sup>72</sup> Exhibit A, Test Claim, page 12.

<sup>73</sup> Exhibit A, Test Claim, page 14.

<sup>74</sup> Exhibit A, Test Claim, page 13.

<sup>75</sup> Exhibit A, Test Claim, pages 10 and 16, paragraph 3 (Declaration of Jason Lynn, Deputy Sheriff Generalist, Risk Management Bureau, Field Operations Support Service, Office of Constitutional Policing); Exhibit C, Claimant’s Rebuttal Comments, page 2.

<sup>76</sup> Exhibit A, Test Claim, page 16, paragraphs 4 and 6 (Declaration of Jason Lynn, Deputy Sheriff Generalist, Risk Management Bureau, Field Operations Support Service, Office of Constitutional Policing).

<sup>77</sup> Exhibit C, Claimant’s Rebuttal Comments, page 2.

<sup>78</sup> Exhibit C, Claimant’s Rebuttal Comments, page 2.

<sup>79</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1.

Finance argues that there are one-time costs, but no ongoing costs, and that providing the reason for the stop verbally is not a new program or higher level of service as follows:

1. Finance argues that printing citation forms “are one-time costs and notes that the Claimant has always been required to print out citation forms,” so printing should not be an ongoing cost.<sup>80</sup>
2. Finance argues that the claimant’s proposed costs for developing procedures and training and briefing officers about the duration of a stop are also one-time costs and notes that “the Claimant has always had to train officers and maintain written procedures. These changes would be incorporated into the Claimant’s regular training.”<sup>81</sup>
3. Finance argues that there are no ongoing costs in officers giving verbal notice for stops. Finance contends that officers were already conducting traffic stops and already know the reason for the stop, and that providing the reason for the stop verbally is not a new program or higher level of service. Further, the costs to provide this verbal notice cannot be reasonably quantified or distinguished from activities occurring before the passage of AB 2773.<sup>82</sup>

### **C. Interested Party County of Santa Clara**

The County of Santa Clara is an interested party under section 1181.2(i) of the Commission’s regulations. In comments filed April 16, 2025, the County of Santa Clara disagrees with Finance and maintains that the test claim statute is a new program or higher level of service, citing the California Supreme Court that said “the requirements are new in comparison with the preexisting scheme in . . . that they did not exist prior to the enactment of [AB 2773].”<sup>83</sup>

To support its argument that the test claim statute’s requirements are new, the County quotes Finance’s comment that “prior to 2024, peace officers were not required to state the reason for a traffic or pedestrian stop before engaging in questioning,” and the text of AB 2773 that states it becomes effective January 1, 2024, which would be unnecessary if the statute merely declared existing law.<sup>84</sup> The legislative history also distinguishes between then-existing law and the test claim statute, stating it newly-

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<sup>80</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1.

<sup>81</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

<sup>82</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

<sup>83</sup> Exhibit D, County of Santa Clara’s Comments, page 2 citing *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

<sup>84</sup> Exhibit D, County of Santa Clara’s Comments, page 2.

introduces a requirement for a peace officer to state the reason for the traffic or pedestrian stop.<sup>85</sup>

The County further argues that the statute provides an enhanced service to stopped individuals and the broader public. Individuals benefit by the enhanced likelihood of a lawful stop. As to the broader public, the County cites the legislative history of the bill that states it was enacted “to promote equity and accountability in communities across California,” and to “bring[] transparency to [the] service of protecting our public.”<sup>86</sup> And the bill’s notification requirement addresses criticisms of the U.S. Supreme Court’s decision in *Whren v. United States*, which found no Fourth Amendment violation by peace officers who temporarily detain individuals where an officer has probable cause to believe the individual has violated traffic laws. *Whren* gave rise to “pretext stops,” where peace officers use a minor traffic stop to investigate other possible crimes, but which have been criticized as a driver of racial bias in law enforcement.<sup>87</sup> According to the County, “by mandating that peace officers provide a reason for certain traffic or pedestrian stops, AB 2773 thus imposes a new or higher level of service.”<sup>88</sup>

#### **IV. Discussion**

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 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>89</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>90</sup>

Reimbursement under article XIII B, section 6 is required when the following elements are met:

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<sup>85</sup> Exhibit D, County of Santa Clara’s Comments, page 2.

<sup>86</sup> Exhibit D, County of Santa Clara’s Comments, page 2.

<sup>87</sup> Exhibit D, County of Santa Clara’s Comments, page 2.

<sup>88</sup> Exhibit D, County of Santa Clara’s Comments, page 3.

<sup>89</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>90</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>91</sup>
2. The mandated activity constitutes a “program” that either:
  - a. Carries out the governmental function of providing a service to the public; or
  - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>92</sup>
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>93</sup>
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>94</sup>

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>95</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>96</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>97</sup>

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<sup>91</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>92</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

<sup>93</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>94</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; Government Code sections 17514 and 17556.

<sup>95</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

<sup>96</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>97</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

#### **A. The Test Claim Statute Was Timely Filed with a Potential Period of Reimbursement Beginning January 1, 2023.**

Government Code section 17551 provides local government test claims shall be filed “not later than 12 months following the effective date of a statute or executive order or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”<sup>98</sup> The Commission’s regulations clarify that “within 12 months of incurring costs” means “within 12 months (365 days) of *first* incurring costs as a result of a statute or executive order, whichever is later.”<sup>99</sup>

The test claim statute was effective January 1, 2023, and has a delayed operative date of January 1, 2024.<sup>100</sup> The Test Claim was filed on December 20, 2024,<sup>101</sup> more than one year from the statute’s effective date.

However, the claimant submitted evidence, which has not been rebutted, that it began to incur increased costs under the statute on January 1, 2024.<sup>102</sup> Therefore, the Test Claim is timely filed.

Government Code section 17557(e) requires a test claim to be “submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” Because the Test Claim was filed December 20, 2024, during fiscal year 2024-2025, the potential period of reimbursement begins at the commencement of the 2023-2024 fiscal year, which is July 1, 2023.<sup>103</sup>

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<sup>98</sup> Government Code section 17551(c).

<sup>99</sup> California Code of Regulations, title 2, section 1183.1(c), emphasis added.

<sup>100</sup> Statutes 2022, chapter 805. As explained by the California Supreme Court, “The effective date [of a statute] is … the date upon which the statute came into being as an existing law.’ (Citation omitted.) ‘[T]he operative date is the date upon which the directives of the statute may be actually implemented.’ (Citation omitted.) Although the effective and operative dates of a statute are often the same, the Legislature may ‘postpone the operation of certain statutes until a later time.’ (Citation omitted.) The Legislature may do so for reasons other than an intent to give the statute prospective effect. For example, the Legislature may delay the operation of a statute to allow ‘persons and agencies affected by it to become aware of its existence and to comply with its terms.’” *Preston v. State Board of Equalization* (2001) 25 Cal.4th 197, 223-224.

<sup>101</sup> Exhibit A, Test Claim, page 1.

<sup>102</sup> Exhibit A, Test Claim, page 16, paragraph 5 (Declaration of Jason Lynn, Deputy Sheriff Generalist, Risk Management Bureau, Field Operations Support Service, Office of Constitutional Policing).

<sup>103</sup> Although the test claim statute did not become operative until January 1, 2024, the claimant and other interested parties have the right to request reimbursement for activities that are “reasonably necessary for the performance of the state-mandated program” in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5, which, *if* supported by substantial evidence in the record, may be reimbursable beginning with the July 1, 2023 period of

**B. The Test Claim Statute Imposes a State-Mandated New Program or Higher Level of Service.**

- 1. The Test Claim Statute Imposes New Requirements on Local Government Peace Officers Who Make a Traffic or Pedestrian Stop to First State the Reason for the Stop Before Engaging in Questioning about a Criminal Investigation or Traffic Violation and to Document the Reason on Any Citation or Police Report. However, Documenting the Reason for a Stop Is Not New when the Officer's Grounds for Belief that the Person Violated Vehicle Code Section 23136, 23140, 23152, or 23153 Relating to DUI Offenses, Were the Reason for the Stop and that Stop Resulted in a Suspension or Arrest per Vehicle Code Section 13380(a) and a Sworn Report.**

The test claim statute requires peace officers who make a traffic or pedestrian stop to state the reason for the stop before engaging in questioning about a criminal investigation or traffic violation and to document the reason on any citation or police report.<sup>104</sup> However, if the officer believes withholding the reason for the stop is necessary to protect life or property from imminent threat, including terrorism and kidnapping, then the activities of stating the reason for the stop and documenting the reason on any citation or police report are not required.<sup>105</sup> These requirements are triggered by decisions of the officer to make a traffic or pedestrian stop and to engage in questioning.

The requirements are new and must be implemented on the statute's operative date of January 1, 2024.<sup>106</sup> Under prior law, a peace officer could initiate a traffic stop, decide to question or not to question the detainee, decide to verbally inform or not to verbally inform the detainee of the reason for the stop, draft and issue the detainee a citation or write a police report without documenting the reason for the stop thereon, and conclude the encounter.<sup>107</sup> The peace officer had to document the reason for the stop in reports

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reimbursement. Here, the claimant is requesting reimbursement for activities that are not mandated by the plain language of the test claim statute, but may be proposed as reasonably necessary activities during the Parameters and Guidelines phase of these proceedings, with an explanation of why the activities are necessary for the performance of the state-mandated program: specifically for printing new forms, development of procedures, and training of officers. Exhibit A, Test Claim, page 16, paragraphs 4 and 6 (Declaration of Jason Lynn, Deputy Sheriff Generalist, Risk Management Bureau, Field Operations Support Service, Office of Constitutional Policing).

<sup>104</sup> Vehicle Code section 2806.5(a), as added by Statutes 2022, chapter 805.

<sup>105</sup> Vehicle Code section 2806.5(b), as added by Statutes 2022, chapter 805.

<sup>106</sup> *People v. Valle* (2024) 105 Cal.App.5th 195, 203-204; Vehicle Code section 2806.5(c).

<sup>107</sup> Vehicle Code sections 40500(a)-(b), 40610, and 40522.

to the Department of Justice, but generally not on the citation or police report itself.<sup>108</sup> One pre-existing requirement regarding DUIs, however, will be discussed below.

Additionally, as noted by the Los Angeles Sheriff's Department newsletter issued in response to the test claim statute,<sup>109</sup> and in accordance with the test claim statute, the Judicial Council amended its traffic citation forms on January 1, 2024, to add a space for "Reason for Stop,"<sup>110</sup> a further indication the requirement is new.

The requirement to document the reason for the stop is not new, however, when grounds for a DUI appear before a stop pursuant to Vehicle Code section 23136, 23140, 23152, or 23153, when those grounds are the reason for the stop, and an officer serves an order of suspension or makes an arrest pursuant to Vehicle Code section 13380(a), as follows:

If a peace officer serves a notice of an order of suspension pursuant to Section 13388, or arrests any person for a violation of Section 23140, 23152, or 23153, the peace officer shall immediately forward to the department a sworn report of all information relevant to the enforcement action, including information that adequately identifies the person, a statement of the officer's grounds for belief that the person violated Section 23136, 23140, 23152, or 23153, a report of the results of any chemical tests that were conducted on the person or the circumstances constituting a refusal to submit to or complete the chemical testing pursuant to Section 13388 or 23612, a copy of any notice to appear under which the person was released from custody, and, if immediately available, a copy of the complaint filed with the court. For the purposes of this section and subdivision (g) of Section 23612, "immediately" means on or before the end of the fifth ordinary business day following the arrest, except that with respect to Section 13388 only, "immediately" has the

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<sup>108</sup> Government Code section 12525.5(b)(1)-(7), added by Statutes 2015, chapter 466, section 2.

<sup>109</sup> Exhibit X (3), Los Angeles County Sheriff's Department Newsletter, *AB 2773 - Stating and Documenting the Reason for the Stop*, <https://pars.lasd.org/Viewer/Manuals/15183/Content/20724> (accessed on April 4, 2025), page 1.

<sup>110</sup> Exhibit X (2), Judicial Council of California, Form TR-130, <https://selfhelp.courts.ca.gov/jcc-form/TR-130> (accessed on April 4, 2025); Exhibit X (8), Judicial Council of California, Form TR-140, <https://selfhelp.courts.ca.gov/jcc-form/TR-140> (accessed July 22, 2025); Exhibit X (9) Judicial Council of California, Notice to Appear and Related Forms (Form TR-INST), Revised Effective January 1, 2025, page 14 (Under "Chapter 6 Mandatory Language/Data Fields": "6.130 **Reason for Stop** [-] The officer must write the reason for the stop on notices used for traffic stops (forms TR-130 and TR-140)") citing Vehicle Code section 1656.3, a mirroring provision to the test claim statute in AB 2773 (2022).) <https://selfhelp.courts.ca.gov/jcc-form/TR-INST> (accessed on July 22, 2025).

same meaning as that term is defined in paragraph (3) of subdivision (b) of Section 13388.<sup>111</sup>

The “statement of the officer’s grounds for belief that the person violated Section 23136, 23140, 23152, or 23153” in the “sworn report” that the police officer “shall immediately forward to the department,” where grounds for belief occurred before the stop, constitutes documenting the reason for the stop, and was thus mandatory before the test claim statute.<sup>112</sup> If the “officer’s grounds for belief that the person violated Section 23136, 23140, 23152, or 23153” were the reason for the stop and that stop resulted in a suspension or arrest per Vehicle Code section 13380(a), then the documentation requirement is not new.

**2. The New Requirement for Peace Officers Who Make a Traffic or Pedestrian Stop to First State the Reason for the Stop Before Engaging in Questioning about a Criminal Investigation or Traffic Violation Is Mandated by the State.**

The Commission also finds the requirement that “a peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, shall state the reason for the stop” is mandated by the state. In the Vehicle Code, “[s]hall” is mandatory and ‘may’ is permissive.<sup>113</sup> The plain language of the test claim statute requires the officer “shall state the reason for the stop . . . .”<sup>114</sup>

However, since the decision to stop the individual and engage in questioning is made at the local level, which then triggers the requirement to first state the reason for the stop in accordance with the test claim statute, the requirement is not *legally* compelled by state law.<sup>115</sup> Nevertheless, as explained below, the decisions to stop the individual and engage in questioning about a criminal investigation or traffic violation are not truly voluntary within the meaning of article XIII B, section 6 and the requirement to first state the reason for the stop is thus mandated by the state.

Case law indicates that a local decision is not truly voluntary for the purposes of article XIII B, section 6 if it is, as a practical matter, constrained by duty. In 2004, the California

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<sup>111</sup> Vehicle Code section 13380(a).

<sup>112</sup> Vehicle Code section 15 (“Shall” is mandatory”).

<sup>113</sup> Vehicle Code section 15.

<sup>114</sup> Vehicle Code section 2806.5, as added by Statutes 2022, chapter 805.

<sup>115</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 741 (This [legal compulsion] standard is similar to the showing necessary to obtain a traditional writ of mandate, which requires the petitioning party to establish the respondent has “a clear, present, and usually ministerial duty to act. .... Mandate will not issue if the duty is ... mixed with discretionary power.”); *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815 (“[A] local entity’s voluntary or discretionary decision to undertake an activity cannot be said to be legally compelled, even if that decision results in certain mandatory actions.”).

Supreme Court in *San Diego Unified School District v. Commission on State Mandates*, suggested that a local discretionary action should not be considered voluntary if, as a practical matter, it must inevitably occur.<sup>116</sup> In that case, the Court was faced with statutory hearing requirements triggered by two types of school expulsions: “mandatory” expulsions, which state law required school principals to recommend whenever a student was found to be in possession of a firearm at school or at a school activity off school grounds, and “discretionary” expulsions, which state law granted school principals the authority to recommend for other conduct.<sup>117</sup> Although the Court confidently concluded that costs for the hearing requirements triggered by “mandatory” expulsions were reimbursable state mandated costs,<sup>118</sup> it hesitated to apply that same logic to deny reimbursement for the “discretionary” expulsions.<sup>119</sup> Instead, it cautioned that denying reimbursement whenever a requirement was triggered by a technically discretionary local action may well contravene both the intent underlying article XIII B, section 6 and past holdings,<sup>120</sup> stating:

Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced [v. State of California* (1984) 153 Cal.App.3d 777,] so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley, supra*, 190 Cal.App.3d 521, 234 Cal.Rptr. 795, an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.*, at pp. 537–538, 234 Cal.Rptr. 795.) The court in *Carmel*

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<sup>116</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888; see *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

<sup>117</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 869-870.

<sup>118</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 881-882.

<sup>119</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888.

<sup>120</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888.

*Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ—and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, *under a strict application of the rule gleaned from City of Merced, supra, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of City of Merced that might lead to such a result.*<sup>121</sup>

In 2009, the Third District Court of Appeal in *Department of Finance v. Commission on State Mandates (POBRA)*, indicated that duty is the dividing line between truly voluntary and technically discretionary decisions.<sup>122</sup> In that case, the court was tasked with determining whether the Public Safety Officers Procedural Bill of Rights Act (POBRA), which granted procedural protections to state and local peace officers subject to investigation, interrogation, or discipline, imposed a reimbursable state mandated program on school districts and community college districts that employ peace officers.<sup>123</sup> The court held that because those protections were triggered by a local discretionary decision, that statute did not impose a reimbursable state mandated program on those districts.<sup>124</sup> However, the court also clarified that this discretionary decision was *not* the district's decision to investigate, interrogate, or discipline its peace officers, but rather the district's decision to employ peace officers in the first place.<sup>125</sup> It explained that since counties and cities had a basic and mandatory duty to provide policing services,<sup>126</sup> their administration of this duty, as a practical matter, necessarily included actions such as investigating, interrogating, or disciplining its peace officers. Thus, like the “discretionary” expulsions discussed in *San Diego Unified School District*,

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<sup>121</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888, footnote omitted and emphasis added.

<sup>122</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

<sup>123</sup> *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1358.

<sup>124</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

<sup>125</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

<sup>126</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

those actions and the downstream requirements imposed by the POBRA statutes could not reasonably be considered “truly voluntary” when performed by counties and cities.<sup>127</sup>

In 2022, the California Supreme Court in *Coast Community College District v. Commission on State Mandates*, recognized that in cases where legal compulsion does not exist (i.e., there is no mandatory legally enforceable duty to obey), a reimbursable state mandate can exist based on a theory of practical compulsion, as follows:

[Practical compulsion] arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply.<sup>128</sup>

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[P]ractical compulsion determination ‘must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal’.<sup>129</sup>

Practical compulsion applies here. As the court stated in *POBRA*, counties and cities have an ordinary, principal, and mandatory duty to provide policing services within their jurisdiction. They are required by the California Constitution and state statute to employ peace officers.<sup>130</sup> County sheriffs are required by Government Code sections 26600 et seq. to preserve the peace, investigate public offenses, and make arrests of persons who commit public offenses. City chiefs of police are conferred these same powers by Government Code section 41601. And the courts have also recognized that “[l]aw

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<sup>127</sup> See *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

<sup>128</sup> *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816 citing *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 748-752 and *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

<sup>129</sup> *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816 citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

<sup>130</sup> Article XI of the California Constitution provides for the formation of counties and cities. Section 1 states that the Legislature shall provide for an elected county sheriff. Section 5 specifies that city charters are to provide for the “government of the city police force.” Government Code sections 36505 and 41601 et seq. require the city council of a general law city to appoint the chief of police, imbue that officer with “the powers conferred upon sheriffs by general law,” and require deputies, police officers, and watchpersons in the city to promptly execute that officer’s lawful orders.

enforcement officers are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them”<sup>131</sup> and that “[p]olice and fire protection are two of the most essential and basic functions of local government.”<sup>132</sup>

Moreover, like the student expulsions discussed in *San Diego Unified School District* and the procedural protections discussed in *POBRA*, traffic or pedestrian stops and the decision to question the individual about criminal investigation or a traffic violation must *necessarily* occur as part of a city or county’s duty to provide policing services because a law enforcement officer’s decision under those circumstances is *constrained by that duty*. School expulsions necessarily occur as part of a school district’s administration of its duty to educate students because that duty includes providing students with a safe learning environment.<sup>133</sup> Thus, whenever expelling a student is the best means of providing students with that safe learning environment, a school principal is duty-bound to recommend that expulsion.<sup>134</sup> The same goes for law enforcement. When an officer is faced with the decision of whether to stop and question an individual, their discretion is similarly constrained by their sworn duty to investigate apparent criminal activity<sup>135</sup> and to protect the citizenry.<sup>136</sup>

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<sup>131</sup> *Lopez v. Southern California Rapid Transit Dist.* (1985) 40 Cal.3d 780, 799 (internal quotations omitted); see also *Pasos v. Los Angeles County Civil Service Commission* (2020) 52 Cal.App.5th 690, 702, as modified on denial of reh’g (Aug. 18, 2020); *Allen v. Payne* (1934) 1 Cal.2d 607, 608 (“From the time of the adoption of our Constitution to the present, the accepted practice has been to leave the detection of crime in the hands of sheriffs and district attorneys, and in our opinion the departure from that practice finds no support in authority or legislative policy. The ferreting out of evidence of crime is a statutory duty expressly imposed upon certain officers, having the equipment and qualified personnel to perform it.”); *Christal v. Police Commission of City and County of San Francisco* (1939) 33 Cal.App.2d 564, 567.

<sup>132</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888; *Carmel Valley Fire Protection District v. State* (1987) 190 Cal.App.3d 521, 537.

<sup>133</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887, footnote 22.

<sup>134</sup> *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887, footnote 22.

<sup>135</sup> See *People v. Coston* (1990) 221 Cal.App.3d 898, 903; *McCain v. Sheridan* (1958) 160 Cal.App.2d 174, 177-178.

<sup>136</sup> *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 799; *Pasos v. Los Angeles County Civil Service Commission* (2020) 52 Cal.App.5th 690, 702, as modified on denial of rehearing (Aug. 18, 2020).

Consequently, the decisions to make a traffic or pedestrian stop and engage in questioning about a criminal investigation or traffic violation are not a truly “voluntary” local action within the meaning of article XIII B, section 6 that would preclude reimbursement for downstream statutory requirements triggered by those actions.

