ITEM 4
DENIED TEST CLAIM
PROPOSED STATEMENT OF DECISION

Labor Code Section 3213.2

Statutes 2001, Chapter 834 (SB 424)

Lower Back Injury Presumption for Law Enforcement (01-TC-25)

California State Association of Counties – Excess Insurance Authority (CSAC-EIA)
and County of Tehama, Claimants

EXECUTIVE SUMMARY

The sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects any decision made by the Commission at the December 9, 2004 hearing on the above-named test claim.[1]

Staff Recommendation

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

However, if the Commission's vote on Item 3 modifies the staff analysis, staff recommends that the motion on adopting the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. In the alternative, if the changes are significant, it is recommended that adoption of a Proposed Statement of Decision be continued to the January 2005 Commission hearing.

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

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Labor Code Section 3213.2; Statutes 2001, Chapter 834; Filed on June 28, 2002, By California State Association of Counties – Excess Insurance Authority (CSAC-EIA) and County of Tehama, Claimants	No. 01-TC-25 ***Lower Back Injury Presumption for Law Enforcement*** PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Proposed for adoption on December 9, 2004)*

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this consolidated test claim during a regularly scheduled hearing on December 9, 2004. [Witness list will be included in the final Statement of Decision.]

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

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision].

BACKGROUND

This test claim addresses an evidentiary presumption given to specified state and local peace officers in workers' compensation cases. Normally, before an employer is liable for payment of workers' compensation benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury was proximately caused by the employment. The burden of proof is usually on the employee to show proximate cause by a preponderance of the evidence.[2]

The Legislature eased the burden of proving industrial causation for certain public employees, primarily fire and safety personnel, by establishing a series of presumptions.[3] The courts have described the rebuttable presumption as follows: "Where facts are proven giving rise to a

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[2] Labor Code sections 3202.5 and 3600. Labor Code section 3202.5 defines preponderance of the evidence as such evidence, "when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

[3] See, Labor Code sections 3212, 3212.1 – 3212.7, and 3213.

presumption . . . , the burden of proof shifts to the party, against whom it operates [i.e., the employer], to prove the nonexistence of the presumed fact, to wit, an industrial relationship." (*Zipton v. Workers' Compensation Appeals Board* (1990) 218 Cal.App.3d 980, 988, fn. 4.)

In 2001, the Legislature passed Senate Bill 424, adding section 3213.2 to the Labor Code. For the first time, certain local agency and state peace officers with at least five years of full-time service, and who were "required to wear a duty belt as a condition of employment," were granted a rebuttable presumption that "lower back impairment so developing or manifesting itself in the peace officer shall be presumed to arise out of and in the course of employment." The presumption extends for a maximum of five years beyond the last date worked, depending on the number of years of service. Under the statute, the employer may offer evidence disputing the presumption.

Claimants' Position

The claimants, CSAC-EIA and the County of Tehama, contend that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, as follows:

> This Chapter creates a new injury heretofore not compensable and provides a presumption that shifts the burden of proof to the employer.
>
> The effect of a presumption is that the employee does not have to demonstrate that the injury arose out of or in the course of his or her employment. The first effect of a presumption is to encourage the filing of workers' compensation claims because otherwise it would be often difficult, if not impossible, to demonstrate that a particular injury arose out of or in the course of one's employment. The presumption not only works in favor of the employee, but works to the detriment of the employer who must now prove that the injury did not arise out of and in the course of the employee's employment, which is difficult.
>
> The net effect of this legislation is to cause an increase in workers' compensation claims for lower back injury and decrease the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the total costs of these claims, from initial presentation to ultimate resolution are reimbursable.

In comments on the draft staff analysis, dated November 5, 2004, the claimants argue that CSAC-EIA is a proper test claimant. In addition, the claimants contend: 1) Labor Code section 3213.2 "sets forth a clear mandate;" 2) staff fails to apply statutory construction rules "to the plain language of the statute;" and 3) staff fails to properly apply the recent California Supreme Court decision, *San Diego Unified School District v. Commission on State Mandates*.

Position of the Department of Finance

The Department of Finance filed comments on August 8, 2002, concluding that the test claim legislation may create a reimbursable state-mandated program.

On November 4, 2004, the Department of Finance filed comments withdrawing any previous conclusions supporting the test claim allegations, and agreeing with the draft staff analysis that CSAC-EIA does not have claimant standing, and the test claim "legislation does not mandate a

new program or higher level of service on local agencies." They also state: "A complete estimate of mandated costs was not identified during the deliberation of the test claim legislation."