Although the Commission’s decisions are not precedential, the Commission notes that this conclusion is consistent with its past decisions. In *Post-Conviction: DNA Court Proceedings*, 00-TC-21, the Commission similarly determined that a statute that required the court to “appoint counsel to investigate and, *if appropriate*, to file a motion for DNA testing” mandated the filing of that motion.<sup>137</sup> In reaching that conclusion, the Commission reasoned that “an attorney’s duty is ‘to present his case vigorously in a manner as favorable to the client as the rules of law and professional ethics will permit’” and that “[b]ecause whether or not to file the DNA testing motion is a matter of professional judgment, the indigent defense counsel’s duty to file it, if appropriate, *is not truly discretionary. Rather, it is an activity mandated by the state.*”<sup>138</sup>

Similarly, in its Decision on reconsideration of the Test Claim that was at issue in *POBRA*, the Commission held that a local entity does not decide who to investigate or discipline based on the costs incurred to the entity. Instead, a local entity makes this decision, like the expulsion decisions discussed by the Supreme Court in *San Diego Unified School District*, to maintain the public’s confidence in its police force and to protect the health, safety, and welfare of its citizens.<sup>139</sup>

And in *Juveniles: Custodial Interrogation*, 21-TC-01, the Commission found that the test claim statute’s requirements on law enforcement to ensure that a youth, 17 years old or younger, consults with legal counsel prior to custodial interrogation and before the waiver of any *Miranda* rights is mandated by state law even though the requirement is triggered by a law enforcement officer’s decision to interrogate the youth.<sup>140</sup> Similarly here, the requirement that a law enforcement officer state the reason for a traffic or

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<sup>137</sup> Commission on State Mandates, Test Claim Decision on *Post Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, [https://csm.ca.gov/decisions/00tc21\\_01tc08sod.pdf](https://csm.ca.gov/decisions/00tc21_01tc08sod.pdf) (accessed on August 18, 2025), adopted July 28, 2006, page 13, emphasis added.

<sup>138</sup> Commission on State Mandates, Test Claim Decision on *Post Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, [https://csm.ca.gov/decisions/00tc21\\_01tc08sod.pdf](https://csm.ca.gov/decisions/00tc21_01tc08sod.pdf) (accessed on August 18, 2025), adopted July 28, 2006, page 14, emphasis added.

<sup>139</sup> Commission on State Mandates, Test Claim Decision on Reconsideration of *Peace Officer Procedural Bill of Rights*, 05-RL-4499-01, <https://csm.ca.gov/decisions/4499sod.pdf> (accessed on August 18, 2025), adopted April 26, 2006, page 21.

<sup>140</sup> Commission on State Mandates, Decision on *Juveniles: Custodial Interrogation*, 21-TC-01, <https://www.csm.ca.gov/decisions/013123-21-tc-01.pdf> (accessed on August 18, 2025), adopted January 27, 2023, pages 26-32.

pedestrian stop is a new task to perform “before engaging in questioning related to a criminal investigation or traffic violation.”<sup>141</sup>

Accordingly, the Commission finds that the new requirement for peace officers who make a traffic or pedestrian stop to first state the reason for the stop before engaging in questioning about a criminal investigation or traffic violation is mandated by the state.

**3. The New Requirement for Peace Officers to Document the Reason for the Traffic or Pedestrian Stop on Any Citations or Police Reports Resulting from the Stop Is Mandated by the State.**

The test claim statute requires the officer who makes a traffic or pedestrian stop and states the reason for the stop before engaging in questioning related to a criminal investigation or traffic violation in accordance with the test claim statute, “shall [also] document the reason for the stop on *any* citation or police report resulting from the stop.”<sup>142</sup> As indicated above, this requirement is new except when the officer’s grounds for belief that the person violated Vehicle Code section 23136, 23140, 23152, or 23153 relating to DUI offenses, were the reason for the stop and that stop resulted in a suspension or arrest per Vehicle Code section 13380(a). Under those circumstances, the officer had a preexisting duty to document the reason for the stop in a sworn report and the requirement to document the reason for the stop is not new.

The activity to document the reason for the stop is triggered by two decisions of the officer: (1) the decision to make a traffic or pedestrian stop, and (2) the decision to issue a citation or complete a police report resulting from the stop.

As stated above, the decisions to make a traffic or pedestrian stop and engage in questioning are practically compelled by duty and therefore not truly voluntary for purposes of article XIII B, section 6.<sup>143</sup>

In addition, following the officer’s decision to initiate a stop, there are some statutes that require a written citation or report and, thus, the new requirement to document the reason for the stop is mandated by the state in those circumstances. For example, as to traffic citations, statutes mandate the following two documentation actions once a violation is found:

- When an officer finds a non-felony Vehicle Code violation or traffic violation, the officer “shall prepare in triplicate the written notice to appear in court,” as prescribed by the Judicial Council.<sup>144</sup> This “notice to appear” is Form TR-130, the citation form the claimant cites that was updated by the Judicial Council to

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<sup>141</sup> Vehicle Code section 2806.5(a).

<sup>142</sup> Vehicle Code section 2806.5(a), emphasis added.

<sup>143</sup> *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

<sup>144</sup> Vehicle Code section 40500(a)–(b).

comply with the test claim statute's documentation requirement.<sup>145</sup> As revised by the Judicial Council on January 1, 2024, it includes a new "Mandatory Language/Data Field" labeled "Reason for Stop."<sup>146</sup>

- When an officer finds that a safety correction must be made to a vehicle, and "the investigating officer decides to take enforcement action, the officer shall prepare, in triplicate, and the violator shall sign, a written notice containing the violator's promise to correct the alleged violation and to deliver proof of correction of the violation to the issuing agency."<sup>147</sup> This "Notice to Correct Violation" (fix-it-ticket) is Form TR-140.<sup>148</sup> Though not cited by the claimant, Form TR-140 was also revised by the Judicial Council on January 1, 2024, and now it includes the same new "Mandatory Language/Data Field" labeled "Reason for Stop."<sup>149</sup>

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<sup>145</sup> Exhibit A, Test Claim, page 16, paragraph 4 (Declaration of Jason Lynn, Deputy Sheriff Generalist, Risk Management Bureau, Field Operations Support Service, Office of Constitutional Policing.); Exhibit X (2), Judicial Council of California, Form TR-130, <https://selfhelp.courts.ca.gov/jcc-form/TR-130> (accessed on April 4, 2025); Exhibit X (8), Judicial Council of California, Form TR-140, <https://selfhelp.courts.ca.gov/jcc-form/TR-140> (accessed on July 22, 2025); Exhibit X (9) Judicial Council of California, Notice to Appear and Related Forms (Form TR-INST), Revised Effective January 1, 2025, page 14 (Under "Chapter 6 Mandatory Language/Data Fields": "6.130 **Reason for Stop** [-] The officer must write the reason for the stop on notices used for traffic stops (forms TR-130 and TR-140)") citing Vehicle Code section 1656.3, a mirroring provision to the test claim statute in AB 2773 (2022).) <https://selfhelp.courts.ca.gov/jcc-form/TR-INST> (accessed on July 22, 2025).

<sup>146</sup> Exhibit X (9) Judicial Council of California, Notice to Appear and Related Forms (Form TR-INST), Revised Effective January 1, 2025, page 14 (Under "Chapter 6 Mandatory Language/Data Fields": "6.130 **Reason for Stop** [-] The officer must write the reason for the stop on notices used for traffic stops (forms TR-130 and TR-140)") citing Vehicle Code section 1656.3, a mirroring provision to the test claim statute in AB 2773 (2022).) <https://selfhelp.courts.ca.gov/jcc-form/TR-INST> (accessed on July 22, 2025).

<sup>147</sup> Vehicle Code section 40610(a); see also Vehicle Code section 40303.5 (listing conditions for releasing the "person arrested" upon a promise to correct the violation).

<sup>148</sup> Exhibit X (8), Judicial Council of California, Form TR-140, <https://selfhelp.courts.ca.gov/jcc-form/TR-140> (accessed on July 22, 2025).

<sup>149</sup> Exhibit X (9) Judicial Council of California, Notice to Appear and Related Forms (Form TR-INST), Revised Effective January 1, 2025, page 14 (Under "Chapter 6 Mandatory Language/Data Fields": "6.130 **Reason for Stop** [-] The officer must write the reason for the stop on notices used for traffic stops (forms TR-130 and TR-140)") citing Vehicle Code section 1656.3, a mirroring provision to the test claim statute in AB 2773 (2022).) <https://selfhelp.courts.ca.gov/jcc-form/TR-INST> (accessed on July 22, 2025).

In addition, police reports are required when an officer observes or suspects child abuse or elder or dependent adult abuse.<sup>150</sup> The officer, as a mandated reporter, is required to make the report, but if the report resulted from a traffic or pedestrian stop, the officer is now required by the test claim statute to document in that report the reason for the traffic stop. Thus, documenting the reason for the stop on these reports is mandated by the state.

The Commission is obligated to presume these reports resulting from a stop are written within an officer's scope of duty, and that, like the decision to make the stop itself, they serve ultimately to promote justice and public safety.<sup>151</sup>

Accordingly, the Commission finds that the documentation requirement to add the reason for the stop on any citations and police reports resulting from traffic or pedestrian stops is also mandated by the state.

#### **4. The State-Mandated Requirements to State the Reason for the Stop and Document the Reason for the Stop, Except as Provided for Certain DUI Offenses, Impose a New Program or Higher Level of Service.**

The Commission also finds that the test claim statute imposes a new program or higher level of service which the California Supreme Court defined for purposes of article XIII B, section 6 as activities that carry 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>152</sup> The new state-mandated requirements imposed by the test claim statute apply uniquely to law enforcement, a peculiarly governmental function.<sup>153</sup> And the statute was intended to provide a service to the public: to "promote equity and accountability in communities across California" and "transparency to [the] service of protecting our public."<sup>154</sup>

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<sup>150</sup> Penal Code sections 11165.7(a)(19), 11166 and 11166(c) (failure to report suspected child abuse or neglect is a misdemeanor); Welfare and Institutions Code section 15630 (a)-(b) and 15630(h) (failure to report suspected elder or dependent adult abuse is a misdemeanor); *People v. Lara* (2010) 48 Cal.4th 216, 227 (Legislature's inclusion of penalty or consequence renders "shall" mandatory where "shall" is not defined as mandatory by statute).

<sup>151</sup> Evidence Code sections 664 and 1280; *Murphey v. Shiromoto* (2017) 13 Cal.App.5th 1052, 1064 (Under Evidence Code sections 664 and 1280, a police officer's "duty to observe and correctly report" is presumed to have been performed, for purposes of admissibility of evidence analysis under hearsay rules.).

<sup>152</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>153</sup> *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

<sup>154</sup> Exhibit X (4), Senate Committee on Public Safety, June 21, 2022, AB 2773, as amended May 19, 2022, page 3.

Accordingly, the new state mandated requirements impose a new program or higher level of service within the meaning of article XIII B, section 6.

### **C. The Test Claim Statute Imposes Costs Mandated by the State.**

The last issue is whether the new activities mandated by the test claim statute result in increased costs mandated by the state, defined as any increased cost a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service.<sup>155</sup> No claim nor any payment shall be made unless the claim exceeds \$1,000.<sup>156</sup> All representations of fact shall be supported by documentary or testimonial evidence in accordance with the Commission's regulations.<sup>157</sup> A finding of costs mandated by the state further means that none of the exceptions in Government Code section 17556 apply to deny the claim.

The Test Claim includes a declaration under penalty of perjury by the claimant's Deputy Sheriff Generalist that alleges in pertinent part:

6. In Fiscal Year 2023-24, the Sheriff has incurred \$111,694.19 for work related to implementing the mandates of AB 2773, including \$13,618.75 for printing new versions of the citation form, \$84,412.87 for developing procedures, training officers, and briefing to officers about the duration of a stop, and \$13,662.57 for traffic stops.
7. The Sheriff estimates incurring costs of \$37,036.14 for FY 2024-25.
8. The Sheriff estimates an increased statewide cost of \$740,463.75 in FY 2024-25.<sup>158</sup>

Thus, the claimant has provided evidence of increased costs exceeding \$1,000, as required by Government Code section 17564.

"Costs" under article XIII B, section 6, must be actual and demonstrated.<sup>159</sup> The claimant has clarified that "\$13,662.57 for traffic stops" as stated in the Test Claim includes the "costs related to stating the reason for the stop and documenting the reason on the citation."<sup>160</sup>

However, it is disputed whether the verbal notice requirement imposes costs mandated by the state. Finance contends that officers were already conducting traffic stops and

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<sup>155</sup> Government Code section 17514.

<sup>156</sup> Government Code section 17564(a).

<sup>157</sup> California Code of Regulations, title 2, sections 1183.1(e), 1187.5.

<sup>158</sup> Exhibit A, Test Claim, pages 10-11 and 16, paragraphs 6-8 (Declaration of Jason Lymn, Deputy Sheriff Generalist, Risk Management Bureau, Field Operations Support Service, Office of Constitutional Policing).

<sup>159</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282 ("Section 6 Subvention Is Intended for Increases in Actual Costs.").

<sup>160</sup> Exhibit C, Claimant's Rebuttal Comments, page 2.

already know the reason for the stop, and that providing the reason for the stop verbally cannot be reasonably quantified or distinguished from activities occurring before the passage of the test claim statute.<sup>161</sup> The claimant counters Finance by stating it “has been able to reasonably quantify and distinguish these new activities from the previous activities” required before the test claim statute using body-worn cameras.<sup>162</sup>

There is some support for Finance’s position in legislative history, which suggests that the new requirements may reduce the time taken during a stop. The test claim statute was intended to “reduce” and “deter ‘pretext stops’”<sup>163</sup> and to eliminate “launch[ing]”<sup>164</sup> into other conversation in which the “longer the questioning goes on the more apprehensive the individual becomes of the officer’s true motives.”<sup>165</sup>

However, there is no evidence that a reduction of time occurs as a result of the additional requirement to state the reason for the traffic or pedestrian stop before engaging in questioning. And here, Finance agrees that the requirement to state the reason for the stop before questioning the individual is a new requirement.<sup>166</sup>

Moreover, the requirements here do not merely reallocate existing staff time, as suggested by Finance. To explain this point, this case is unlike and is distinguishable from the 2003 case of *County of Los Angeles v. Commission on State Mandates*, which found there were no increased costs mandated by the state for a required two hour domestic violence training course for peace officers, which was included in the existing regulations imposed by the State Commission on Peace Officer Standards and Training

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<sup>161</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

<sup>162</sup> Exhibit C, Claimant’s Rebuttal Comments, page 2.

<sup>163</sup> Exhibit X (6), Senate Committee on Appropriations, August 1, 2022, AB 2773, as amended June 13, 2022, page 2 (“This bill seeks to reduce the use of pretext stops by requiring a peace officer to state the reason for a stop prior to any interaction with the person being stopped.”); Exhibit X (7) Assembly Committee on Public Safety, April 5, 2022, AB 2773, as introduced February 18, 2022, page 4.

<sup>164</sup> *People v. Valle* (2024) 105 Cal.App.5th.195, 203-204 cites in legislative history that previously, officers might ““launch into a series of questions that may have no apparent relationship to any basis for the stop. The longer the questioning goes on the more apprehensive the individual becomes of the officer’s true motives. However, when confronted by an officer they may feel compelled to answer the questions when in fact they are not required to do so. If informed at the outset of the basis for the stop, the individual would know if any subsequent questions are legitimate or an attempt to elicit incriminating statements or acquiescence to a search.”” (Concurrence in Sen. Amends. to Assem. Bill 2773, as amended Aug. 11, 2022, p. 2.).”

<sup>165</sup> Exhibit X (7) Assembly Committee on Public Safety, April 5, 2022, AB 2773, as introduced February 18, 2022, page 6.

<sup>166</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1 (“Prior to 2024, peace officers were not required to state the reason for a traffic or pedestrian stop before engaging in questioning.”).

(POST) requiring “24 hours of [peace officer] training every two years, to be chosen from a menu of available courses.”<sup>167</sup> The County argued it should be reimbursed for the law enforcement personnel to attend the domestic violence training.<sup>168</sup> The Court of Appeal upheld the Commission’s decision to deny reimbursement for the two-hour training requirement because “local law enforcement agencies may cho[o]se from a menu of course offerings to fulfill the [existing] 24-hour requirement.”<sup>169</sup> It also found nothing more than “merely ‘incidental’” increased costs, despite acknowledging that “[o]fficer downtime will be incurred,” because “the state is requiring certain courses to be placed within an already existing framework for training.”<sup>170</sup> The court concluded: “Thus, while there may be a mandate, there are no increased costs mandated by [the test claim statute].”<sup>171</sup>

Similarly, in the Commission’s Decision in *Physical Performance Tests*, 96-365-01, which was upheld in an unpublished decision by the Third District Court of Appeal, school teachers had been newly required to administer physical fitness assessment tests to 5th, 7th, and 9th graders during the school day, which was previously defined by statute.<sup>172</sup> As in *County of Los Angeles*, the school districts argued that the teachers’ time to administer the tests must be reimbursed, but the Commission denied the Test Claim for the same reason the police officers’ time spent on domestic violence training in *County of Los Angeles* could not be reimbursed. Like the 24 hours of total training time in *County of Los Angeles*, neither the school day hours nor the minimum number of education days in a school year were extended because of the assessment tests and there was no evidence of additional costs incurred as a result of teacher staffing time. Thus, as part of the existing program of providing education within a previously set minimum number of hours in a school day and number of days in a school year, the teachers’ time was merely reallocated within that existing time frame.<sup>173</sup>

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<sup>167</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App.4th 1176, 1181, 1183.

<sup>168</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App.4th 1176, 1181.

<sup>169</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App.4th 1176, 1194.

<sup>170</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App.4th 1176, 1194.

<sup>171</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1195.

<sup>172</sup> *San Diego Unified School District v. Commission on State Mandates*, Third District Court of Appeal, Case No. C044162, 2004 WL 1664857.

<sup>173</sup> Commission on State Mandates, Test Claim Decision on *Physical Performance Tests*, 96-365-01, <https://csm.ca.gov/decisions/9636501sod.pdf> (accessed on August 18, 2025), adopted June 25, 1998, pages 5-6.

*County of Los Angeles and Physical Performance Tests* are the exceptions to the general rule that costs mandated by the state through new programs are reimbursable. Here, there are no existing laws establishing a time frame for traffic and pedestrian stops. Instead, stating the reason for the stop is a new and additional requirement imposed by the state and the claimants have provided evidence in the record to support the increased costs to comply with the new requirement to state the reason for the stop. As the courts have declared:

[A]s to cities, counties, and [] districts [with an ordinary, principal and mandatory duty to provide policing services], new statutory duties that increase the costs of such services are *prima facie* reimbursable. This is true, notwithstanding a potential argument that such a local government's decision is voluntary in part, as to the number of personnel it hires.<sup>174</sup>

As a new requirement mandated by the state with evidence of costs exceeding \$1000, the Commission finds that the requirement to state the reason for the stop results in increased costs mandated by the state within the meaning of Government Code section 17514.

Finally, none of the exceptions in Government Code section 17556 apply. The test claim statute is solely aimed at modifying peace officer behavior and does not create a new crime or infraction, eliminate a crime or infraction, or change the penalty for a crime or infraction within the meaning of Government Code section 17556(g) or article XIII B, section 6(a)(2) of the California Constitution.

Accordingly, the Commission finds that the test claim statute results in costs mandated by the state.

## **V. Conclusion**

Based on the foregoing, the Commission approves this Test Claim for the period of reimbursement beginning July 1, 2023, and finds that Vehicle Code section 2806.5, as added by Statutes 2022, chapter 805, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, for a county or city peace officer to do the following beginning January 1, 2024, when the officer makes a traffic or pedestrian stop:

- State the reason for the stop before engaging in questioning related to a criminal investigation or traffic violation.
- Document the reason for the stop on any citation or police report resulting from the stop.

These activities are not required or mandated by the state when the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including, but not limited to, cases of terrorism or kidnapping.

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<sup>174</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal. App.4th 1355, 1367.

In addition, documenting the reason for a stop is not new and does not mandate a new program or higher level of service when the officer's grounds for belief that the person violated Vehicle Code section 23136, 23140, 23152, or 23153 relating to DUI offenses, were the reason for the stop and that stop resulted in a suspension or arrest per Vehicle Code section 13380(a).

## **DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 6, 2025, I served the:

- **Current Mailing List dated October 6, 2025**
- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued October 6, 2025**

*Stops: Notification by Peace Officers, 24-TC-03*

Statutes 2022, Chapter 805, Section 5 (AB 2773); Vehicle Code Section 2806.5  
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on 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 October 6, 2025 at Sacramento, California.



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**Claim Number:** 24-TC-03

**Matter:** Stops: Notification by Peace Officers

**Claimant:** County of Los Angeles

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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, § 1181.3.)

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CONCURRENCE IN SENATE AMENDMENTS  
AB 2773 (Holden)  
As Amended August 11, 2022  
Majority vote

## Exhibit F

### SUMMARY

Requires, beginning January 1, 2024, a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions related to a criminal investigation or traffic violation, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat.

### Senate Amendments

- 1) Specify that the limitation on peace officer questioning before stating the reason for the stop applies to questions related to a criminal investigation or a traffic violation.
- 2) Require each state and local agency to include in its annual report to the Attorney General of data on stops to include the reason given to the person stopped at the time of the stop.
- 3) Delay implementation until January 1, 2024.

### COMMENTS

*As Passed by the Assembly, this bill:*

- 1) Required a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including but not limited to, cases of terrorism or kidnapping.
- 2) Required the officer to document the reason for the stop on any citation or police report resulting from the stop.
- 3) Required the Department of Motor Vehicles (DMV) to include information regarding the duty of a peace officer to state the reason for the stop in the handbook at the earliest opportunity when the handbook is otherwise revised or reprinted.

### According to the Author

"To promote equity and accountability in communities across California – that is my goal. AB 2773 brings transparency to service of protecting our public."

### Arguments in Support

According to the *California Public Defenders Association*, "It is a common experience for community members to be stopped on our streets and highways by peace officers for minor traffic violations and pedestrian offenses. Those community members are obliged to stop for the officer, and failure to do so is at least a misdemeanor, which could subject them to a custodial arrest. Most people are nervous and apprehensive after being stopped by an officer who can deprive them of their liberty."

"In October of 2021, the Public Policy Institute of California (PPIC) published a report entitled, 'Racial Disparities in Law Enforcement Stops.' In its report, which analyzed data for almost four million stops by California's 15 largest law enforcement agencies in 2019 it found the following:

Black Californians are significantly more likely to be stopped than white individuals.

Black individuals are more than twice as likely to be searched as white individuals.

Black people are at least twice as likely as whites to experience so-called intrusive outcomes, ranging from being asked to step out of a vehicle, to being handcuffed, to the stop involving a weapon. Stops of Black individuals are three times more likely to involve a weapon than stops of white individuals. In CHP stops for traffic violations, almost everyone, Black or white, receives at least a warning, 98.5% and 98.6%, respectively. While being stopped for a traffic

violation rarely results in a booking, both state and local law enforcement agencies book Black drivers more often than white, about 3.5% and 2.5% respectively.

"AB 2773 would increase transparency and public confidence in law enforcement by requiring an officer to immediately reassure the individual of the reason for the stop. Unfortunately, some officers launch into a series of questions that may have no apparent relationship to any basis for the stop. The longer the questioning goes on the more apprehensive the individual becomes of the officer's true motives. However, when confronted by an officer they may feel compelled to answer the questions when in fact they are not required to do so. If informed at the outset of the basis for the stop, the individual would know if any subsequent questions are legitimate or an attempt to elicit incriminating statements or acquiescence to a search.

"As public defenders we see the disproportionate effect on our black and brown clients who are more likely to be searched and arrested following a traffic stop. Many times, there were handcuffed and left sitting on the side of the road, while their vehicles were searched. Other times, once the officer pulled them over, the first thing the officer said was 'are you on probation or parole?'

"AB 2773 is good commonsense public policy. The many officers who do not engage in such tactics would be benefitted by measures that discourage the offending few from doing so. The good public policy reasons behind this bill are further enhanced by its efforts to educate the public of their civil rights through the DMV handbook. Preserving civil rights is every bit as important as preserving public safety on our highways. Civil rights that are forfeited out of ignorance are not civil rights and serve only to reward those who seek to capitalize on that ignorance."

### **Arguments in Opposition**

According to the *California State Sheriffs' Association*, "When a peace officer initiates a stop, there are many variables that must be considered and information that should be gathered.

Traffic stops can be among the most dangerous types of interactions that peace officers encounter and it often makes sense for an officer to seek and obtain additional information at the very beginning of a contact. This can be vital in assessing the risk emanating from the stop, and peace officers are trained that determining risk surrounding a traffic stop is a key consideration. This bill's limitation is so strict, in fact, that it prohibits an officer from asking for a person's identification or even asking a person to turn off the vehicle's ignition prior to disclosing the reason for the stop. Obtaining more information from the subject of the stop is vital to protecting

everyone's safety and the bill's exception based on an 'imminent threat' is not enough to address all situations imbued with risk."

## **FISCAL COMMENTS**

According to the Senate Appropriations Committee:

- 1) CHP: The California Highway Patrol (CHP) reports costs of approximately \$160,000 for information technology changes that would required to collect and report additional "stop data" information to the Department of Justice (Special Fund – Motor Vehicle Account).
- 2) DOJ: The Department of Justice reports costs of \$43,000 in 2022-23 for consulting services for application development and to assist with analysis and design, database modification, web application development, web services development, deployment and follow-up (General Fund).
- 3) DMV: Staff notes likely minor and absorbable costs to the DMV to update the Driver's Handbook (Special Fund – Motor Vehicle Account).
- 4) Local Reimbursements: Unknown, potentially significant costs for all 608 state and local agencies employing peace officers to update policies regarding pedestrian and traffic stops and provide the training necessary to comply with the reporting requirements of AB 2773 (Local Funds, General Fund). Costs to the General Fund will depend predominantly on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.

**VOTES:**

**ASM PUBLIC SAFETY: 5-2-0**

**YES:** Jones-Sawyer, Mia Bonta, Bryan, Quirk, Santiago

**NO:** Lackey, Seyarto

**ASM TRANSPORTATION: 10-4-1**

**YES:** Friedman, Berman, Daly, Gipson, Kalra, Lee, Medina, O'Donnell, Ward, Wicks

**NO:** Fong, Chen, Davies, Nguyen

**ABS, ABST OR NV:** Nazarian

**ASM APPROPRIATIONS: 12-4-0**

**YES:** Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

**NO:** Bigelow, Megan Dahle, Davies, Fong

**ASSEMBLY FLOOR: 43-22-13**

**YES:** Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, McCarty, Medina, Mullin, Nazarian, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

**NO:** Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Mathis, Muratsuchi, Nguyen, Patterson, Salas, Seyarto, Smith, Valladares, Voepel, Waldron

**ABS, ABST OR NV:** Aguiar-Curry, Berman, Cooley, Cooper, Daly, Grayson, Maienschein, Mayes, O'Donnell, Petrie-Norris, Ramos, Rodriguez, Villapudua

**UPDATED**

VERSION: August 11, 2022

CONSULTANT: Cheryl Anderson / PUB. S. / (916) 319-3744

FN: 0004481

**NOTICE TO:** APPEAR IN COURT AT  AM  PM ON:**OR** RESPOND TO CITATION BEFORE:**DATE:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

See back for detailed instructions

 To be notified

Name of Court, Division of Court, Street Address, City, State ZIP  
 XXX.XXX.XXXX ➔ websiteurl.com

Name of Court, Division of Court, Street Address, City, State ZIP  
 XXX.XXX.XXXX ➔ websiteurl.com

Name of Court, Division of Court, Street Address, City, State ZIP  
 XXX.XXX.XXXX ➔ websiteurl.com

Name of Court, Division of Court, Street Address, City, State ZIP  
 XXX.XXX.XXXX ➔ websiteurl.com

**ACT BY THIS DATE TO AVOID A WARRANT OR ADDED FEES**

Date of Violation (mm/dd/yy)	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Driver's License Number (all states)	Class	State
------------------------------	--	--------------------------------------	-------	-------

Name (first, middle, last)				
----------------------------	--	--	--	--

Current Address (no., street, city, state, zip)				
---	--	--	--	--

Date of Birth (mm/dd/yy)	Parent/Guardian Phone No.	<input type="checkbox"/> Juvenile	Commercial	Insurance
		<input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> Y <input type="checkbox"/> N	

Race / Ethnicity	Sex	Hair	Eyes	Height	Weight
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Vehicle License/VIN	State	Reg (mm/yy)	Year of Veh.	Make
---------------------	-------	-------------	--------------	------

Registered Owner/Lessee <input type="checkbox"/> Same as driver <input type="checkbox"/> Owner's responsibility (VC, § 40001)	Model	Body Style
---	-------	------------

Address (no., street, city, state, zip) <input type="checkbox"/> Same as driver	Color
---	-------

Reason for Stop	CHP / DOT / PUC / ICC
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**CITATION DETAILS** Booking Required (see reverse)

Correctable (Fix-It)	Code/Section	Description	M = Misdemeanor I = Infraction (circle)
<input type="checkbox"/> Y <input type="checkbox"/> N	_____		M I
<input type="checkbox"/> Y <input type="checkbox"/> N	_____		M I
<input type="checkbox"/> Y <input type="checkbox"/> N	_____		M I
<input type="checkbox"/> Y <input type="checkbox"/> N	_____		M I

Approx. Speed	PF/Max Speed	Veh. Limit	Safe Speed	Radar/Lidar	<input type="checkbox"/> Commercial Veh. VC, § 15210(b)
---------------	--------------	------------	------------	-------------	--

Location of Violation					<input type="checkbox"/> Hazardous Mat. VC, § 353
-----------------------	--	--	--	--	--

City/County of Occurrence				Agency Case No.	
---------------------------	--	--	--	-----------------	--

Comments (weather, road, traffic conditions)	<input type="checkbox"/> Crash
--	--------------------------------

<input type="checkbox"/> Violations not committed in my presence, declared on information and belief (VC, § 40600) I declare under penalty of perjury under the laws of the State of CA that the foregoing is true and correct.
--

<u>      </u> / <u>      </u> / <u>      </u>	ARRESTING OR CITING OFFICER	<u>      </u> / <u>      </u> / <u>      </u>
DECL. DATE		SERIAL NO.
<u>      </u> / <u>      </u> / <u>      </u>	ARRESTING OFFICER, (if different from above)	<u>      </u> / <u>      </u> / <u>      </u>
DECL. DATE		SERIAL NO.

I promise to act by the date at the top of this citation. Signing DOES NOT admit guilt.		
---	--	--

<u>      </u> / <u>      </u> / <u>      </u>	<input type="checkbox"/> CELLPHONE - OPTIONAL (may be used for reminders)	<input type="checkbox"/> EMAIL - OPTIONAL (may be used for reminders)
---	---	---

X _____	SIGNATURE
---------	-----------

**DEFENDANT COPY | FORM INFO**Continuation form 

Form Adopted for Mandatory Use  
 Judicial Council of California  
 TR-130, Traffic/Nontraffic Notice to Appear  
 [Rev. Jan. 1, 2024]  
**SEE REVERSE**

FPO Barcode USS Code 39

Vehicle Code, §§40500(b), 40513(b),  
 40522, 40600; Pen. Code, §853.9

TAB AREA

# WHAT YOU NEED TO DO

Step 1 Which box is checked on the front of the citation:

APPEAR IN COURT **or** RESPOND TO CITATION?

Step 2 Follow instructions based on the box checked on the front.

## If APPEAR IN COURT is checked on the front

► **Your next step:** Go to court on the date, time and location on the front. Appearing in court is your **only option**. You can plead guilty or not guilty. **IMPORTANT: Missing court may result in a warrant for your arrest.** *Don't let that happen—go to court! The judge will explain next steps.*

→ **Helpful Tip:** Put the court date in your calendar, set a reminder, start planning now.

→ **Juveniles:** If you were under 18 years old at the time of the violation, you must bring a parent or guardian with you to court.

## If RESPOND TO CITATION is checked on the front

*Citations can take up to 14 days to show up in the court system.  
Keep checking to find your citation, and then complete Option A, B, C, or D by the date listed on front*

► **Your next step:** Choose an option below and respond by the date.

**IMPORTANT:** Not responding by the date on the front can result in a "failure to appear" charge, a guilty finding, an additional fee of up to \$100, and a hold on your car registration (owner's responsibility).

**Choose one of the options below to avoid these penalties:**

– **Option A: Pay or Ask for a Reduction (Guilty Finding)**

- Pay (online, call, in person). If you cannot pay in full now, contact the court (see front for contact information) to request a payment plan or extension.
- Ask for a reduction at MYCITATIONS.COURTS.CA.GOV (takes about 10 minutes).

**Note:** This option may add points to your driving record and affect insurance.

– **Option B: Request Traffic School** To avoid points on your driving record, you can request traffic school. You pay the citation plus an additional traffic school fee and complete traffic school. Contact the court to see if you are eligible.

– **Option C: Dispute the Citation (Plead Not Guilty)** You can dispute the citation **in person** by requesting a court date for a trial (no cost) or **by mail** ("trial by written declaration"), which requires you to pay the fine up front (amount returned if citation is dismissed). Contact court for more details (court info on front of citation).

– **Option D: Correctable ("Fix-It")** If "Correctable" is checked on the front, first show an officer, authorized inspection agency, or DMV (license and registration issues only) that you fixed the issue, and they will sign the citation (below). Then, you must show the court that you fixed the issue to have the violation dismissed. You must also pay a transaction fee. For insurance issues, you must show the court you had insurance when you got the ticket and pay a transaction fee.

## CERTIFICATE OF CORRECTION (MUST BE RETURNED TO COURT)

Section(s) Violated	Signature of Person Certifying Correction	Serial No.	Agency	Date

If "Booking Required" is checked on front, call xxx-xxx-xxxx to schedule an appointment before the court date. You will not be arrested and will attend your court date on your own.

## MORE INFORMATION

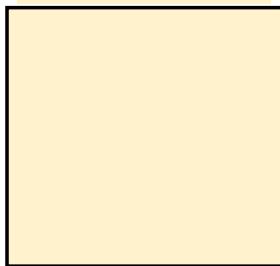


For translations and general information about the process, visit <https://www.courts.ca.gov/forms.htm>

To contact the court, see front of citation for court's website and phone number. The court will send notice explaining next steps.

(Circle one)

RIGHT or LEFT  
THUMB PRINT



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# **23-06 - AB 2773 (2022) – Stating and Documenting the Reason for the Stop**

[24-01 - Parking Enforcement Detail \(PED\) - Handling Calls for Service and Complaints from the Public](#)

[23-05 - 2024 Legislative Update](#)



## **AB 2773 (2022) – STATING AND DOCUMENTING THE REASON FOR THE STOP**

### **PURPOSE**

The purpose of this Newsletter is to update Department Personnel with traffic stop procedures required by California Assembly Bill 2773, effective January 1, 2024.

### **BACKGROUND**

Assembly Bill 2773, signed into law on September 29, 2022, amends Government Code Section 12525.5, Vehicle Code Section 1656.3, and adds to the Vehicle Code Section 2806.5.

### **Legal Requirement Upon Contact**

Assembly Bill 2773 requires that an officer(s) conducting a traffic or pedestrian stop advise the detainee of the reason for the stop prior to engaging them in questioning related to a criminal investigation or a traffic violation. This requirement does not apply when the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including, but not limited to, cases of terrorism or kidnapping.

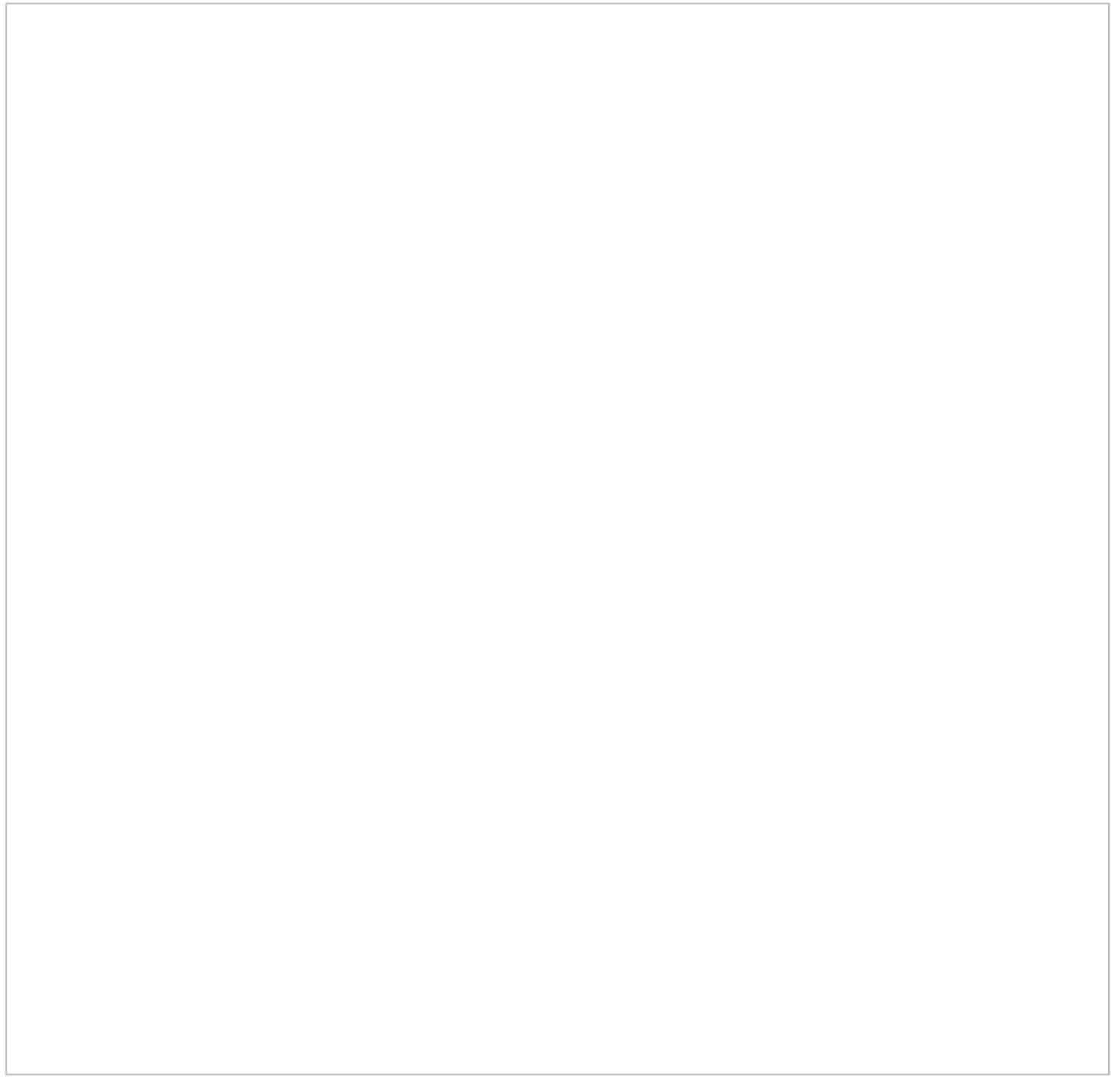
### **Legal Requirement for Documentation**

Per the bill, law enforcement officers are required to document the reason for the stop on any citation or police report resulting from the stop. Per MPP 5-05/030.05, The Judicial Council of the State of California establishes the format of the citation or Notice to Appear (SH-CR-66) form. The Department must comply with the format and revisions established by the Council. The Judicial Council has amended the Notice to Appear to conform to the new legislation. The legislation states failure to make the required statement is grounds for filing a motion to suppress using the procedures established in Penal Code section 1538.5. See the below citation guide for guidance.

Department members are reminded, per MPP section 3-01/000.05, Bias – Free Policing, that Deputies should draw upon their training and critical decision-making skills to assess whether there is criminal conduct and be aware of implicit bias by proxy while carrying out their duties. Deputies conducting investigative stops shall:

- Establish reasonable suspicion or probable cause using actual and credible description(s) of a specific suspect or suspects in any criminal investigation;
- Only conduct investigatory stops when they have reasonable suspicion that a person has been, is, or is about to be engaged in the commission of a crime;
- Refrain from using racial or identity profiling in exercising their discretion to conduct a search, except as part of actual and reliable information, and description of a specific suspect or suspects in any criminal investigation;
- Refrain from initiating stops or other field contacts because of an individual's actual or perceived immigration status;
- Ensure requests to conduct consent searches are reasonable, and be able to articulate a valid reason under the law and policy for initially having stopped an individual; and
- Only conduct searches of individuals based on probation or parole status when knowledge of a probation or parole search condition has been established.

Persons that are contacted during consensual encounters shall be free to leave at all times, and the contact shall be voluntary. A consensual encounter can transform into a detention if a reasonable person believes they are not free to leave.



If you require further information, contact Field Operations Support Services at [REDACTED TEXT]

**ATTACHMENTS**

[Citation Guide](#)

**REFERENCES**

[Bill Text - AB-2773 Stops: Notification by Peace Officers - California Legislative Information](#)

[MPP 5-05/030.05 - Issuance of Citations](#)

[MPP 5-09/205.00 - Code 9 and Pre-Stop Coordination](#)

[MPP 3-01/000.05 – Bias – Free Policing](#)

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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

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**Bill No:** AB 2773      **Hearing Date:** June 21, 2022

**Author:** Holden

**Version:** May 19, 2022

**Urgency:** No

**Fiscal:** Yes

**Consultant:** AB

**Subject:** *Traffic or pedestrian stops: notification by peace officers*

### HISTORY

**Source:** Author

**Prior Legislation:** AB 2918 (Holden), Ch. 723, Stats. of 2018  
AB 953 (Weber, 2015), Ch. 466, Stats. of 2015  
AB 2133 (Torrico, 2006), not heard in Assembly Public Safety  
SB 1389 (Murray, 2000), held in Senate Appropriations

**Support:** California Public Defenders Association; Initiate Justice; National Association of Social Workers, California Chapter; Oakland Privacy; The Young Women's Freedom Center

**Opposition:** California State Sheriffs' Association; California Police Chiefs Association

**Assembly Floor Vote:** 43 - 22

### PURPOSE

***The purpose of this bill is to require a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking investigatory questions unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat. Additionally, the bill adds information regarding this requirement to the DMV Driver's Handbook, and requires local law enforcement agencies to report additional stop information to the DOJ.***

*Existing law*, the United States Constitution, provides that the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. (U.S. Const., amend. IV.)

*Existing law* requires DMV to publish a synopsis or summary of the laws regulating the operation of vehicles and the use of highways. This summary is referred to as the California Driver's Handbook (Handbook). (Veh. Code, § 1656.)

*Existing law* requires DMV to include specified information in the handbook, including a section on a person's civil rights during a traffic stop. This section must include information regarding the limitations of a peace officer's authority during a traffic stop and the legal rights of drivers

and passengers, including the right to file complaints against a peace officer. (Veh. Code, § 1656.3, subd. (a)(4).)

*Existing law* requires DMV to develop the above section of the Handbook in consultation with the civil rights section of the of the Department of Justice (DOJ), California Highway Patrol (CHP), California Commission on Peace Officer Standards and Training (POST), and civil rights organizations, including community-based organizations. (Veh. Code, § 1656.3, subd. (a)(4).)

*Existing law* provides that the information included in the handbook shall be initially include in the handbook at the earliest opportunity when the handbook is otherwise revised or reprinted, in order to minimize costs. (Veh. Code, § 1656.3, subd. (b).)

*Existing law* requires each state and local agency that employs peace officers to annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year. (Government Code §12525.5(a)(1).)