Position of the Department of Industrial Relations

In comments received August 8, 2002, the Department of Industrial Relations contends that the test claim legislation is not a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The Department asserts that the presumption in favor of safety officers does not result in a new program or higher level of service for the following reasons:

- Local governments are not required to accept all workers' compensation claims. They have the option to rebut any claim before the Workers' Compensation Appeals Board by presenting a preponderance of evidence showing the non-existence of industrial causation.
- Statutes mandating a higher level of compensation to local government employees, such as workers' compensation benefits, are not "new programs" whose costs would be subject to reimbursement under article XIII B, section 6.
- There is no shift of a financial burden from the State to local governments because local governments, by statute, have always been solely liable for providing workers' compensation benefits to their employees.[4]

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[5] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[6] "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."[7] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or

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[4] Comments from Department of Industrial Relations, dated August 7, 2002.

[5] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

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

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

task.[8] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[9]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[10] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[11] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[12]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[13]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[14] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[15]

Issue 1: Does CSAC-EIA have standing as a claimant for this test claim?

Government Code sections 17550 and 17551 authorize local agencies and school districts to file test claims seeking reimbursement pursuant to article XIII B, section 6. Government Code section 17518 defines "local agencies" to mean "any city, county, special district, authority, or

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

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

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

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

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

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

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

[15] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

other political subdivision of the state." Government Code section 17520 currently defines "special district" to include a "joint powers agency."

CSAC-EIA is a joint powers authority established pursuant to the Joint Exercise of Powers Act ("Act") in Government Code section 6500 et seq. and is formed for insurance and risk management purposes.[16] Under the Act, school districts and local agencies are authorized to enter into agreements to "jointly exercise any power common to the contracting parties."[17] The entity provided to administer or execute the agreement (in this case CSAC-EIA) may be a firm or corporation, including a nonprofit corporation, designated in the agreement.[18] A joint powers authority is a separate entity from the parties to the agreement and is not legally considered to be the same entity as its contracting parties.[19] CSAC-EIA contends that, as a joint powers agency, it is a type of local agency that can file a test claim based on the plain language of Government Code section 17520. Based on the facts of this case, the Commission disagrees.

In 1991, the California Supreme Court decided *Kinlaw v. State of California, supra,* a case that is relevant here. In *Kinlaw*, medically indigent adults and taxpayers brought an action against the state alleging that the state violated article XIII B, section 6 by enacting legislation that shifted financial responsibility for the funding of health care for medically indigent adults to the counties. The Supreme Court denied the claim, holding that the medically indigent adults and taxpayers lacked standing to prosecute the action and that the plaintiffs have no right to reimbursement under article XIII B, section 6.[20] The court stated the following:

> 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 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.[21] (Emphasis added.)

Like the plaintiffs in *Kinlaw*, CSAC-EIA, as a separate entity from the contracting counties, is not directly affected by the test claim legislation. The Legislature, in Labor Code section 3213.2, gave specified peace officers a presumption of industrial causation that the lower back injury arose out of and in the course of their employment. The counties, as employers of peace officers,

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[16] Letter dated August 3, 2004, by Gina C. Dean, Assistant General Manager for CSAC-EIA.

[17] Government Code section 6502.

[18] Government Code section 6506.

[19] Government Code section 6507; 65 Opinions of the California Attorney General 618, 623 (1982).

[20] *Kinlaw, supra*, 54 Cal.3d at pages 334-335.

[21] *Ibid.*

argue that the presumption creates a reimbursable state-mandated program and that the increased costs are reimbursable.

But, CSAC-EIA does not employ peace officers specified in the test claim legislation.[22] Thus, while CSAC-EIA may have an interest in this claim as the insurer, its interest is indirect. As expressed in an opinion of the California Attorney General, a joint powers authority "is simply not a city, a county, or the state as those terms are normally used."[23] Thus, under the *Kinlaw* decision, CSAC-EIA lacks standing in this case to act as a claimant.

This conclusion is further supported by the decision of the Third District Court of Appeal in *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976. Although Government Code section 17520[24] expressly includes redevelopment agencies in the definition of "special districts" that are eligible to file test claims with the Commission, the court found that redevelopment agencies are not subject to article XIII B, section 6 since they are not bound by the spending limitations in article XIII B, and are not required to expend any "proceeds of taxes." The court stated:

> 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."[25]

The Third District Court of Appeal affirmed the *Redevelopment Agency* decision in *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281, again finding that redevelopment agencies are not entitled to claim reimbursement for state-mandated costs because they are not required to expend "proceeds of taxes."