*Existing law* requires reports on stops submitted to the Attorney General to include, at a minimum, the following information:

- The time, date, and location of the stop.
- The reason for the stop.
- The result of the stop, such as no action, warning, citation, arrest, etc.
- If a warning or citation was issued, the warning provided or the violation cited.
- If an arrest was made, the offense charged.
- The perceived race or ethnicity, gender, and approximate age of the person stopped. For motor vehicle stops, this paragraph only applies to the driver unless the officer took actions with regard to the passenger.
- Actions taken by the peace officer, as specified. (Government Code §12525.5(b)(1)-(7).)

*Existing law* provides that law enforcement agencies shall not report personal identifying information of the individuals stopped to the Attorney General, and that all other information in the reports, except for unique identifying information of the officer involved, shall be available to the public. ((Government Code §12525.5(d).)

*Existing law* defines "stop," for the purposes of reports sent by law enforcement agencies to the Attorney General, as 'any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control.' (Government Code §12525.5(g)(2).)

*Existing law* finds and declares that pedestrians, users of public transportation, and vehicular occupants who have been stopped, searched, interrogated, and subjected to a property seizure by a peace officer for no reason other than the color of their skin, national origin, religion, gender identity or expression, housing status, sexual orientation, or mental or physical disability are the victims of discriminatory practices (Penal Code §13519.4(d)(4).)

*Existing law* prohibits a peace officer from engaging in racial or identity profiling, as defined. (Penal Code §13519.4(e),(f).)

*Existing law* creates the Racial and Identity Profiling Advisory Board (RIPA), which, among other duties, is required to conduct and consult available, evidence-based research on intentional and implicit biases, and law enforcement stop, search, and seizure tactics. (Penal Code §13519.4(j)(3)(D).)

*This bill* requires a peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, to state the reason for the stop, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat.

*This bill* requires the officer to document the reason for the stop on any citation or police report resulting from the stop.

*This bill* requires that the Handbook include information regarding the requirement above.

*This bill* requires local law enforcement agency, in their reports to DOJ regarding stops, to include information regarding the reason given to the person stopped at the time of the stop.

## COMMENTS

### 1. Need for This Bill

According to the Author:

“To promote equity and accountability in communities across California — that is my goal. AB2773 brings transparency to service of protecting our public.”

### 2. Pretext Stops

The Fourth Amendment of the United States Constitution provides in part that “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated.” The United States Supreme Court has held that temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of persons within the meaning of this provision.<sup>1</sup> In *Whren v. United States*, decided in 1996, the Court further held that “the temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment’s prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective.”<sup>2</sup> The Court’s decision in *Whren* has given rise to what have been dubbed “pretext stops,” a practice in which a law enforcement officer uses a minor traffic violation as a pretext to stop a vehicle in order to investigate other possible crimes. Given the litany of possible traffic violations, especially in California, the use of pretext stops as an investigative tool has become widespread since the decision in *Whren*.

As use of pretext stops has increased, so too has criticism of the practice. Many argue that pretext stops are a driver of racial bias in law enforcement (discussed further below), while

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<sup>1</sup> See *Delaware v. Prouse*, [440 U.S. 648](#), 653 (1979); *United States v. Martinez Fuerte*, [428 U.S. 543](#), 556 (1976); *United States v. Brignoni Ponce*, [422 U.S. 873](#), 878 (1975)

<sup>2</sup> *Whren v. United States*, 517 U.S. 806, 809-819 (1996).

others claim that they subvert the spirit, if not the letter, of the Fourth Amendment by giving officers carte blanche to stop a vehicle. Critics also point to the difficulty in contesting a pretext stop in court. That is, if an officer stops a driver based on an observed traffic violation – of which there are dozens – the driver bears the burden of producing evidence to refute the officer’s testimony, that, for instance, the license plate was obscured or a taillight was not properly illuminated on a specific date and time. All of these issues, critics argue, lead to disparate outcomes, primarily based on race, and undermine police legitimacy in the eyes of the communities they serve.

### 3. The Racial Implications of Police Stops

As mentioned above, much of the criticism of pretext stops has centered around their disparate impact on communities of color. In 2020, the Stanford Open Policing Project published an analysis of almost 100 million police traffic stops conducted between 2011 and 2017 by 21 state patrol agencies (including the California Highway Patrol) and 29 municipal police departments nationwide. One of the study’s central findings was that “police stopped and searched black and Hispanic drivers on the basis of less evidence used in stopping white drivers, who are searched less but are more likely to be found with illegal items.”<sup>3</sup> Moreover, these stops based on routine traffic violations often turn violent. A 2021 New York Times investigation found that in the preceding 5 years, police officers killed at least more than 400 unarmed drivers and passengers who were not under pursuit for a violent crime, while about 60 officers died at the hands of motorists who had been pulled over.<sup>4</sup>

In 2015, the Legislature passed AB 953 (Weber, Ch. 466, Stats. of 2015), also known as the Racial and Identity Profiling Act (RIPA) of 2015, which expressly prohibited racial and identity profiling by law enforcement and requires law enforcement agencies to report stop data to the DOJ. . RIPA guidelines define a “stop” as “any detention by a peace officer of a person or any peace officer interaction with a person in which the officer conducts a search. This data includes both pedestrian and vehicle stops.”<sup>5</sup> A 2019 analysis of RIPA stop data by the Public Policy Institute of California found the following:

RIPA data reveal that Black Californians have notably different experiences during stops than white Californians. Black people are more than twice as likely to be searched, even though searches of Black people are somewhat less likely to yield contraband or evidence. Black people are overrepresented in stops with no enforcement—but Black Californians are almost twice as likely to be booked into jail.

Stops are also more intrusive. During a law enforcement stop, Black people are at least twice as likely to be asked to step out of a vehicle, to be handcuffed, or to experience a stop involving an officer’s weapon. However, context significantly contributes to racial disparities. For example, officers stop more Black people than

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<sup>3</sup> Pierson, Emma et. al. “A large-scale analysis of racial disparities in police stops across the United States.” *The Stanford Open Policing Project*. July 2020. <https://5harad.com/papers/100M-stops.pdf>

<sup>4</sup> Kirkpatrick, David et. al. “Pulled Over: Why Many Police Traffic Stops Turn Deadly.” *New York Times*. 31 Oct 2021. <https://www.nytimes.com/2021/10/31/us/police-traffic-stops-killings.html>

<sup>5</sup> <https://openjustice.doj.ca.gov/exploration/stop-data>

white for reasonable suspicion, an outstanding warrant, or being on parole/probation. Agency type and jurisdiction also play a significant role.<sup>6</sup>

RIPA stop data for the following year (2020) showed that the most commonly reported reason for a stop (86.1%) across all racial/ethnic groups was a traffic violation, and that individuals perceived as Black or Hispanic comprised 60% of the stops reported, while just under 32% of the stops involved individuals perceived as White.<sup>7</sup> The 2020 data also reflected a continuation of the previous year's trends as well as a finding that "officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more individuals perceived as Black than individuals perceived as White, even though they stopped more than double the number of individuals perceived as White than individuals perceived as Black."<sup>8</sup>

#### 4. Recent Local Reforms and Effect of This Bill

In recent years, several local jurisdictions have advanced reforms related to traffic stops, including Oakland in 2018 and Berkeley in 2020.<sup>9</sup> Most recently, in early March 2022, the Los Angeles Police Department enacted a policy to limit the use, duration and scope of pretext stops conducted by its officers. The policy allows officers to make stops for minor equipment violations or other infractions *only* when the officer believes that such a violation significantly interferes with public safety, and requires officers to state the public safety reason for such stops on their body-worn cameras. Additionally, the policy prohibits pretext stops *unless* officers are acting upon articulable information in addition to the perceived violation, and, like this bill, requires officers to provide the detainees, as early as is practicable, with the information that caused officers to stop them. According to the policy, a decision to initiate a stop "should not be based on a mere hunch or on generalized characteristics such as a person's race, gender, age, homeless circumstance, or presence in a high crime neighborhood."<sup>10</sup>

In light of the racial disparities in police stops and in an effort to improve police accountability with regard to stops, the Author seeks to enact a requirement that officers communicate the reason for their stop before engaging in investigatory questioning and document the reason for the stop in their citation or police report. However, a police officer may withhold the reason for the stop if they reasonably believe that it is necessary to protect life or property from imminent threat. This bill also provides that information regarding this requirement must be included in the DMV's Driver's Handbook.

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<sup>6</sup> Lofstrom, Magnus et. al. "Racial Disparities in Law Enforcement Stops." *Public Policy Institute of California*. Published October 2021. <https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>

<sup>7</sup> This breakdown is significant given the racial breakdown of the state according to the 2020 census: 39% of Californians identify as Hispanic/Latino, 35% as white, and 5% as black.

<https://www.ppic.org/publication/californias-population/>

<sup>8</sup> "Racial and Identity Profiling Advisory Board Annual Report 2022."

<https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf>

<sup>9</sup> For more information on these reforms, see the following:

<https://www.sfchronicle.com/bayarea/article/To-curb-racial-bias-Oakland-police-are-pulling-14839567.php>; <https://www.berkeleyside.org/2021/05/25/berkeley-department-of-transportation-civilian-traffic-enforcement>

<sup>10</sup> "Policy – Limitation on Use of Pretextual Stops – Established." Special Order #3, March 9, 2022. LAPD. [https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/03/3\\_9\\_22\\_SO\\_No.\\_3\\_Policy\\_Limitation\\_on\\_Use\\_of\\_Pretextual\\_Stops\\_Established.pdf](https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2022/03/3_9_22_SO_No._3_Policy_Limitation_on_Use_of_Pretextual_Stops_Established.pdf)

A separate provision of this bill deals with the existing requirement that local law enforcement agencies submit annual reports to DOJ regarding traffic and pedestrian stops, including specified information. This bill requires law enforcement agencies to additionally include, for each stop reported, the reason given to the person stopped at the time of the stop.

## 5. Argument in Support

According to Oakland Privacy:

AB 2773 addresses a problem that has taken lives and ended in tragedy far too often. Non-emergency traffic stops for busted tail-lights or expired registration should, we can all agree, never end in death and violence and yet they do. Philando Castile was pulled over for a busted tail light in 2016. He did not survive.

Part of the reason for these tragedies is that it is human nature to be frightened, defensive and in flight mode when pulled over for a reason that you do not understand and that the cops are not explaining to you. Despite all the know your rights pamphlets (which by the most optimistic of estimates will reach only a fraction of the population), it is difficult to control these feelings, which can be interpreted by law enforcement officers as having “something to hide”. Moreover, for populations that have difficult relationships with law enforcement due to racial profiling or previous encounters, these reactions are going to be exacerbated. A simple explanation of the reason for the stop at the beginning can do a lot to prevent fear, panic and the urge to flee. There is simply no reason not to do this. The role of law enforcement is to enforce the law, not to play cat and mouse games to try to provoke people into doing the wrong thing and causing the encounter to spiral out of control.

The bill makes reasonable exemptions for imminent threats, and is targeting what are called “pretextual stops” or stops whose predicate is mostly discretionary and constitutes a minor infraction like overly tinted windows, dangling objects on a windshield, or broken tail lights. Law enforcement reporting does indicate that racial disparities continue to exist in the choices made about when to make pretextual stops, so by requiring more documentation, AB 2773 contributes to the effort to correct for implicit bias in California policing.

The bill's enforcement teeth as introduced, were to permit a motion to suppress any evidence gathered in a traffic stop when the reason for the stop was not clearly disclosed to the driver prior to the procurement of that evidence. We were glad to see the author addressing the need for an enforcement mechanism to make sure there is policy compliance and with the removal of this clause, must ask the committee to consider how the bill's requirements will be enforced. In our experience, law enforcement agencies do not consistently implement state laws that do not have enforcement mechanisms.”

## 6. Argument in Opposition

According to the California State Sheriff's Association:

When a peace officer initiates a stop, there are many variables that must be considered and information that should be gathered. Traffic stops can be among the

most dangerous types of interactions that peace officers encounter and it often makes sense for an officer to seek and obtain additional information at the very beginning of a contact. This can be vital in assessing the risk emanating from the stop, and peace officers are trained that determining risk surrounding a traffic stop is a key consideration.

This bill's limitation is so strict, in fact, that it prohibits an officer from asking for a person's identification or even asking a person to turn off the vehicle's ignition prior to disclosing the reason for the stop. Obtaining more information from the subject of the stop is vital to protecting everyone's safety and the bill's exception based on an "imminent threat" is not enough to address all situations imbued with risk."

**-- END --**

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THIRD READING

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Bill No: AB 2773  
Author: Holden (D)  
Amended: 8/11/22 in Senate  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 4-0, 6/21/22

AYES: Bradford, Kamlager, Skinner, Wiener

NO VOTE RECORDED: Ochoa Bogh

SENATE TRANSPORTATION COMMITTEE: 13-3, 6/28/22

AYES: Newman, Allen, Archuleta, Becker, Cortese, Dodd, Hertzberg, Limón, McGuire, Min, Rubio, Skinner, Wieckowski

NOES: Dahle, Melendez, Wilk

NO VOTE RECORDED: Bates

SENATE APPROPRIATIONS COMMITTEE: 5-1, 8/11/22

AYES: Portantino, Bradford, Laird, McGuire, Wieckowski

NOES: Jones

NO VOTE RECORDED: Bates

ASSEMBLY FLOOR: 43-22, 5/25/22 - See last page for vote

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**SUBJECT:** Stops: notification by peace officers

**SOURCE:** Author

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**DIGEST:** This bill requires, effective January 1, 2024, a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking investigatory questions unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat; and adds information regarding this requirement to the Department of Motor Vehicles (DMV) Driver's Handbook, and requires local law enforcement agencies to report additional stop information to the Department of Justice (DOJ).

**ANALYSIS:**

Existing law:

- 1) Provides that the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. (U.S. Const., amend. IV.)
- 2) Requires DMV to publish a synopsis or summary of the laws regulating the operation of vehicles and the use of highways. This summary is referred to as the California Driver's Handbook (Handbook). (Veh. Code, § 1656.)
- 3) Requires DMV to include specified information in the handbook, including a section on a person's civil rights during a traffic stop. This section must include information regarding the limitations of a peace officer's authority during a traffic stop and the legal rights of drivers and passengers, including the right to file complaints against a peace officer. (Veh. Code, § 1656.3, subd. (a)(4).)
- 4) Requires DMV to develop the above section of the Handbook in consultation with the civil rights section of the DOJ, California Highway Patrol (CHP), California Commission on Peace Officer Standards and Training (POST), and civil rights organizations, including community-based organizations. (Veh. Code, § 1656.3, subd. (a)(4).)
- 5) Provides that the information included in the handbook shall be initially include in the handbook at the earliest opportunity when the handbook is otherwise revised or reprinted, in order to minimize costs. (Veh. Code, § 1656.3, subd. (b).)
- 6) Requires each state and local agency that employs peace officers to annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year. (Government Code §12525.5(a)(1).)
- 7) Requires reports on stops submitted to the Attorney General to include, at a minimum, the following information:
  - a) The time, date, and location of the stop
  - b) The reason for the stop
  - c) The result of the stop, such as no action, warning, citation, arrest, etc.

- d) If a warning or citation was issued, the warning provided or the violation cited
- e) If an arrest was made, the offense charged
- f) The perceived race or ethnicity, gender, and approximate age of the person stopped. For motor vehicle stops, this paragraph only applies to the driver unless the officer took actions with regard to the passenger
- g) Actions taken by the peace officer, as specified. (Government Code §12525.5(b)(1)-(7).)

8) Provides that law enforcement agencies shall not report personal identifying information of the individuals stopped to the Attorney General, and that all other information in the reports, except for unique identifying information of the officer involved, shall be available to the public. (Government Code §12525.5(d).)

9) Defines “stop,” for the purposes of reports sent by law enforcement agencies to the Attorney General, as ‘any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person’s body or property in the person’s possession or control.’ (Government Code §12525.5(g)(2).)

10) Finds and declares that pedestrians, users of public transportation, and vehicular occupants who have been stopped, searched, interrogated, and subjected to a property seizure by a peace officer for no reason other than the color of their skin, national origin, religion, gender identity or expression, housing status, sexual orientation, or mental or physical disability are the victims of discriminatory practices (Penal Code §13519.4(d)(4).)

11) Prohibits a peace officer from engaging in racial or identity profiling, as defined. (Penal Code §13519.4(e),(f).)

12) Creates the Racial and Identity Profiling Advisory Board (RIPA), which, among other duties, is required to conduct and consult available, evidence-based research on intentional and implicit biases, and law enforcement stop, search, and seizure tactics. (Penal Code §13519.4(j)(3)(D).)

This bill:

1) Requires a peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, to state the

reason for the stop, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat.

- 2) Requires the officer to document the reason for the stop on any citation or police report resulting from the stop.
- 3) Requires that the DMV Driver's Handbook include information regarding the requirement above.
- 4) Requires local law enforcement agency, in their reports to DOJ regarding stops, to include information regarding the reason given to the person stopped at the time of the stop.
- 5) Specifies that its provisions do not become operative until January 1, 2024.

### **Comments**

According to the author, “to promote equity and accountability in communities across California — that is my goal. AB 2773 brings transparency to service of protecting our public.”

The Fourth Amendment of the United States Constitution provides in part that “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated.” The United States Supreme Court has held that temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of persons within the meaning of this provision. In *Whren v. United States*, decided in 1996, the Court further held that “the temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment’s prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective.” The Court’s decision in *Whren* has given rise to what have been dubbed “pretext stops,” a practice in which a law enforcement officer uses a minor traffic violation as a pretext to stop a vehicle in order to investigate other possible crimes. Given the litany of possible traffic violations, especially in California, the use of pretext stops as an investigative tool has become widespread since the decision in *Whren*.

As use of pretext stops has increased, so too has criticism of the practice. Many argue that pretext stops are a driver of racial bias in law enforcement (discussed further below), while others claim that they subvert the spirit, if not the letter, of the Fourth Amendment by giving officers carte blanche to stop a vehicle. Critics

also point to the difficulty in contesting a pretext stop in court. That is, if an officer stops a driver based on an observed traffic violation – of which there are dozens – the driver bears the burden of producing evidence to refute the officer’s testimony, that, for instance, the license plate was obscured or a taillight was not properly illuminated on a specific date and time. All of these issues, critics argue, lead to disparate outcomes, primarily based on race, and undermine police legitimacy in the eyes of the communities they serve.

In 2020, the Stanford Open Policing Project published an analysis of almost 100 million police traffic stops conducted between 2011 and 2017 by 21 state patrol agencies (including the California Highway Patrol) and 29 municipal police departments nationwide. One of the study’s central findings was that “police stopped and searched black and Hispanic drivers on the basis of less evidence used in stopping white drivers, who are searched less but are more likely to be found with illegal items.” Moreover, these stops based on routine traffic violations often turn violent. A 2021 New York Times investigation found that in the preceding 5 years, police officers killed at least more than 400 unarmed drivers and passengers who were not under pursuit for a violent crime, while about 60 officers died at the hands of motorists who had been pulled over.

In 2015, the Legislature passed AB 953 (Weber, Chapter 466, Statutes of 2015), also known as the Racial and Identity Profiling Act of 2015, which expressly prohibited racial and identity profiling by law enforcement and requires law enforcement agencies to report stop data to the DOJ. RIPA guidelines define a “stop” as “any detention by a peace officer of a person or any peace officer interaction with a person in which the officer conducts a search. This data includes both pedestrian and vehicle stops.”

RIPA stop data for 2020 showed that the most commonly reported reason for a stop (86.1%) across all racial/ethnic groups was a traffic violation, and that individuals perceived as Black or Hispanic comprised 60% of the stops reported, while just under 32% of the stops involved individuals perceived as White. The 2020 data also reflected a continuation of the previous year’s trends as well as a finding that “officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more individuals perceived as Black than individuals perceived as White, even though they stopped more than double the number of individuals perceived as White than individuals perceived as Black.”

In light of the racial disparities in police stops and in an effort to improve police accountability with regard to stops, the Author seeks to enact a requirement that officers communicate the reason for their stop before engaging in investigatory

questioning and document the reason for the stop in their citation or police report. However, a police officer may withhold the reason for the stop if they reasonably believe that it is necessary to protect life or property from imminent threat. This bill also provides that information regarding this requirement must be included in the DMV's Driver's Handbook.

A separate provision of this bill deals with the existing requirement that local law enforcement agencies submit annual reports to DOJ regarding traffic and pedestrian stops, including specified information. This bill requires law enforcement agencies to additionally include, for each stop reported, the reason given to the person stopped at the time of the stop.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- *CHP:* The CHP reports costs of approximately \$160,000 for information technology changes that would required to collect and report additional “stop data” information to DOJ (Special Fund – Motor Vehicle Account).
- *DOJ:* The DOJ reports costs of \$43,000 in 2022-23 for consulting services for application development and to assist with analysis and design, database modification, web application development, web services development, deployment and follow-up (General Fund).
- *DMV:* Staff notes likely minor and absorbable costs to the DMV to update the Driver's Handbook (Special Fund – Motor Vehicle Account).
- *Local Reimbursements:* Unknown, potentially significant costs for all 608 state and local agencies employing peace officers to update policies regarding pedestrian and traffic stops and provide the training necessary to comply with the reporting requirements of AB 2773 (Local Funds, General Fund). Costs to the General Fund will depend predominantly on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.

**SUPPORT:** (Verified 8/11/22)

ACLU California Action  
California Federation of Teachers  
California Public Defenders Association  
City of Alameda  
Initiate Justice

National Association of Social Workers, California Chapter  
Oakland Privacy  
Sister Warriors Freedom Coalition  
The Young Women's Freedom Center

**OPPOSITION:** (Verified 8/11/22)

California State Sheriffs' Association  
Los Angeles Professional Peace Officers Association  
Public Risk Innovation, Solutions and Management

**ASSEMBLY FLOOR: 43-22, 5/25/22**

**AYES:** Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, McCarty, Medina, Mullin, Nazarian, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

**NOES:** Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Mathis, Muratsuchi, Nguyen, Patterson, Salas, Seyarto, Smith, Valladares, Voepel, Waldron

**NO VOTE RECORDED:** Aguiar-Curry, Berman, Cooley, Cooper, Daly, Grayson, Maienschein, Mayes, O'Donnell, Petrie-Norris, Ramos, Rodriguez, Villapudua

Prepared by: Alex Barnett / PUB. S. /  
8/15/22 13:01:41

\*\*\*\*\* **END** \*\*\*\*\*

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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### AB 2773 (Holden) - Stops: notification by peace officers

**Version:** June 13, 2022

**Urgency:** No

**Hearing Date:** August 1, 2022

**Policy Vote:** PUB. S. 4 - 0, TRANS. 13 - 3

**Mandate:** Yes

**Consultant:** Matthew Fleming

**Bill Summary:** AB 2773 would require a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking investigatory questions, as specified. The bill would require the Department of Motor Vehicles (DMV) to add information regarding this requirement to the DMV Driver's Handbook and it would require local law enforcement agencies report additional stop information to the Department of Justice (DOJ).

#### Fiscal Impact:

- CHP: The California Highway Patrol (CHP) reports costs of approximately \$160,000 for information technology changes that would required to collect and report additional "stop data" information to the Department of Justice (Special Fund – Motor Vehicle Account).
- DOJ: The Department of Justice reports costs of \$43,000 in 2022-23 for consulting services for application development and to assist with analysis and design, database modification, web application development, web services development, deployment and follow-up (General Fund).
- DMV: Staff notes likely minor and absorbable costs to the DMV to update the Driver's Handbook (Special Fund – Motor Vehicle Account).
- Local Reimbursements: Unknown, potentially significant costs for all 608 state and local agencies employing peace officers to update policies regarding pedestrian and traffic stops and provide the training necessary to comply with the reporting requirements of AB 2773 (Local Funds, General Fund). Costs to the General Fund will depend predominantly on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.

**Background:** This purpose of this bill is to create more transparency and equity in police practices by requiring any peace officer to cite a reason for stopping a driver or pedestrian. Racial profiling continues to be an issue in California and requiring a peace officer to identify the reasons for any stop will ensure law enforcement has a valid reason for detaining a driver or pedestrian.

The United States Supreme Court has held that temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of persons within the meaning of this provision. In *Whren v. United States*, decided in 1996, the Court further held that "the temporary

detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective." The Court's decision in *Whren* has given rise to what have been dubbed "pretext stops," a practice in which a law enforcement officer uses a minor traffic violation as a pretext to stop a vehicle in order to investigate other possible crimes. Given the litany of possible traffic violations, especially in California, the use of pretext stops as an investigative tool has become widespread since the decision in *Whren*.

Pretext stops have been widely criticized. Much of that criticism is centered around their disparate impact on communities of color. In 2015, the Legislature passed AB 953 (Weber, Ch. 466, Stats. of 2015), also known as the Racial and Identity Profiling Act (RIPA) of 2015, which expressly prohibited racial and identity profiling by law enforcement and requires law enforcement agencies to report stop data to the DOJ. . RIPA guidelines define a "stop" as "any detention by a peace officer of a person or any peace officer interaction with a person in which the officer conducts a search. This data includes both pedestrian and vehicle stops."

RIPA stop data for the following year (2020) showed that the most commonly reported reason for a stop (86.1%) across all racial/ethnic groups was a traffic violation, and that individuals perceived as Black or Hispanic comprised 60% of the stops reported, while just under 32% of the stops involved individuals perceived as White. The 2020 data also reflected a continuation of the previous year's trends as well as a finding that "officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more individuals perceived as Black than individuals perceived as White, even though they stopped more than double the number of individuals perceived as White than individuals perceived as Black."

This bill seeks to reduce the use of pretext stops by requiring a peace officer to state the reason for a stop prior to any interaction with the person being stopped. This would serve to prevent a peace officer from coming up with a legitimate justification for the stop after it occurs, thereby obscuring a biased motive. According to the author: "to promote equity and accountability in communities across California — that is my goal. AB2773 brings transparency to service of protecting our public."

The bill would also seek to inform the public of this requirement by requiring it to be published in the DMV Driver Handbook. It would also require local law enforcement to report to DOJ with information regarding the reason given to the person stopped at the time of the stop.

### **Proposed Law:**

- Requires a peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, to state the reason for the stop, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat.
- Requires the officer to document the reason for the stop on any citation or police report resulting from the stop.

- Requires the DMV to update the Driver's Handbook include information regarding the requirement that a peace officer state the reason for the stop.
- Requires local law enforcement agencies, in their reports to DOJ regarding stops, to include information regarding the reason given to the person stopped at the time of the stop.

**Related Legislation:**

- SB 1359 (Hueso, 2022) would require a peace officer to confirm that a vehicle does not have current DMV registration before issuing a citation for failure to display registration tabs and would prohibit the issuance of a citation for failure to display registration tabs when the vehicle registration is current or there is an application for registration on file with the department of Motor Vehicles (DMV).
- SB 1389 (Bradford, 2022) would prohibit a peace officer from initiating a traffic stop for a low-level infraction, as defined, unless there is a separate, independent basis to initiate the traffic stop. SB 1389 did not receive a vote on the Senate Floor.

**-- END --**

Date of Hearing: April 5, 2022  
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2773 (Holden) – As Introduced February 18, 2022

**As Proposed to be Amended in Committee**

**SUMMARY:** Requires a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions, unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat. Makes a failure to state the reason for the stop grounds for a statutory motion to suppress. Specifically, **this bill**:

- 1) Requires a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions unless the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including but not limited to, cases of terrorism or kidnapping.
- 2) Provides that failure to make the required statement is grounds for filing a motion to suppress using the procedures established in Penal Code section 1538.5.
- 3) Requires the officer to document the reason for the stop on any citation or police report resulting from the stop.
- 4) Requires the Department of Motor Vehicles (DMV) to include information regarding the duty of a peace officer to state the reason for the stop in the handbook at the earliest opportunity when the handbook is otherwise revised or reprinted.

**EXISTING LAW:**

- 1) Requires DMV to publish a synopsis or summary of the laws regulating the operation of vehicles and the use of highways. This summary is referred to as the California Driver's Handbook (Handbook). (Veh. Code, § 1656.)
- 2) Requires DMV to include within the Handbook a section on a person's civil rights during a traffic stop, including:
  - a) The limitations on a peace officer's authority during a traffic stop; and
  - b) The legal rights of drivers and passengers, including, but not limited to, the right to file complaints against a peace officer. (Veh. Code, § 1656.3, subd. (a)(4).)
- 3) Requires DMV to develop this section in consultation with the civil rights section of the of the Department of Justice (DOJ), California Highway Patrol (CHP), California Commission on Peace Officer Standards and Training (POST), and civil rights organizations, including

community-based organizations. (Veh. Code, § 1656.3, subd. (a)(4).)

- 4) Provides that the information shall be included in the handbook at the earliest opportunity when the handbook is revised or reprinted. (Veh. Code, § 1656.3, subd. (b).)
- 5) Prohibits unreasonable searches and seizures. (U.S. Const., amends. IV & XIV.)
- 6) Specifies procedures for a defendant in a criminal action to move to suppress evidence obtained as the result of an illegal search or seizure. (Pen. Code § 1538.5.)
- 7) Provides that a defendant may move for the return of property or to suppress evidence obtained as a result of a search or seizure if either of the following is true:
  - a) The search without a warrant was unreasonable; or
  - b) The search or seizure with a warrant was unreasonable because the warrant is insufficient on its face; the property or evidence obtained is not that described in the warrant; there was not probable cause for the issuance of the warrant; the method of execution of the warrant violated federal or state constitutional standards; or, there was any other violation of federal or state constitutional standards. (Pen. Code, § 1538.5, subd. (a).)
- 8) Provides that at any hearing on a motion to suppress, the court may hear evidence on any issue of fact necessary to reach a proper ruling of the motion. (Pen. Code, § 1538.5, subd. (c).)
- 9) Provides that any person in a trial, hearing, or proceeding may move to suppress any electronic information obtained or retained in violation of the Fourth Amendment or the Electronic Communications Privacy Act (ECPA). The motion shall be made, determined, and be subject to review in accordance with the procedures set forth in Penal Code section 1538.5. (Pen. Code, § 1546.4, subd. (a).)
- 10) States that only relevant evidence is admissible, and except as otherwise provided by statute, all relevant evidence is admissible. (Evid. Code, §§ 350, 351.)
- 11) Provides that relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post-conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court, subject to the existing statutory role of evidence relating to privilege or hearsay, or inadmissibility. (Cal. Const., art. I, § 28, as adopted June 8, 1982.)
- 12) Defines “relevant evidence” as meaning evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “To promote equity and accountability in communities across California — that is my goal. AB 2773 brings transparency to service of protecting our public.”
- 2) **The Racial and Identity Profiling Act (RIPA):** AB 953 (Weber), Chapter 466, Statutes of 2015, enacted RIPA. Among other things, RIPA requires law enforcement agencies employing peace officers to report their stop data annually to the Attorney General. RIPA guidelines define a “stop” as “any detention by a peace officer of a person or any peace officer interaction with a person in which the officer conducts a search. This data include both pedestrian and vehicle stops.” (<https://openjustice.doj.ca.gov/exploration/stop-data> [as of March 19, 2022].) “The data elements are statutorily mandated by the regulations underlying RIPA and include person-level and stop-level information (e.g., actions taken, reason for stop). Officers are required to record their perception of the identity characteristics pertaining to each stopped person, including their; race or ethnicity, gender, approximate age, lesbian, gay bisexual or transgender (LGBT) status, English fluency, and disability. Officers are prohibited from asking the person stopped to self-identify these characteristics. Consequently, officer perceptions of identity characteristics may differ from how an individual self-identifies.” (*Ibid.*)
- 3) **Racial Profiling:** Existing law prohibits law enforcement officers from engaging in racial profiling. (Pen. Code, § 13519.4, subd. (f).) “Racial or identify profiling” is the practice of detaining a suspect, or engaging in law enforcement activities after the stop, based on a broad set of criteria which casts suspicion on an entire class of people rather than individualized suspicion of the particular person being stopped. (Pen. Code, § 13519.4, subd. (e).)

Although racial profiling is prohibited, studies show that racial profiling by law enforcement does occur. According to the Public Policy Institute of California (PPIC), the first wave of RIPA data reflects that Black individuals are “notably overrepresented in police stops.” (<https://www.ppic.org/blog/african-americans-are-notably-overrepresented-in-police-stops/> [as of March 22, 2022].) In this first wave of data, eight agencies reported regarding stops between July 1, and December 31, 2018. The PPIC analyzed the RIPA data and found “[w]hile African Americans make up roughly 6% of the population in the [reported] jurisdictions, they made up slightly more than 15% of all stops. Those perceived to be Middle Eastern or South Asian make up about 1.8% of the population but represented 4.4% of all stops. In contrast, the state’s two largest racial/ethnic groups—Latinos and whites—were slightly underrepresented, as they make up about 41% and 35% of the population, respectively, but around 40% and 33% of all stops. Asian Americans were even more underrepresented: they are roughly 12% of the population, but made up about 5.5% of all stops.” (*Ibid.*) For African Americans, the racial inequities were the greatest, and existed among all eight of the agencies reporting. (*Ibid.*)

- 4) **Pretext Stops:** Under federal law, officers generally have wide latitude to initiate a traffic stop regardless of the officer’s motivation in making the stop. Under the Fourth Amendment, the decision to stop an automobile is reasonable if the officer has probable cause to believe that a traffic violation has occurred. (*Whren v. United States* (1996) 517 U.S. 806, 810.) A “pretext stop” occurs when an officer stops a vehicle for a traffic violation in order to investigate a more serious offense for which the officer lacks probable cause.

Officers stop drivers for low-level offenses such as tinted windows, broken taillights, license

plates improperly affixed to vehicles, obstructed windshields or objects hanging from a rearview mirror. (See, e.g., Pen. Code § 26708(a)(2); *People v. Colbert* (2007) Cal.App.4th 1068, 1073 [a stop under § 26708(a)(2) is reasonable when the police officer “explicitly testifie[s] that the air freshener was ‘large enough to obstruct [the driver’s] view through the front windshield’”]; *People v. Guerra* (2002) 2002 WL 31717061 [stopping a driver to see whether a neck chain hanging from a rearview mirror violated the Vehicle Code]; Baker & Bogel-Burroughs, *How a Common Air Freshener Can Result in a High-Stakes Traffic Stop*, N.Y. Times (Apr. 17, 2021) <<https://www.nytimes.com/2021/04/17/us/police-air-fresheners.html?referringSource=articleShare>> [“prohibitions against objects hanging from rearview mirrors can extend to fuzzy dice, graduation tassels, and rosaries”].)

Research shows that there is significant racial bias both as to who gets stopped and the outcomes of those stops, including the officer’s use of a weapon.

(<https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/> [as of March 31, 2022].)

In light of the racial disparities in law enforcement stops, as well as the outcomes of those stops, this bill seeks to deter “pretext stops” by requiring more police accountability – i.e., by requiring officers to state the reason for the stop and document it on a citation or police report. According to the author’s office, “in most instances the confrontation between law enforcement and people of color begin when people of color are not afforded the privilege of knowing why they were pulled over or stopped from continuing their walk in the first place. In these instances, people of color are demanded to comply or the situation escalates.”

5) **Suppression of Evidence and Proposition 8:** California’s search and seizure procedures are codified in Penal Code section 1538.5. The statute sets forth a process by which a defendant may move to suppress evidence obtained as the result of an illegal search or seizure.

“[I]n 1982, the California voters passed Proposition 8. Proposition 8 enacted article I, section 28 of the California Constitution, which provides in relevant part: ‘Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings . . . .’ (Cal. Const., art. I, § 28, subd. (f), par. (2).)” (*People v. Lazlo* (2012) 206 Cal.App.4th 1063, 1069.) The “Truth-in-Evidence” provision of Section 28(f)(2) “was intended to permit exclusion of relevant, but unlawfully obtained evidence, only if exclusion is required by the United States Constitution ....” (*In re Lance W.* (1985) 37 Cal.3d 873, 890 (*Lance W.*)). Section 28(f)(2) is applicable not only to judicially created rules of exclusion (*In re Demetrius A.* (1989) 208 Cal.App.3d 1245, 1247), but also to statutory evidentiary restrictions (*Lance W.*, *supra*, 37 Cal.3d at p. 893).

Article I, section 28, federalized California’s search and seizure law. A trial court may exclude evidence under Penal Code section 1538.5 only if exclusion is mandated by the federal Constitution. (*Lance W.*, *supra*, 37 Cal.3d at p. 896.) The exclusionary rule under the Fourth Amendment requires suppression of evidence seized during an unreasonable search or seizure. (U.S. Const., amend. IV, XIV; *Wong Sun v. United States* (1963) 371 U.S. 471, 484-487 [9 L.Ed.2d 441, 83 S.Ct. 407]; *Mapp v. Ohio* (1961) 367 U.S. 643, 655 [6 L.Ed.2d 1081, 81 S.Ct. 1684]; *People v. Williams* (1999) 20 Cal.4th 119, 125.)

This bill would create a statutory right to suppress evidence obtained as the result of an officer's failure to state the reason for the stop which would not necessarily rise to the level of a Fourth Amendment violation. (*People v. McKay* (2002) 27 Cal.4th 601, 605 [the violation of a state statute, standing alone, does not form the basis for suppression under the Fourth Amendment.] Accordingly, it requires a two-thirds vote.

6) **California Driver's Handbook:** DMV publishes the California Driver Handbook which provides a synopsis of existing law and rules of the road. The Handbook provides a more accessible means for potential and current drivers to understand the rules of the road. DMV puts this document together on its own, and has a few statutory requirements on particular sections of the Handbook. (<https://www.dmv.ca.gov/portal/handbook/california-driver-handbook/> [as of March 30, 2022].) As relevant here, under current law, DMV is required to include a section on a person's civil rights during a traffic stop. (Veh. Code, § 1656.3, subd. (a)(4).)

This bill would require the DMV handbook to also contain information regarding the duty of a peace officer to state the reason for the traffic stop. DMV would be required to update the Handbook with this information at the earliest opportunity when the Handbook is revised or reprinted.

7) **Practical Considerations:** The author may wish to clarify whether or not there are any exceptions to the search remedy under this bill. For example, is the suppression remedy intended to apply to persons on searchable probation who have waived their Fourth Amendment rights but not their statutory rights under this bill?

8) **Argument in Support:** According to the *California Public Defenders Association*, "It is a common experience for community members to be stopped on our streets and highways by peace officers for minor traffic violations and pedestrian offenses. Those community members are obliged to stop for the officer, and failure to do so is at least a misdemeanor, which could subject them to a custodial arrest. Most people are nervous and apprehensive after being stopped by an officer who can deprive them of their liberty.

"In October of 2021, the Public Policy Institute of California (PPIC) published a report entitled, 'Racial Disparities in Law Enforcement Stops.' In its report, which analyzed data for almost four million stops by California's 15 largest law enforcement agencies in 2019 it found the following:

- Black Californians are significantly more likely to be stopped than white individuals.
- Black individuals are more than twice as likely to be searched as white individuals.
- Black people are at least twice as likely as whites to experience so-called intrusive outcomes, ranging from being asked to step out of a vehicle, to being handcuffed, to the stop involving a weapon.
- Stops of Black individuals are three times more likely to involve a weapon than stops of white individuals.
- In CHP stops for traffic violations, almost everyone, Black or white, receives at least a warning, 98.5 percent and 98.6 percent, respectively. While being stopped for a traffic violation rarely results in a booking, both state and local law enforcement agencies book Black drivers more often than white, about 3.5 percent and 2.5 percent respectively.

“AB 2773 would increase transparency and public confidence in law enforcement by requiring an officer to immediately reassure the individual of the reason for the stop. Unfortunately, some officers launch into a series of questions that may have no apparent relationship to any basis for the stop. The longer the questioning goes on the more apprehensive the individual becomes of the officer’s true motives. However, when confronted by an officer they may feel compelled to answer the questions when in fact they are not required to do so. If informed at the outset of the basis for the stop, the individual would know if any subsequent questions are legitimate or an attempt to elicit incriminating statements or acquiescence to a search.

“As public defenders we see the disproportionate effect on our black and brown clients who are more likely to be searched and arrested following a traffic stop. Many times, there were handcuffed and left sitting on the side of the road, while their vehicles were searched. Other times, once the officer pulled them over, the first thing the officer said was ‘are you on probation or parole?’

“AB 2773 is good commonsense public policy. The many officers who do not engage in such tactics would be benefitted by measures that discourage the offending few from doing so. The good public policy reasons behind this bill are further enhanced by its efforts to educate the public of their civil rights through the DMV handbook. Preserving civil rights is every bit as important as preserving public safety on our highways. Civil rights that are forfeited out of ignorance are not civil rights and serve only to reward those who seek to capitalize on that ignorance.”

- 9) **Argument in Opposition:** According to the *California State Sheriffs’ Association*, “When a peace officer initiates a stop, there are many variables that must be considered and information that should be gathered. Traffic stops can be among the most dangerous types of interactions that peace officers encounter and it often makes sense for an officer to seek and obtain additional information at the very beginning of a contact. This can be vital in assessing the risk emanating from the stop, and peace officers are trained that determining risk surrounding a traffic stop is a key consideration. This bill’s limitation is so strict, in fact, that it prohibits an officer from asking for a person’s identification or even asking a person to turn off the vehicle’s ignition prior to disclosing the reason for the stop. Obtaining more information from the subject of the stop is vital to protecting everyone’s safety and the bill’s exception based on an ‘imminent threat’ is not enough to address all situations imbued with risk.

“Further, the bill’s provision that failure to tell the person the reason for the stop before asking any questions is grounds for filing a motion to suppress could end up ultimately keeping crucial information from a judge or jury if there is criminal activity discovered during the stop. A confession to a murder given by the subject of a traffic stop after the person has been Mirandized would be subject to a motion to suppress if the peace officer started the stop with a question – any question – before stating the reason for the stop. This language creates the very real possibility of vast miscarriages of justice based on the simple timing of an officer asking if they may see the person’s identification before telling the person why they were stopped.”

- 10) **Related Legislation:**

- a) AB 2285 (Smith), clarifies that a “stop” for the purposes of the RIPA does not include circumstances upon which a peace officer is dispatched to a call for service or a medical emergency. AB 2285 failed passage in this Committee and was granted reconsideration.
- b) AB 2537 (Gipson) requires Department of Motor Vehicles, in conjunction with the Department of Justice and the Commission on Peace Officer Standards and Training, to develop and create a video showing the proper conduct by a peace officer during a traffic stop and to post the video on its internet website.

**11) Prior Legislation:** AB 2918 (Holden), Chapter 723, Statutes of 2018, required the DMV to include within the Handbook a section on a person’s civil rights during a traffic stop.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California for Safety and Justice  
California Public Defenders Association  
Californians United for a Responsible Budget  
Ella Baker Center for Human Rights  
Initiate Justice

### **Opposition**

California State Sheriffs' Association

**A**

**nalysis Prepared by:** Cheryl Anderson / PUB. S. / (916) 319-3744

**NOTICE TO CORRECT VIOLATION**  
(Face of Violator's Copy)

(Name of Agency and Jurisdiction)		NOTICE TO CORRECT VIOLATION			(Citation No.)		
Date of Violation 1.	/ /	Time 2.	<input type="checkbox"/> AM <input type="checkbox"/> PM	Day of Week <b>S M T W T F S</b>	Case No.		
Name (First, Middle, Last) 2.		<input type="checkbox"/> Owner's Responsibility (Veh. Code, § 40001)					
Mailing Address 3.							
City 4.		State		ZIP Code			
Driver Lic. No. 5.		State	Class	Age	Birth Date / /	<input type="checkbox"/> Juvenile (Tel. No.) ( )	
6.	Sex	Hair	Eyes	Height	Weight	Race	Other Description
Veh. Lic. No. or VIN 7.		State				<input type="checkbox"/> COMMERCIAL VEHICLE (Veh. Code, § 15210(b))	
Yr. of Veh. 8.		Make	Model	Body Style	Color	<input type="checkbox"/> HAZARDOUS MATERIAL (Veh. Code, § 353)	
Veh. Lic. No. or VIN 9.		State					
Yr. of Veh. 10.		Make	Model	Body Style	Color	CHP/DOT	
Reason for Stop 11.							PUC/ICC
Registered Owner or Lessee 12.							<input type="checkbox"/> Same as Driver
Address 13.		City	State		ZIP Code		<input type="checkbox"/> Same as Driver
Violation(s) Code and Section 14.		Description					
15.							
16.							
17.							
Location of Violation(s) 18.							City/County
19.							
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct. 20. Executed at							California
Citing Officer 21.		ID			Vacation Dates From To		
		<b>I PROMISE TO CORRECT THE VIOLATION(S) LISTED ABOVE AND PROVIDE PROOF OF CORRECTION TO THE ISSUING AGENCY AS INSTRUCTED BELOW WITHIN 30 DAYS.</b>					
22. <b>X SIGNATURE</b>							
WHEN: CORRECT VIOLATION(S) IMMEDIATELY. CONTINUED OPERATION WITHOUT CORRECTION MAY RESULT IN ARREST AND PENALTY.							
WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.							
WHERE: PROVIDE PROOF OF CORRECTION TO THE ISSUING AGENCY'S ADDRESS LISTED ON THE REVERSE.							
		FPO Barcode					DEFENDANT COPY
Adopted for Mandatory Use Judicial Council of California, <a href="http://www.courts.ca.gov">www.courts.ca.gov</a> TR-140, Notice to Correct Violation, [Rev. Jan. 1, 2024]							SEE REVERSE Vehicle Code, §§ 40610(d), 40618

Shaded areas on the sample form indicate spaces  
subject to modification for local or agency requirements.

# REVERSE OF VIOLATOR'S COPY

## INSTRUCTIONS TO DRIVER-OWNER

### WHAT TO DO

#### METHODS FOR OBTAINING CERTIFICATION OF CORRECTION (Veh. Code, § 40616):

This Notice to Correct Violation may be cleared upon correction of the violation by providing satisfactory proof of correction within 30 days of this notice, as specified below, either in person at the issuing agency's office at [address] during normal business hours or by mail postmarked within 30 days of this notice to the issuing agency's address indicated below.

Violations may be certified as corrected on this form (as indicated below) in the following manner:

1. Brake, lamp, smog device, or muffler violations may be certified as corrected by any station licensed to inspect and certify for the specific violation(s).
2. Driver license and registration violations may be certified as corrected at offices of the DMV by an appropriate employee thereof, or by any clerk or deputy clerk of a court.
3. Any violation may be certified as corrected by a law enforcement agency regularly engaged in the enforcement of the California Vehicle Code.

**DO NOT STOP AN OFFICER ON ANY FREEWAY, EXPRESSWAY, OR BRIDGE FOR CERTIFICATION OF CORRECTION.**

**NOTE: INSPECTION STATIONS MUST LIST THEIR ARD LICENSE NUMBER ISSUED BY THE BUREAU OF AUTOMOTIVE REPAIR IN THE SPACE PROVIDED BELOW.**

**WARNING:** Any person willfully violating a written promise to correct or willfully failing to deliver proof of correction is guilty of a misdemeanor (Veh. Code, § 40616), which may lead to arrest, penalty, and additional fees. In addition, the Department of Motor Vehicles (DMV) will **WITHHOLD** the issuance or renewal of your driver license, and may revoke or suspend your driving privilege for Vehicle Code offenses. **YOU MUST RETURN THE COMPLETED CERTIFICATE OF CORRECTION TO THE ISSUING AGENCY.**

CERTIFICATE OF CORRECTION (RETURN TO THE ISSUING AGENCY)				
Section(s) Violated	Signature of Person Certifying Correction	ID or ARD License No.	Agency or Certified Inspection Station	Date

POSTMASTER: If undeliverable return to Name  
and Mailing Address on reverse

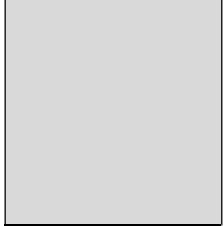
[Name of Agency]  
[Section(s) or division(s), room no[s].]  
[Street address]

FIRST  
CLASS  
POSTAGE  
REQUIRED

Rev. Jan. 1, 2024

Shaded areas on the sample form indicate spaces  
subject to modification for local or agency requirements.

## REVERSE OF COURT COPY

TO BE EXECUTED IN CASE OF FAILURE TO DELIVER PROOF OF CORRECTION	
DEFENDANT HEREIN FAILED TO DELIVER PROOF OF CORRECTION IN VIOLATION OF HIS/HER SIGNED PROMISE, AND IN VIOLATION OF VEHICLE CODE SECTION 40616.	
I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.	
EXECUTED AT _____	CALIFORNIA, ON _____ DATE _____
BY: _____ PRINT OR TYPE NAME	TITLE _____
SIGNATURE _____	ID/BADGE NUMBER _____
ADDRESS: _____	
FOR COURT USE ONLY	
(Circle one)	
RIGHT or LEFT THUMB PRINT	
	

Rev. Jan. 1, 2024

Shaded areas on the sample form indicate spaces subject to modification for local or agency requirements.

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**NOTICE TO APPEAR AND RELATED FORMS  
(Form TR-INST)**

**Revised Effective January 1, 2025**



**JUDICIAL COUNCIL of CALIFORNIA**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

## **ACKNOWLEDGMENTS**

The Judicial Council gratefully acknowledges the contributions and cooperation of those representatives from the judicial community, law enforcement agencies, and special interest groups who made this manual possible.

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## Chapter 1 PURPOSE OF FORMS

### **1.00. Definitions**

For the purposes of these instructions the following words are synonymous: (a) Notice to Appear, citation; (b) violation, offense, allegation, charges; (c) defendant, violator, person, individual, citee, driver; (d) court, court of jurisdiction; (e) officer, arresting officer, citing officer, issuing officer.

### **1.010. In General**

Notice to Appear forms are designed to meet statutory requirements and, to the extent possible, address the procedural requirements of local courts and law enforcement agencies. Notice to Appear forms should also provide the defendant with pertinent information regarding the charges and what steps the defendant must take to respond.

The uniform language and data fields assist law enforcement and the courts in the timely and accurate processing of the citation information. The design also ensures statewide conformity of advisements important to the defendant and that those advisements are clear and explicit.

### **1.020. Notice to Appear**

- (a) Whenever a person is arrested for any violation declared to be an infraction or misdemeanor, or for a violation of any city or county ordinance, and the person is not immediately taken before a magistrate, the arresting officer must prepare a Notice to Appear form.<sup>1</sup>
- (b) When the Notice to Appear is prepared on a form approved by the Judicial Council it constitutes a complaint to which the defendant may enter a plea.<sup>2</sup>

### **1.030. Continuation Form**

- (a) The *Continuation of Notice to Appear* or *Continuation of Citation* form must be used when multiple offenses are charged and the Notice to Appear form does not provide sufficient space for the listing of all the charges. A *Continuation of Citation* is a multipurpose form intended for use with either a Notice to Appear form or a Notice to Correct Violation form.
- (b) A second Notice to Appear must not be issued in lieu of a continuation form.
- (c) The Notice to Appear and the corresponding continuation form must be treated as one law enforcement document and contain the same citation number.

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<sup>1</sup> Veh. Code, § 40500(a); Pen. Code, § 853.6.

<sup>2</sup> Veh. Code, § 40513(b); Pen. Code, § 853.9.

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#### **1.040. *Electronic Notice to Appear***

- (a) An electronic Notice to Appear issued on form TR-130, *Traffic/Nontraffic Notice to Appear*, eliminates those citation-processing problems caused by the illegibility of handwritten information. The use of an electronic Notice to Appear also reduces the amount of information that must be entered into law enforcement and court computer systems.
- (b) A court is authorized to receive and file a Notice to Appear in an electronic form if all of the following conditions are met:<sup>3</sup>
  - (1) The information is on a form approved by the Judicial Council.
  - (2) The Notice to Appear is transmitted to the court by a law enforcement agency.
  - (3) The court has the facility to electronically store the information for the statutory period of record retention.
  - (4) The court has the ability to reproduce the Notice to Appear in physical form upon the demand and payment of the reproduction costs.
- (c) Any Notice to Appear prepared electronically must include all mandatory data fields and notices to the defendant that are on form TR-130. The formatting and spacing may vary depending on the software used to prepare the citation.

#### **1.041. *Notice to Correct Violation***

Unless certain disqualifying conditions exist, a law enforcement officer who chooses to take action on certain registration, license, or equipment violations of the Vehicle Code must issue a Notice to Appear that specifies that the offense is correctable or a Notice to Correct Violation. (Veh. Code, §§ 40610, 40522, 40303.5.) If an agency does not receive proof of correction on a Notice to Correct, the agency can deliver to the court the signed promise with a certification that no proof of correction was received. (*Id.*, § 40618.) The Judicial Council adopted form TR-140, *Notice to Correct Violation*, in 2000. (See Appendix G.)

#### **1.050. *Notice of Correction and Proof of Service***

Form TR-100, *Notice of Correction and Proof of Service*, must be used for any corrections to the original Notice to Appear citation.<sup>4</sup> (See Appendix A.)

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<sup>3</sup> Pen. Code, § 959.1.

<sup>4</sup> Veh. Code, § 40505.

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## Chapter 2 AUTHORITY TO PRESCRIBE FORMAT

### **2.010. Judicial Council**

- (a) The Judicial Council has three forms for the Notice to Appear:
  - (1) Form TR-115, *Automated Traffic Enforcement System Notice to Appear*,<sup>5</sup> to be used in conjunction with violations of Vehicle Code sections 22451, 21453, and 22101 recorded by an automated traffic enforcement system. (See Appendix D.)
  - (2) Form TR-120, *Nontraffic Notice to Appear*,<sup>6</sup> to be used for violations other than traffic offenses. (See Appendix E.)
  - (3) Form TR-130, *Traffic/Nontraffic Notice to Appear*,<sup>7</sup> to be used for both infraction and misdemeanor offenses. If form TR-130 is prepared and submitted electronically, a computer-generated citation is issued to the defendant at the time of arrest and a copy is filed with the court either electronically when permitted or as a paper copy. (See Appendix F.)
- (b) Form TR-106, *Continuation of Notice to Appear*, and form TR-108, *Continuation of Citation*, are intended for use in conjunction with form TR-120, *Nontraffic Notice to Appear*, and form TR-130, *Traffic/Nontraffic Notice to Appear*. (See Appendix B and Appendix C.)
- (c) The Judicial Council has not adopted a form for, nor established guidelines governing, the following: (1) parking citations, (2) arrest/booking reports, and (3) court bail courtesy notices.

## Chapter 3 REVISION DATES

### **3.010. Judicial Council**

- (a) Periodically, the Judicial Council will revise Notice to Appear forms. Law enforcement must use the revised Notice to Appear form by the effective date of the revised form if it is to serve as a complaint. (See section 6.030 for exception.) Depending on changes in statutory requirements, effective dates are established to allow law enforcement as much time as possible to deplete any existing supplies of the old form, print and disseminate new forms, and, if necessary, develop new procedures and train personnel regarding the revisions.

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<sup>5</sup> *Id.*, § 40518.

<sup>6</sup> Pen. Code, § 853.9.

<sup>7</sup> Veh. Code, §§ 40500(b), 40513(b), 40522; Pen. Code, § 853.9.

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(b) The council revised forms TR-130 and TR-140, effective January 1, 2024, and forms TR-115 and TR-120, effective June 26, 2015. Forms TR-100, TR-106, and TR-108 have an effective date of January 1, 2004.

## **Chapter 4 FORM SPECIFICATIONS**

### ***4.010. Required Copies***

The arresting officer must prepare the Notice to Appear form, at a minimum, in triplicate with a copy delivered to the court and the issuing agency for Vehicle Code violations<sup>8</sup> and in duplicate for all other violations.<sup>9</sup> The copy of the citation issued to the arrested person must include all of the information on the copy of the citation filed with the court, including any signature for the defendant's promise to appear or respond.<sup>10</sup> Before printing or programming Notice to Appear forms, law enforcement agencies should contact their local court to determine if there are any local requirements for the court's case management system.

### ***4.020. Size and Color***

The size and color of Notice to Appear copies for printed forms TR-106, TR-108, TR-120, TR-130, and TR-140 should conform with the requirements of the courts in which they are filed. Printed copies of forms completed electronically should comply as closely as possible with these specifications but may vary depending on the courts' or law enforcement agency's technological capabilities. The Judicial Council recommends the following minimum size and other form specifications:

- (a) A "trim" size of 4-1/4 inches wide and 7-1/2 inches long; 5/8-inch tabs on the top or bottom of the form.
- (b) Original (Court's copy), white, 15-pound paper stock. Print head-to-head.
- (c) Duplicate (Police agency's copy), pink, 15-pound paper stock. No printing on reverse.
- (d) Triplicate (Officer's copy), green, 15-pound paper stock. Print reverse head-to-head.
- (e) Quadruplicate (Defendant's copy), yellow, 20-pound paper stock. Print reverse head-to-head.
- (f) The colors of the "Court's copy" and "Police agency's copy" correspond with rule 1:3-1 of the Model Rules Governing Procedure in Traffic Cases adopted by the National Conference of Commissioners on Uniform State Laws.

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<sup>8</sup> Veh. Code, §§ 40500(a), 40506.

<sup>9</sup> Pen. Code, § 853.6.

<sup>10</sup> Veh. Code, § 40505.

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#### **4.030. Paper Stock**

Paper stock for handwritten citations must be pressure sensitive and have a shelf life of at least five years. The citation text must be reproducible on photocopy equipment.

#### **4.040. Serial Numbers**

- (a) The serial numbers of the form sets must be sequential. There must be no duplication of numbers between form sets.
- (b) The format of the serial numbers is at the discretion of local law enforcement with the approval of the court.

#### **4.050. Printing Format**

- (a) A vertical format is required, except for the Proof of Service on form TR-100, which is printed horizontally to facilitate mailing.
- (b) All text on the forms must be printed in black ink, except the warning at the top of form TR-130, which should be printed in white ink. All text on citation forms TR-115 and TR-120 must have a minimum font size of 6.0 points. All text on form TR-130 must have a minimum font size of 5.0 points. Serial numbers may be printed in red ink. The box for the defendant's signature and the box for the warning may be printed in red ink. Form TR-130 may include gray shading around the appearance and response information, the citation details section, and each section on the back of the citation to improve readability. The "Tab Area" on form TR-130 may appear on the top or bottom of the form. It is meant to represent space for perforation of forms in a citation book.

#### **4.060. Printing Expenses**

The printing of the forms and the associated costs are not the responsibility of the Judicial Council; printing is to be arranged in accordance with local custom.

### **Chapter 5 VARIATIONS OF MANDATORY LANGUAGE/DATA FIELDS**

#### **5.000. In General**

Mandatory language and data fields are indicated by unshaded areas on examples of Judicial Council forms; see section 5.010 for exceptions. On form TR-130, yellow shading indicates fields that can be customized.

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### **5.010. Permitted Variations**

- (a) To meet the unique customs and/or needs of local law enforcement agencies and courts, the Judicial Council form permits limited variations in specified data fields. To indicate that variations may be permitted, these data fields are identified by shaded areas. On form TR-130, this shading is yellow. Shading should not appear on printed forms.
- (b) The California Highway Patrol is permitted to alter the format and location of the fields for the name of the court, court address, and phone number and to add a field for the location of a CHP Inspection Facility on the face of a form TR-130, *Traffic/Nontraffic Notice to Appear*, for their form CHP-215X.
- (c) Formatting for the bracketed information that is required in the “Where” field on Notice to Appear forms may be modified to include information for multiple court locations. On form TR-130, formatting for the information in the yellow box containing the court addresses may be modified as necessary to include the desired number of court locations.

## **Chapter 6 MANDATORY LANGUAGE/DATA FIELDS**

### **6.000. In General**

The mandatory language and data fields vary between the various Notice to Appear forms depending on the purpose of the form. All language and data fields in unshaded (or nonyellow, for form TR-130) areas on the forms are mandatory, even if not discussed below. Mandatory text or data fields of the forms may not be reworded or omitted, except for references to statutory authorities, which may be abbreviated differently. Citations prepared electronically may abbreviate terms to facilitate printing of forms.

Law enforcement agencies should be aware that if a written Notice to Appear is not prepared on an approved Judicial Council form, a court may conclude that it does not constitute a complaint to which a defendant may enter a plea. (Veh. Code, § 40513(b).) If a defendant pleads other than “guilty” or “nolo contendere” and the court concludes that the Notice to Appear is defective, it could be necessary to refile the charges by a formal complaint. (Veh. Code, § 40513(a).)

### **6.010. Agency Name**

The name of the citing agency and jurisdiction must appear near the top of the form.

### **6.020. Title of Form**

The title of the form must be printed near the top of the form, or in the bottom corner, for form TR-130.

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### **6.030. Serial Number**

- (a) A sequential serial number for each multipart set of Notice to Appear forms must appear horizontally near the top right corner of each form.
- (b) To facilitate the filing systems of some courts, statewide law enforcement agencies must also print the serial number in the lower right margin of the court's copy. Statewide law enforcement agencies must comply with this requirement as specified in section 3.010. Local law enforcement agencies must comply with the requirement for the duplication of the serial number in the right margin within one calendar year of a request from a local court.
- (c) The serial number may be preprinted on the Notice to Appear.
- (d) The serial number on continuation form TR-106 or TR-108 must be the same as that on the corresponding Notice to Appear; the duplication of the serial number in the right margin is not required.
- (e) Bar coding of the serial number permits those courts with bar code readers to improve the timeliness and accuracy of processing Notice to Appear forms. Within the following parameters, the bar coding of the serial number must be placed on the face of the court's copy of the Notice to Appear form:
  - (1) The bar code must appear as near as practicable to the bottom of the form and in USS Code 39 barcode data format.
  - (2) The bar code should have a 1/4-inch area (quiet zone) that is clear and free of all printing preceding the start character and the following stop character.
  - (3) Statewide law enforcement agencies must comply with the bar code requirement as specified in section 3.010.
  - (4) Local law enforcement agencies must comply with the bar code requirement within one calendar year of a request from a local court.

### **6.040. Identifying the Type of Violation**

To facilitate processing, the citing officer must check one of the three options on form TR-130:

“Appear in Court” if one of the offenses charged is a misdemeanor or an infraction requiring an appearance. The citing officer must provide a time and date to appear when checking this box.

“Respond to Citation Before” if the offense charged is an infraction that does not require an appearance. The citing officer must provide only a date by which to respond when checking this box.

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“To Be Notified” if the person being cited will be notified at a later date. The formatting of the “To Be Notified” box may be adjusted.

The citing officer must check the Misdemeanor box at the top of form TR-106, TR-108, or TR-120 if one of the offenses charged is a misdemeanor.

#### **6.050. Date and Time**

- (a) The date and time of the issuance of the Notice to Appear must be indicated near the top of the form.
- (b) The “Date of Violation” data field must be Mo./Day/Yr.
- (c) A check box “A.M./P.M.” format is provided as an optional field to indicate the time. Indicating the time in the “A.M./P.M.” is more easily understood by most defendants than the use of the 24-hour clock (military time).

#### **6.060. Defendant’s Name**

- (a) The defendant’s name is required on the Notice to Appear.<sup>11</sup>
- (b) The sequence of the defendant’s name must be First/Middle/Last. This sequence corresponds with the California Driver License/Identification Card.

#### **6.070. Defendant’s Address**

- (a) The defendant’s current address must be indicated on the Notice to Appear.<sup>12</sup>
- (b) The address must be the defendant’s mailing address. The mailing address allows the court to mail a courtesy notice and/or other correspondence to the defendant.
- (c) A street address may also be indicated in addition to the mailing address.

#### **6.071. Defendant’s Class and Category of Driver’s License**

- (a) The defendant’s class of driver’s license may be specified on the Notice to Appear.
- (b) Notice to Appear forms TR-115 and TR-130 must specify whether the defendant’s driver’s license is a commercial driver’s license.

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<sup>11</sup> Veh. Code, §§ 40500(a), 40518(b); Pen. Code, § 853.6.

<sup>12</sup> Veh. Code, §§ 40500(a), 40518(b); Pen. Code, § 853.6.

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#### **6.080. Defendant's Birth Date**

- (a) The defendant's birth date is required on the Notice to Appear. The sequence of the birth date must be Mo./Day/Yr.
- (b) The birth date data field is designed to accept a numerical entry.

#### **6.090. Defendant's Physical Description**

- (a) The defendant's sex, color of hair, color of eyes, height, and weight are required on the Notice to Appear. See section 6.091 for the policy regarding the defendant's race/ethnicity.
- (b) Data fields for the recording of the defendant's physical description are designed to accept the standard abbreviations of physical descriptors.

#### **6.091. Defendant's Race/Ethnicity**

- (a) A specific data field for the defendant's race or ethnicity must be added to the Notice to Appear form. The data field should be located on the same line as other physical descriptors.
- (b) If the defendant's race or ethnicity is to be indicated, the Judicial Council recommends the use of a single alpha character. Reference: California Department of Justice's Electronic Disposition Reporting Manual.

#### **6.100. Commercial Vehicle**

If the vehicle involved in an offense when a Notice to Appear is issued is a commercial vehicle,<sup>13</sup> the citing officer must mark the check box within the data field “**COMMERCIAL VEHICLE** (Veh. Code, § 15210(b)).”

#### **6.110. Hazardous Material**

If the vehicle involved in an offense when a Notice to Appear is issued was transporting hazardous material, the citing officer must mark the check box within the data field “**HAZARDOUS MATERIAL** (Veh. Code, § 353).”

#### **6.120. Vehicle Description**

The year, make, model, body style, and color of the vehicle operated by the defendant at the time of the offense must be indicated on the Notice to Appear.<sup>14</sup>

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<sup>13</sup> *Commercial vehicle* is defined in Vehicle Code section 15210(b). The requirement to indicate if an offense involves a motor vehicle is per Vehicle Code section 40300.2.

<sup>14</sup> Veh. Code, § 40500(a).

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### **6.130. Reason for Stop**

The officer must write the reason for the stop on notices used for traffic stops (forms TR-130 and TR-140).<sup>15</sup>

### **6.140. Name of Registered Owner/Lessee**

- (a) The Notice to Appear must contain the name of the registered owner or lessee.<sup>16</sup>
- (b) The name must be indicated on the Notice to Appear in the sequence First/Middle/Last unless a company is listed as the registered owner of the vehicle or vehicles.

### **6.150. Address of the Registered Owner/Lessee**

- (a) The address of the registered owner/lessee must be indicated on the Notice to Appear.<sup>17</sup>
- (b) The address must be the registered owner's mailing address.

### **6.160. Correctable Violation Advisement and Check Boxes**

- (a) Whenever a person is arrested for violations specified in Vehicle Code section 40303.5 and none of the disqualifying conditions set forth in Vehicle Code section 40610(b) exist, and the officer issues a Notice to Appear, the notice must specify the offense charged and note in a form approved by the Judicial Council that the charge will be dismissed upon proof of correction.<sup>18</sup>
- (b) For offenses identified in Vehicle Code section 40303.5 the citing officer must indicate by marking the appropriate "Yes" or "No" check box whether or not the offense is eligible for dismissal upon proof of timely correction. Marking the "No" box denotes that disqualifying conditions specified in Vehicle Code section 40610(b) exist.
- (c) The correctable violation advisement and the check boxes do not appear on the *Automated Traffic Enforcement System* notice form, TR-115.

### **6.170. Booking Required**

The officer may either book the arrested person prior to release or indicate on the Notice to Appear that the arrested person must be booked before appearing in court.<sup>19</sup> If the "Booking Required" check box is checked on form TR-120 or TR-130, the arresting agency must complete

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<sup>15</sup> Veh. Code, § 1656.3.

<sup>16</sup> *Id.*, § 40500(a).

<sup>17</sup> *Ibid.*

<sup>18</sup> *Id.*, § 40522.

<sup>19</sup> Pen. Code, § 853.6.

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the verification of booking section on the defendant's copy of the form. The "Booking Required" check box does not appear on the *Automated Traffic Enforcement System* notice, form TR-115.

#### **6.180. *Violations***

The Notice to Appear must state the offenses charged.<sup>20</sup>

#### **6.190. *Speed***

A Notice to Appear charging a speeding violation must specify the approximate speed ("approx."), *prima facie* or maximum speed, and any other speed limit exceeded.<sup>21</sup>

- (a) The "Safe Speed" box is provided so that the officer can indicate a speed different from the maximum or *prima facie* (posted) speed when the Notice to Appear is prepared charging a violation of the basic speed law (Veh. Code, § 22350). Conditions affecting the safe speed limit should be noted on the Notice to Appear (e.g., fog, rain, etc.).
- (b) When a speed violation is charged, both the approximate speed and the *prima facie* speed applicable to the street or highway should be indicated.
- (c) Entry of the maximum speed limit pertaining to the particular type of vehicle, or combination of vehicles, is only required if the defendant is cited for exceeding the speed limit for that vehicle.

#### **6.200. *Location of Violation***

The Notice to Appear must state the location where the offenses charged occurred.

#### **6.210. *Officer's Declaration on Information and Belief***

The officer must indicate on the Notice to Appear (check box) when the offense was not committed in the officer's presence and that the officer's declaration is on information and belief. A citizen's complaint and a collision investigation are examples of a situation that may result in the officer checking the box. The declaration is separate and distinct from the officer's declaration under penalty of perjury discussed in section 6.220.

#### **6.220. *Officer's Declaration Under Penalty of Perjury***

The Notice to Appear must contain the officer's dated declaration, under penalty of perjury, subscribed by the officer, that the information regarding the violations is true and correct.<sup>22</sup> The

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<sup>20</sup> Veh. Code, § 40500(a); Pen. Code, § 853.6.

<sup>21</sup> Veh. Code, § 40503.

<sup>22</sup> Code Civ. Proc., § 2015.5.

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date of the declaration must appear in the declaration date field when completed by either an arresting or a citing officer.

#### **6.230. Other Officer**

The name of the arresting officer, if different from the name of the officer completing the Notice to Appear, must be stated on the Notice to Appear. This policy was adopted to address situations in which there are teams of officers working radar enforcement or aerial patrol. This option is not available on the *Automated Traffic Enforcement System Notice to Appear*. (See section 6.231.)

#### **6.231. Declarant—Automated Traffic Enforcement System Citations**

The name of the government agency or law enforcement representative making the declaration, “Violation was not committed in my presence. The above is declared on information and belief and is based on photographic evidence,” must be stated on the *Automated Traffic Enforcement System Notice to Appear*.

#### **6.240. Defendant’s Signature**

To secure release from arrest, the defendant must give their written promise to appear.<sup>23</sup> The defendant’s signature on the defendant’s copy of the citation must be identical to the signature on the copy of the citation filed with the court. The requirement for a signed promise to appear does not apply to citations issued for violations recorded by an *Automated Traffic Enforcement System Notice to Appear*.

The defendant has the option to provide their cellphone information when they sign the citation. This information may be used by the court to send reminders about mandatory appearances and deadlines.<sup>24</sup>

#### **6.250. Time to Appear or Deadline to Respond**

- (a) The time specified in a Notice to Appear issued for a traffic offense must be a specific date which is at least 21 days after arrest; the court having jurisdiction over the offense charged may authorize the arresting officer to specify on the Notice to Appear that the appearance may be made before the time specified.<sup>25</sup>
- (b) When a Notice to Appear has been issued for a violation recorded by an automated traffic enforcement system, it must be mailed within 15 days of the violation date to the current address of the registered owner of the vehicle on file with the Department of Motor Vehicles,

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<sup>23</sup> Veh. Code, § 40504; Pen. Code, § 853.6.

<sup>24</sup> Cal. Rules of Court, rule 4.107.

<sup>25</sup> Veh. Code, § 40501(a).

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with a certificate of mailing obtained as evidence of service.<sup>26</sup> The time to appear must be at least 10 days after the Notice to Appear is delivered.<sup>27</sup>

- (c) The time to appear placed on the Notice to Appear for a nontraffic offense must be at least 10 days after the date of arrest for a nontraffic violation. (Pen. Code, § 853.6.)
- (d) In the case of juveniles, the court having jurisdiction over the offense charged may require the arresting officer to indicate on the Notice to Appear “to be notified” rather than a specific date.<sup>28</sup>

#### **6.260. *Place to Appear***

The place specified on the Notice to Appear must be one of the following:

- (a) Before a magistrate or judge.<sup>29</sup>
- (b) Before a person authorized to receive a deposit of bail.<sup>30</sup>
- (c) Before the juvenile court, juvenile court referee, or juvenile hearing officer.<sup>31</sup>

#### **6.270. *Night Court***

If the court identified in the Notice to Appear holds night sessions, the notice must include a statement advising the defendant.<sup>32</sup>

#### **6.280. *Legend***

The lower left corner of the Notice to Appear forms must denote that the form is a Judicial Council form and specify the council’s form number.

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<sup>26</sup> *Id.*, § 40518(a).

<sup>27</sup> *Id.*, § 40518(b).

<sup>28</sup> *Id.*, § 40501(b).

<sup>29</sup> *Id.*, § 40502(a), (b); Pen. Code, § 853.6.

<sup>30</sup> Veh. Code, § 40502(c); Pen. Code, § 853.6.

<sup>31</sup> Veh. Code, § 40502(d).

<sup>32</sup> *Ibid.*

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## Chapter 7 DISCRETIONARY LANGUAGE/DATA FIELDS

### **7.000. In General**

The discretionary (shaded or yellow) areas on the forms (see Appendixes) depict language and data fields that are frequently included at the option of the court or law enforcement agency (with the consent of the court in which the Notice to Appear is to be filed).

Because of limited space, not all of the discretionary language and data fields used throughout the state can be shown on the sample forms. The following are narrative descriptions of several discretionary data fields.

### **7.010. Bail Statement**

If the offense is bailable, the magistrate must fix the amount of bail and endorse the following statement on the warrant for arrest.<sup>33</sup>

BAIL:

The defendant is to be admitted to bail in the sum of \_\_\_\_\_ dollars.

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Judge

Note: The mandatory requirement that the above statement appear on the reverse of the court's copy disrupts the processing of Notice to Appear forms in those automated courts that use the space for cash register validations, automated traffic system notations, and notes of court proceedings. These courts use a separate form when issuing a warrant for arrest. For those reasons, the warrant for arrest statement is now discretionary.

### **7.030. Defendant's Thumbprint**

- (a) The defendant's thumbprint may be placed on the Notice to Appear in situations in which there is a question in the citing officer's mind as to the true identity of the defendant. The court will then have the option of comparing thumbprints in those cases where the defendant alleges that another person has committed the cited offense.<sup>34</sup>
- (b) The Judicial Council recommends that the thumbprint on form TR-120 or TR-130 be placed in a one-inch square area located on the reverse of the court's copy in the lower left corner. For electronic citations, a digitized thumbprint or fingerprint may be printed on the defendant's paper copy of the citation and filed with the court as part of the Notice to Appear. If the defendant's thumbprint or fingerprint is captured electronically as a digital image, but not included as part of the Notice to Appear, the digital image may be retained

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<sup>33</sup> Pen. Code, § 815(a).

<sup>34</sup> Veh. Code, § 40500(a); Pen. Code, § 853.6.

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by the arresting agency for use as provided in Penal Code sections 853.5 and 853.6 and Vehicle Code sections 40500 and 40504 and any other purposes permitted by law.

(c) The thumbprint item does not appear on the *Automated Traffic Enforcement System Notice to Appear*.

## **Chapter 8 PROHIBITED LANGUAGE/DATA FIELDS**

### ***8.010. Defendant's Social Security Number***

The defendant's social security number must not be indicated on the Notice to Appear, unless the social security number is also the driver's license number and/or the defendant holds a commercial driver's license.

To protect an individual's civil rights, federal statutes allow a very restricted compulsory use of a person's social security number for the purpose of establishing identity.<sup>35</sup>

Federal statutes do permit an agency having administrative responsibility for driver's license and motor vehicle registration laws to use a person's social security number to establish that person's identity as it relates to the laws within the agency's jurisdiction.<sup>36</sup>

The California Department of Motor Vehicles requires an individual to disclose their social security number in order to obtain a driver's license or identification card.<sup>37</sup> A number of other states use the individual's social security number as the driver's license number.

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<sup>35</sup> 5 U.S.C. § 552a.

<sup>36</sup> 42 U.S.C. § 405(c)(2)(C)(i).

<sup>37</sup> Veh. Code, §§ 1653.5, 12801.

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## Appendix A: Notice of Correction and Proof of Service, Form TR-100

NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: TELEPHONE:	
PEOPLE OF THE STATE OF CALIFORNIA VS.	
DEFENDANT:	
NOTICE OF CORRECTION AND PROOF OF SERVICE (Vehicle Code, § 40505)	
AMENDING OFFICER NAME/ID NO.:	DEPARTMENT/AGENCY:
CITATION NUMBER:	CASE NUMBER:

1. A Notice to Appear/Notice to Correct Violation was issued to you by an officer of this department on (date):

2. The citation issued to you contained an error as indicated by the items checked below. This notice of correction does not affect the validity of the citation or the required court appearance.

Date/time of violation should be \_\_\_\_\_  
 Date/time of court appearance should be changed from \_\_\_\_\_ to \_\_\_\_\_  
 Violation section(s) should be changed from \_\_\_\_\_ to \_\_\_\_\_  
 Location of violation should be changed from \_\_\_\_\_ to \_\_\_\_\_  
 Other (specify): \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_  
(Signature of officer)

Form Adopted for Mandatory Use  
Judicial Council of California  
TR-100 (Rev. January 1, 2004)

I am at least 18 years of age, not a party to this action, and I am a resident of or employed in the county where where the mailing took place. My business address is:

On (date): \_\_\_\_\_ I served this Notice of Correction on the parties at the address listed below by depositing in a sealed envelope, postage prepaid, with the United States Postal Service at (city and state):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_  
Original to court \_\_\_\_\_  
(Type or print name) \_\_\_\_\_  
(SIGNATURE) \_\_\_\_\_

Defendant's Address:

## Appendix B: Continuation of Notice to Appear, Form TR-106

### CONTINUATION OF NOTICE TO APPEAR (Face of Violator's Copy)

(Name of Agency and Jurisdiction)		MISDEMEANOR		(Citation No.)	
CONTINUATION OF NOTICE		<input type="checkbox"/> Traffic	<input type="checkbox"/> Nontraffic		
TO APPEAR		AM		Day of Week	Case No.
Date	Time	PM	S M T W T F S		
Name (First, Middle, Last) 2.					
Veh. Lic. No. or VIN 3.		State			
Correctable Violation (Veh. Code, § 40610)					
Yes	No	Code and Section	Description	Misdemeanor or Infraction (Circle)	
4.	<input type="checkbox"/>	M I			
5.	<input type="checkbox"/>	M I			
6.	<input type="checkbox"/>	M I			
7.	<input type="checkbox"/>	M I			
8.	<input type="checkbox"/>	M I			
9.	<input type="checkbox"/>	M I			
10.	<input type="checkbox"/>	M I			
11.	<input type="checkbox"/>	M I			
12.	<input type="checkbox"/>	M I			
13.	<input type="checkbox"/>	M I			
14.	<input type="checkbox"/>	M I			
15.	<input type="checkbox"/>	M I			
16.	<input type="checkbox"/>	M I			
17.	<input type="checkbox"/>	M I			
18.	<input type="checkbox"/>	M I			
19.	<input type="checkbox"/>	M I			
20.	<input type="checkbox"/>	M I			
21. Violations not committed in my presence, declared on information and belief.					
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct, and a continuation of the enforcement document noted.					
22. _____				Arresting or Citing Officer	Serial No. _____
23. _____ / _____ / _____		Date	Name of Arresting Officer, if different from Citing Officer	Serial No. _____	
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED. X Signature					
SEE REVERSE Judicial Council of California Form Rev. 01-01-04 (Veh. Code, §§ 40500(b), 40513(b), 40522, 40600; Pen. Code, § 853.9) TR-106					

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

**CONTINUATION OF NOTICE TO APPEAR  
(REVERSE OF VIOLATOR'S COPY)**

**IMPORTANT — READ CAREFULLY**

This form is used when multiple offenses are charged and the original notice to appear form does not provide sufficient space for the listing of all the charges. PLEASE REFER TO THE REVERSE OF THE ORIGINAL NOTICE TO APPEAR FOR IMPORTANT INFORMATION REGARDING YOUR LEGAL OBLIGATIONS.

**CORRECTABLE VIOLATIONS:** Those driver license, vehicle registration, and mechanical violations cited in accordance with Vehicle Code section 40610(a) will be dismissed by the court if PROOF OF CORRECTION and payment of a transaction fee are presented to the court by mail or in person on or before the appearance date.

**Violations of Vehicle Code section 16028 (automobile insurance) will be dismissed upon your showing to the court that evidence of financial responsibility was valid at the time this citation was issued.**

Proof of correction should be obtained for driver license, registration, and equipment violations.  
**CORRECT EQUIPMENT VIOLATIONS IMMEDIATELY.**

**METHODS FOR OBTAINING CERTIFICATION OF CORRECTION (Veh. Code, § 40616):**

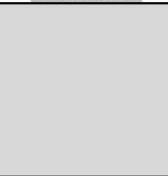
1. Pollution control device violations must be certified by a smog check station licensed by the California Bureau of Automobile Repair.
2. Lamp, brakes, and exhaust system violations may be certified as corrected by an authorized inspection and installation station for the specific violation(s).
3. Registration and driver license violations may also be certified as corrected by an office of the Department of Motor Vehicles or by any clerk or deputy clerk of a court.
4. Proof of correction, except for violations that must be cleared at a certified inspection and installation station, may be obtained at \_\_\_\_\_ (fill in location) during regular business hours.

**CERTIFICATE OF CORRECTION (MUST BE RETURNED TO COURT)**

**Shaded areas on the form indicate spaces subject to modification for local or agency requirements.**

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CONTINUATION OF NOTICE TO APEAR  
(Reverse Of Court Copy)

(Circle one)	
RIGHT or LEFT THUMB PRINT	
	

Shaded areas on the form indicate spaces subject  
to modification for local or agency requirements.

## Appendix C *Continuation of Citation*, Form TR-108

### CONTINUATION OF CITATION (Face of Violator's Copy)

(Name of Agency and Jurisdiction)		<input type="checkbox"/> MISDEMEANOR	
CONTINUATION <input type="checkbox"/> NOTICE TO APPEAR		<input type="checkbox"/> NOTICE TO CORRECT VIOLATION <input type="checkbox"/> Traffic <input type="checkbox"/> Nontraffic	
OF CITATION		(Citation No.)	
Date of Violation	Time	AM	Day of Week
1 / /		<input type="checkbox"/>	S M T W T F S
Name (First, Middle, Last)		Case No.	
2			
Veh. Lic. No. or VIN		State	
3			
Correctable Violation (Veh. Code, § 40610)			
Yes	No	Code and Section	Description
Misdemeanor or Infraction (Circle)			
4	<input type="checkbox"/>		M I
5	<input type="checkbox"/>		M I
6	<input type="checkbox"/>		M I
7	<input type="checkbox"/>		M I
8	<input type="checkbox"/>		M I
9	<input type="checkbox"/>		M I
10	<input type="checkbox"/>		M I
11	<input type="checkbox"/>		M I
12	<input type="checkbox"/>		M I
13	<input type="checkbox"/>		M I
14	<input type="checkbox"/>		M I
15	<input type="checkbox"/>		M I
16	<input type="checkbox"/>		M I
17	<input type="checkbox"/>		M I
18	<input type="checkbox"/>		M I
19	<input type="checkbox"/>		M I
20	<input type="checkbox"/>		M I
21 <input type="checkbox"/> Violations not committed in my presence, declared on information and belief.			
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct, and a continuation of the enforcement document noted.			
22		Arresting or Citing Officer	Serial No.
23 / /		Date Name of Arresting Officer, if different from Citing Officer	Serial No.
24 WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED. X Signature			
Judicial Council of California Form Rev. 01-01-04 (Veh. Code, §§ 40500(b), 40513(b), 40522, 40500, 40610(d), 40618; Pen. Code, § 853.8)		SEE REVERSE TR-108	

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

**CONTINUATION OF CITATION**  
**(Reverse of Violator's Copy)**

**IMPORTANT—READ CAREFULLY**

This form is used when multiple offenses are charged and the original Notice to Appear/Notice to Correct Violation form does not provide sufficient space for the listing of all the charges. PLEASE REFER TO THE REVERSE OF THE ORIGINAL NOTICE TO APPEAR/NOTICE TO CORRECT VIOLATION FOR IMPORTANT INFORMATION REGARDING YOUR LEGAL OBLIGATIONS.

**CORRECTABLE VIOLATIONS ON A NOTICE TO APPEAR:** Those driver license, vehicle registration, and mechanical violations cited in accordance with Vehicle Code section 40610(a) will be dismissed by the court if PROOF OF CORRECTION and payment of a transaction fee are presented to the court by mail or in person on or before the appearance date. Proof of correction should be obtained for driver license, registration, and equipment violations. **CORRECT EQUIPMENT VIOLATIONS IMMEDIATELY.**

**Violations of Vehicle Code section 16028 (automobile insurance) will be dismissed only upon (1) your showing or mailing to the court evidence of financial responsibility valid at the time this notice to appear was issued and (2) your payment of a transaction fee.**

**CORRECTABLE VIOLATIONS ON A NOTICE TO CORRECT VIOLATION:** Those driver license, vehicle registration, and mechanical violations cited in accordance with Vehicle Code section 40610(b) must be corrected and PROOF OF CORRECTION must be provided to the law enforcement agency's office designated on the reverse side of the Notice to Correct Violation form within 30 days in order to have the violation cleared. Proof of correction should be obtained for driver license, registration, and equipment violations. **CORRECT EQUIPMENT VIOLATIONS IMMEDIATELY.**

**METHODS FOR OBTAINING CERTIFICATION OF CORRECTION (Veh. Code, § 40616)**

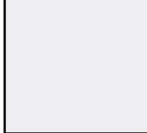
1. Pollution control device violations must be certified by a smog check station licensed by the California Bureau of Automobile Repair.
2. Lamp, brakes, and exhaust system violations may be certified as corrected by an authorized inspection and installation station for the specific violation(s).
3. Registration and driver license violations may also be certified as corrected at an office of the Department of Motor Vehicles or by any clerk or deputy clerk of a court.
4. Proof of correction, except for violations that must be cleared at a certified inspection and installation station, may be obtained at \_\_\_\_\_ (fill in location) during regular business hours.

**CERTIFICATE OF CORRECTION (MUST BE RETURNED TO:  COURT,  CITING AGENCY)**

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

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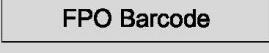
**CONTINUATION OF CITATION**  
(Reverse of Court's Copy)

<p>(Circle one)</p> <p>RIGHT or LEFT THUMPRINT</p> 	

Shaded areas on the form indicate spaces subject  
to modification for local or agency requirements.

**Appendix D Automated Traffic Enforcement System Notice to Appear, Form TR-115**

**TRAFFIC NOTICE TO APPEAR**  
Automated Traffic Enforcement System

(NAME OF AGENCY AND JURISDICTION)					
<b>NOTICE TO APPEAR</b> Automated Traffic Enforcement (Citation No.)					
Date of Violation 1. / /		Time □ AM □ PM		Day of Week S M T W T F S	
Name (First, Middle, Last) 2.					
Address 3.					
City 4.		State		ZIP Code	
Driver Lic. No. 5.		State		Class	Commercial □ Yes □ No
Sex 6.	Hair	Eyes	Height	Weight	Race
Veh. Lic. No. or VIN 7.		State		<input type="checkbox"/> COMMERCIAL VEHICLE <small>(Veh. Code, § 15210(b))</small>	
Yr. of Veh. 8.	Make	Model	Body Style	Color	<input type="checkbox"/> HAZARDOUS MATERIAL <small>(Veh. Code, § 353)</small>
Registered Owner or Lessee 9.					
Address 10.					
City 11.		State		ZIP Code	
Code and Section 12.		Description			
Location of Violation at 13.		City/County of Occurrence			
<input checked="" type="checkbox"/> Violation was not committed in my presence. The above is declared on information and belief and is based on photographic evidence.					
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.					
Date Issued 14.	Declarant		ID No.		
<b>YOU MUST RESPOND TO THE COURT ON OR BEFORE:</b>					
15. WHEN: DATE: _____			Time: _____ □ AM □ PM		
WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.					
16. WHERE: [Name of court[s]] [Section[s] or division[s], room no[s].] [Street address(es)] [Phone no.]			Clerk's Office Hours <small>[Insert hours clerk's office is open.]</small>		
					
Judicial Council of California Form Rev. 06-26-15 (Veh. Code, § 40518)			DEFENDANT COPY SEE REVERSE TR-115		

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

**TRAFFIC NOTICE TO APPEAR**  
**Automated Traffic Enforcement System**

<b>IMPORTANT—READ CAREFULLY</b>		
<p><b>This Citation Is Based on Photographic Evidence</b>            The vehicle identified on the front was photographed in violation of a traffic signal or sign.            You may see the photographs. Contact: _____            You may see the photographs online at: _____            For more information about the evidence in this case, you may contact the issuing agency, _____            by telephone at: _____            or in person at: _____            on _____ during the hours of _____            If you were not driving the vehicle at the time of the violation,            contact: _____</p>		
<b>WHAT TO DO</b>		
<p>You have been issued a citation that charges you with a traffic infraction. You must respond by following one of the procedures below by the date on the front (see "WHEN"). If you do not, you may lose your license to drive, and your money penalties may increase.</p> <p><b>1. If you do NOT contest the violation</b></p> <p>a. <b>(Pay the bail amount)</b> (See "BAIL INFORMATION" below) Your bail will be forfeited to the court. You will not have to appear in court. You will be convicted of the violation, and it will appear on your record at the Department of Motor Vehicles (DMV). A point count will be charged to your DMV record for this offense and your insurance may be adversely affected.</p> <p>b. <b>(Traffic school)</b> You may be able to avoid the point count and adverse effect on your insurance by attending traffic school. Contact the court to request traffic school. You must pay the bail amount as a fee, and you may have to pay other fees.</p> <p><b>2. If you contest the violation (select one)</b></p> <p>a. <b>(Court trial)</b> Send a certified or registered letter postmarked not later than five days prior to the appearance date, or come to the court by the appearance date to request a court trial on a future date when an officer and witnesses will be present. You may be required to submit the bail amount. You will be given a date for your trial. Go online or call the court for information on going to court without paying bail.</p> <p>—OR—</p> <p>b. <b>(Trial by written declaration)</b> Send a certified or registered letter postmarked not later than five days prior to the appearance date, or come to the court on or before the date on the front and request a trial by written declaration. Submit the bail amount. You will be given forms to allow you to write a statement and submit other evidence without appearing in court. An officer will also submit a statement. The judicial officer will consider all of the evidence at the same time and decide the case.</p>		
<b>WRITING TO THE COURT</b>		
<p>If you write to the court, always write the citation number and your driver license number on your letter. Use of certified or registered mail is required. Do not send your copy of the citation. Keep it for your own records.</p>		
<b>BAIL INFORMATION</b>		
<p>The "bail" is the amount to pay or deposit for the charged violation.</p> <table border="1" style="margin-left: auto; margin-right: auto; width: fit-content; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Bail Amount: \$ _____ OR [See enclosed information]</td> </tr> </table>		Bail Amount: \$ _____ OR [See enclosed information]
Bail Amount: \$ _____ OR [See enclosed information]		
<p>Make the check or money order payable to _____.            Write the citation number and your driver license number on your check or money order.            You may deposit the bail in person, by mail or by phone. Go online or call the court for information on going to court without paying bail.</p>		
<b>NIGHT COURT TRIALS</b> [are] [are NOT] available for this citation.		
<b>JUVENILES</b>		
<p>If you are under 18, you must be accompanied by your parent or guardian when you appear in court. Bring this citation and your driver license. You will be notified by the Juvenile Court of your court date. [For additional information, call the Juvenile Traffic Court at _____]</p>		
<b>ONLINE INFORMATION</b>		
<p>You may obtain additional information at            [Local Web site: _____]</p>		

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

## Appendix E *Nontraffic Notice to Appear*, Form TR-120

### NONTRAFFIC NOTICE TO APPEAR (Face of Court's Copy)

(Name of Agency and Jurisdiction)			<input type="checkbox"/> MISDEMEANOR		(Citation No.)	
NOTICE TO APPEAR			Nontraffic			
Date of Violation	Time		<input type="checkbox"/> AM	Day of Week	Case No.	
1. / /			<input type="checkbox"/> PM	S M T W T F S		
Name (First, Middle, Last) 2.						
Address 3.						
City 4.		State/Country		ZIP Code	E-mail Address	
Driver Lic. No. 5.		State	Class	Age	Birth Date / /	<input type="checkbox"/> Juvenile (Phone No.)
Sex 6.	Hair	Eyes	Height	Weight	Race	Other Description
Misdemeanor or Infraction (Circle)						
7.	Code	Ordinance	M      I			
8.			M      I			
9.			M      I			
10.			M      I			
11.			M      I			
12.			M      I			
13.			M      I			
14.			M      I			
15.			M      I			
16.			M      I			
17.			M      I			
18.			M      I			
Evidence Seized 19.		<input type="checkbox"/> Booking Required				
Location of Violation(s) 20.		City/County of Occurrence				
Comments 21.						
<input type="checkbox"/> Violations not committed in my presence, declared on information and belief. 22. I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.						
23. / /	Dec. Date	Arresting or Citing Officer	Serial No.	To Dates Off		
24. / /	Dec. Date	Name of Arresting Officer, if different from Citing Officer	Serial No.	To Dates Off		
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW. 25. X Signature						
26. WHEN: ON OR BEFORE THIS DATE: / /		Time: <input type="checkbox"/> AM <input type="checkbox"/> PM				
27. WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE. WHERE: [Name of court(s)] [Section(s) or division(s), room no(s).] [Street address(es)] [Phone No.]		Time: <input type="checkbox"/> AM <input type="checkbox"/> PM				
28. <input type="checkbox"/> To be notified		<input type="checkbox"/> You may arrange with the clerk to appear at a night session of the court.				
		FPO Barcode (USS Code 39)			DEFENDANT COPY	
Judicial Council of California Form Rev. 06-26-15 (Pen. Code, § 853.9)						
SEE REVERSE TR-120						

Shaded areas on the form indicate spaces subject  
to modification for local or agency requirements.

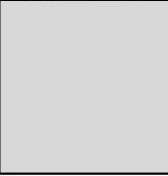
NONTRAFFIC NOTICE TO APPEAR  
(Reverse Of Defendant's Copy)

IMPORTANT — READ CAREFULLY			
<b>LOCAL INFORMATION FOR THE CITATION IS AVAILABLE ONLINE AT [website address]</b>			
<b>WARNING:</b> If you fail to appear in court as you have promised, you may be arrested and punished by 6 MONTHS IN JAIL AND/OR A \$1,000 FINE, regardless of the disposition of the original charge. (Pen. Code, § 853.7.)			
If "Booking Required" is checked you must appear on a weekday prior to your court date for booking at: _____ between the hours of _____ and _____ and bring the signed verification to your court appearance. Call _____ for more information.			
Booking Verification: I declare under penalty of perjury under the laws of the State of California that _____ was booked on _____ Date _____ Officer _____ Serial No. _____			
<b>WHAT TO DO</b>			

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

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**NONTRAFFIC NOTICE TO APPEAR**  
(Reverse Of Court's Copy)

<p>(Circle one)</p> <p>RIGHT or LEFT THUMB PRINT</p> 	

Shaded areas on the form indicate spaces subject  
to modification for local or agency requirements.

## Appendix F *Traffic/Nontraffic Notice to Appear*, Form TR-130

### AGENCY NAME/JURISDICTION INFO

### (CITATION NUMBER)

<b>NOTICE TO:</b>		<input type="checkbox"/> APPEAR IN COURT AT <input type="checkbox"/> AM <input type="checkbox"/> PM ON: <b>OR</b> <input type="checkbox"/> RESPOND TO CITATION BEFORE: <b>DATE:</b> <input type="text"/> / <input type="text"/> / <input type="text"/>		<input type="checkbox"/> Name of Court, Division of Court, Street Address, City, State ZIP Ø XXX.XXX.XXXX ➔ websitlur.com <input type="checkbox"/> Name of Court, Division of Court, Street Address, City, State ZIP Ø XXX.XXX.XXXX ➔ websitlur.com <input type="checkbox"/> Name of Court, Division of Court, Street Address, City, State ZIP Ø XXX.XXX.XXXX ➔ websitlur.com <input type="checkbox"/> Name of Court, Division of Court, Street Address, City, State ZIP Ø XXX.XXX.XXXX ➔ websitlur.com	
<input type="checkbox"/> To be notified See back for detailed instructions		<b>ACT BY THIS DATE TO AVOID A WARRANT OR ADDED FEES</b>			
Date of Violation (mm/dd/yy)		Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Driver's License Number (all states)		Class <input type="checkbox"/> State
Name (first, middle, last)					
Current Address (no., street, city, state, zip)					
Date of Birth (mm/dd/yy)	Parent/Guardian Phone No. <input type="checkbox"/> Juvenile			Commercial <input type="checkbox"/> Y <input type="checkbox"/> N	Insurance <input type="checkbox"/> Y <input type="checkbox"/> N
Race / Ethnicity	Sex	Hair	Eyes	Height	Weight
Vehicle License/VIN	State	Reg (mm/yy)	Year of Veh.	Make	
Registered Owner/Lessee <input type="checkbox"/> Same as driver <input type="checkbox"/> Owner's responsibility (VC, § 40001)	Model		Body Style		
Address (no., street, city, state, zip) <input type="checkbox"/> Same as driver	Color				
Reason for Stop			CHP / DOT / PUC / ICC		
<b>CITATION DETAILS</b> <input type="checkbox"/> Booking Required (see reverse)					
Correctable (Fix-It)	Code/Section	Description			<i>M = Misdemeanor</i> <i>I = Infraction (circle)</i>
<input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> _____			M <input type="checkbox"/> I	
<input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> _____			M <input type="checkbox"/> I	
<input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> _____			M <input type="checkbox"/> I	
<input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> _____			M <input type="checkbox"/> I	
Approx. Speed	PF/Max Speed	Veh. Limit	Safe Speed	Radar/Lidar	<input type="checkbox"/> Commercial Veh. VC, § 15210(b)  <input type="checkbox"/> Hazardous Mat. VC, § 353
Location of Violation				Agency Case No.	
City/County of Occurrence				Comments (weather, road, traffic conditions) <input type="checkbox"/> Crash	
<input type="checkbox"/> Violations not committed in my presence, declared on information and belief (VC, § 40600) I declare under penalty of perjury under the laws of the State of CA that the foregoing is true and correct.					
<input type="checkbox"/> DECL. DATE	ARRESTING OR CITING OFFICER			SIGNAL NO.	
<input type="checkbox"/> DECL. DATE	ARRESTING OFFICER, (if different from above)			SIGNAL NO.	
<b>I promise to act by the date at the top of this citation. Signing DOES NOT admit guilt.</b> _____ CELLPHONE - OPTIONAL (may be used for reminders) <input type="checkbox"/> EMAIL - OPTIONAL (may be used for reminders)					
X _____ SIGNATURE					

### DEFENDANT COPY | FORM INFO

#### Continuation form

Form Adopted for Mandatory Use  
 Judicial Council of California  
 TR-130, Traffic/Nontraffic Notice to Appear  
 [Rev. Jan. 1, 2024]  
**SEE REVERSE**

FPO Barcode USS Code 39

Vehicle Code, §§40500(b), 40513(b),  
 40522, 40600; Pen. Code, §853.9

**TAB AREA**

## WHAT YOU NEED TO DO

Step 1 Which box is checked on the front of the citation:

APPEAR IN COURT *or* RESPOND TO CITATION?

Step 2 Follow instructions based on the box checked on the front.

### If APPEAR IN COURT is checked on the front

- Your next step: Go to court on the date, time and location on the front. Appearing in court is your **only option**. You can plead guilty or not guilty.  
**IMPORTANT:** Missing court may result in a warrant for your arrest.  
*Don't let that happen—go to court! The judge will explain next steps.*
- Helpful Tip: Put the court date in your calendar, set a reminder, start planning now.
- Juveniles: If you were under 18 years old at the time of the violation, you must bring a parent or guardian with you to court.

### If RESPOND TO CITATION is checked on the front

*Citations can take up to 14 days to show up in the court system.  
Keep checking to find your citation, and then complete Option A, B, C, or D by the date listed on front*

- Your next step: Choose an option below and respond by the date.  
**IMPORTANT:** Not responding by the date on the front can result in a "failure to appear" charge, a guilty finding, an additional fee of up to \$100, and a hold on your car registration (owner's responsibility).  
**Choose one of the options below to avoid these penalties:**
  - **Option A: Pay or Ask for a Reduction (Guilty Finding)**
    - Pay (online, call, in person). If you cannot pay in full now, contact the court (see front for contact information) to request a payment plan or extension.
    - Ask for a reduction at MYCITATIONS.COURTS.CA.GOV (takes about 10 minutes).
  - **Option B: Request Traffic School** To avoid points on your driving record, you can request traffic school. You pay the citation plus an additional traffic school fee and complete traffic school. Contact the court to see if you are eligible.
  - **Option C: Dispute the Citation (Plead Not Guilty)** You can dispute the citation **In person** by requesting a court date for a trial (no cost) or **by mail** ("trial by written declaration"), which requires you to pay the fine up front (amount returned if citation is dismissed). Contact court for more details (court info on front of citation).
  - **Option D: Correctable ("Fix-It")** If "Correctable" is checked on the front, first show an officer, authorized inspection agency, or DMV (license and registration issues only) that you fixed the issue, and they will sign the citation (below). Then, you must show the court that you fixed the issue to have the violation dismissed. You must also pay a transaction fee. For insurance issues, you must show the court you had insurance when you got the ticket and pay a transaction fee.

### CERTIFICATE OF CORRECTION (MUST BE RETURNED TO COURT)

Section(s) Violated	Signature of Person Certifying Correction	Serial No.	Agency	Date

If "Booking Required" is checked on front, call xxx-xxx-xxxx to schedule an appointment before the court date. You will not be arrested and will attend your court date on your own.

### MORE INFORMATION



For translations and general information about the process, visit <https://www.courts.ca.gov/forms.htm>

To contact the court, see front of citation for court's website and phone number.  
*The court will send notice explaining next steps.*

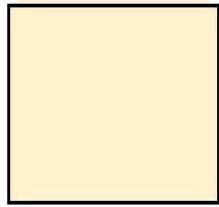
[Rev. Jan. 1, 2024]

**TAB AREA**

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(Circle one)

RIGHT or LEFT  
THUMB PRINT



## Appendix G Notice to Correct Violation, Form TR-140

### NOTICE TO CORRECT VIOLATION (Face of Violator's Copy)

(Name of Agency and Jurisdiction)		NOTICE TO CORRECT VIOLATION		(Citation No.)	
Date of Violation 1. / /	Time 2. <input type="checkbox"/> AM <input type="checkbox"/> PM	Day of Week 3. S M T W T F S		Case No. 4.	
Name (First, Middle, Last) 5. <input type="checkbox"/> Owner's Responsibility (Veh. Code, § 40001)					
Mailing Address 6.					
City 7.			State 8.		ZIP Code 9.
Driver Lic. No. 10.		State 11.	Class 12.	Age 13.	Birth Date / / ( ) 14.
Sex 15.	Hair 16.	Eyes 17.	Height 18.	Weight 19.	Race 20.
Other Description 21.					
Veh. Lic. No. or VIN 22.			State 23.		<input type="checkbox"/> COMMERCIAL VEHICLE (Veh. Code, § 15210(b)) <input type="checkbox"/> HAZARDOUS MATERIAL (Veh. Code, § 353)
Yr. of Veh. 24.	Make 25.	Model 26.	Body Style 27.	Color 28.	CHP/DOT 29.
PUC/ICC 30.					
Reason for Stop 31.					
Registered Owner or Lessee 32.					
Address 33.		City 34.	State 35.	ZIP Code 36.	<input type="checkbox"/> Same as Driver 37.
Violation(s) 38.		Code and Section 39.	Description 40.		
14.					
15.					
16.					
17.					
Location of Violation(s) 41.			City/County 42.		
19.					
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct. 20. Executed at California					
Citing Officer 21.		ID From To		Vacation Dates From To	
I PROMISE TO CORRECT THE VIOLATION(S) LISTED ABOVE AND PROVIDE PROOF OF CORRECTION TO THE ISSUING AGENCY AS INSTRUCTED BELOW WITHIN 30 DAYS. 22. X SIGNATURE					
WHEN: CORRECT VIOLATION(S) IMMEDIATELY. CONTINUED OPERATION WITHOUT CORRECTION MAY RESULT IN ARREST AND PENALTY.			WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.		
WHERE: PROVIDE PROOF OF CORRECTION TO THE ISSUING AGENCY'S ADDRESS LISTED ON THE REVERSE.					
FPO Barcode			DEFENDANT COPY SEE REVERSE Vehicle Code, §§ 40810(d), 40816		
Adopted for Mandatory Use Judicial Council of California, www.courts.ca.gov TR-140, Notice to Correct Violation, [Rev. Jan. 1, 2024]					

Shaded areas on the sample form indicate spaces  
subject to modification for local or agency requirements.

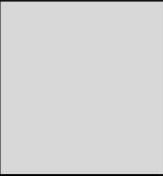
## REVERSE OF VIOLATOR'S COPY

INSTRUCTIONS TO DRIVER-OWNER																																		
WHAT TO DO																																		
<b>METHODS FOR OBTAINING CERTIFICATION OF CORRECTION (Veh. Code, § 40616):</b> This Notice to Correct Violation may be cleared upon correction of the violation by providing satisfactory proof of correction within 30 days of this notice, as specified below, either in person at the issuing agency's office at [address] during normal business hours or by mail postmarked within 30 days of this notice to the issuing agency's address indicated below.																																		
Violations may be certified as corrected on this form (as indicated below) in the following manner:																																		
1. Brake, lamp, smog device, or muffler violations may be certified as corrected by any station licensed to inspect and certify for the specific violation(s). 2. Driver license and registration violations may be certified as corrected at offices of the DMV by an appropriate employee thereof, or by any clerk or deputy clerk of a court. 3. Any violation may be certified as corrected by a law enforcement agency regularly engaged in the enforcement of the California Vehicle Code.																																		
<b>DO NOT STOP AN OFFICER ON ANY FREEWAY, EXPRESSWAY, OR BRIDGE FOR CERTIFICATION OF CORRECTION.</b>																																		
<b>NOTE: INSPECTION STATIONS MUST LIST THEIR ARD LICENSE NUMBER ISSUED BY THE BUREAU OF AUTOMOTIVE REPAIR IN THE SPACE PROVIDED BELOW.</b>																																		
<b>WARNING:</b> Any person willfully violating a written promise to correct or willfully failing to deliver proof of correction is guilty of a misdemeanor (Veh. Code, § 40616), which may lead to arrest, penalty, and additional fees. In addition, the Department of Motor Vehicles (DMV) will WITHHOLD the issuance or renewal of your driver license, and may revoke or suspend your driving privilege for Vehicle Code offenses. YOU MUST RETURN THE COMPLETED CERTIFICATE OF CORRECTION TO THE ISSUING AGENCY.																																		
<b>CERTIFICATE OF CORRECTION (RETURN TO THE ISSUING AGENCY)</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Section(s) Violated</th> <th style="width: 25%;">Signature of Person Certifying Correction</th> <th style="width: 15%;">ID or ARD License No.</th> <th style="width: 25%;">Agency or Certified Inspection Station</th> <th style="width: 10%;">Date</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>					Section(s) Violated	Signature of Person Certifying Correction	ID or ARD License No.	Agency or Certified Inspection Station	Date																									
Section(s) Violated	Signature of Person Certifying Correction	ID or ARD License No.	Agency or Certified Inspection Station	Date																														
<small>POSTMASTER: If undeliverable return to Name and Mailing Address on reverse</small>																																		
<small>[Name of Agency]  <small>[Sections] or division[s], room nos.]  <small>[Street address]</small></small> </small>																																		
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <small>FIRST CLASS POSTAGE REQUIRED</small> </div>																																		

Rev. Jan. 1, 2024

Shaded areas on the sample form indicate spaces  
subject to modification for local or agency requirements.

## REVERSE OF COURT COPY

<b>TO BE EXECUTED IN CASE OF FAILURE TO DELIVER PROOF OF CORRECTION</b>	
DEFENDANT HEREIN FAILED TO DELIVER PROOF OF CORRECTION IN VIOLATION OF HIS/HER SIGNED PROMISE, AND IN VIOLATION OF VEHICLE CODE SECTION 40616.	
I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.	
EXECUTED AT _____	CALIFORNIA, ON _____ DATE _____
BY: _____ PRINT OR TYPE NAME _____	TITLE _____
SIGNATURE _____	ID/BADGE NUMBER _____
ADDRESS: _____	
<b>FOR COURT USE ONLY</b>	
(Circle one)	
RIGHT or LEFT THUMB PRINT	
	

Rev. Jan. 1, 2024

Shaded areas on the sample form indicate spaces subject to modification for local or agency requirements.