In the present case, CSAC-EIA is also not subject to the appropriations limitation of article XIII B and does not expend any "proceeds of taxes" within the meaning of article XIII B. According to the letter dated August 3, 2004, from CSAC-EIA, "CSAC-EIA has no authority to tax" and instead receives proceeds of taxes from its member counties in the form of premium payments. Therefore, the Commission concludes CSAC-EIA is not an eligible claimant for this test claim; however, the Commission may hear and decide the test claim as filed on behalf of the County of Tehama.

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[22] In the November 5, 2004 response to the draft staff analysis, the claimant states the following: "Indeed, CSAC-EIA is a separate entity comprised of counties to act as a mechanism to protect the counties' fisc. Although CSAC-EIA does not employ peace officers, when it comes to their workers' compensation, the buck stops at CSAC-EIA."

[23] 65 Opinions of the California Attorney General 618, 623 (1982).

[24] Consistent with case law, operative January 1, 2005, the Legislature amended Government Code section 17520, eliminating redevelopment agencies and joint powers entities from the express definition of "special districts" for mandate reimbursement. (Stats. 2004, ch. 890 (AB 2856).)

[25] *Redevelopment Agency, supra*, 55 Cal.App.4th at page 986.

Issue 2: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

The Commission finds that the test claim legislation is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on local agencies within the meaning of article XIII B, section 6.

Labor Code section 3213.2, as added by Statutes 2001, chapter 834, provides:

> (a) In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a peace officer employed by the Department of the California Highway Patrol, or a peace officer employed by the University of California, who has been employed for at least five years as a peace officer on a regular, full-time salary and has been required to wear a duty belt as a condition of employment, the term "injury," as used in this division, includes lower back impairments. The compensation that is awarded for lower back impairments shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.
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> (b) The lower back impairment so developing or manifesting itself in the peace officer shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.
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> (c) For purposes of this section, "duty belt" means a belt used for the purpose of holding a gun, handcuffs, baton, and other items related to law enforcement.

The claimant contends that the test claim legislation constitutes a new program or higher level of service:

> There was no requirement prior to 1975, nor in any of the intervening years, until the passage of [the test claim legislation in 2001] which mandated the inclusion of lower back injury as a compensable injury for law enforcement, and the creation of a presumption in favor of lower back injury occurring on the job.[26]

In the November 5, 2004 response to the draft staff analysis, the claimant states:

> The presumption in the applicant's favor increases the likelihood that his claim will result in money payments from his employer as well as full coverage of his medical costs. The greater the number of successful applicants, the more the employer will pay in workers' compensation benefits. Thus the new program or higher level of service is the creation of the presumption.[27]

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[26] Test Claim, page 2.

[27] Claimants' response to draft staff analysis, page 4.

The claimant reads requirements into Labor Code section 3213.2, which, by the plain meaning of the statute, are not there. First, the claimant asserts in the test claim filing that the legislation created a new compensable injury for peace officers. However, Labor Code section 3208, as last amended in 1971, specifies that for the purposes of workers' compensation, "'Injury' includes *any* injury or disease arising out of the employment." [Emphasis added.]

The express language of Labor Code section 3213.2 does not impose any other state-mandated requirements on local agencies. Rather, the decision to dispute this type of workers' compensation claim and prove that the injury is non-industrial remains entirely with the local agency. The plain language of Labor Code section 3213.2 states that the "presumption is disputable and *may* be controverted by other evidence . . .". [Emphasis added.]

Under the rules of statutory construction, when the statutory language is plain, as the statute is here, the court is required to enforce the statute according to its terms. The California Supreme Court determined that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.][28]

Moreover, the court may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the court is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[29] Consistent with this principle, the courts have strictly construed the meaning and effects of statutes analyzed under article XIII B, section 6, and have not applied section 6 as an equitable remedy:

> A strict construction of section 6 is in keeping with the rules of constitutional interpretation, which require that constitutional limitations and restrictions on legislative power "are to be construed strictly, and are not to be extended to include matters not covered by the language used." [Citations omitted.]["Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation."] Under these principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding policies.[30]

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[28] *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

[29] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

[30] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

This is further supported by the California Supreme Court's decision in *Kern High School Dist.*[31] In *Kern High School Dist.*, the court considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."[32] The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."[33]

The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.[34] The court stated the following:

> In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)[35]

Thus, the Supreme Court held as follows:

> [W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.][36]

The Supreme Court left undecided whether a reimbursable state mandate "might be found in circumstances short of legal compulsion—for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program."[37]

The claimant, in November 5, 2004 comments on the draft staff analysis argues that the Commission should look to the 2004 decision of the California Supreme Court, *San Diego Unified School Dist., supra,* in which the Court discusses the potential pitfalls of extending "the

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[31] *Kern High School Dist., supra*, 30 Cal.4th 727.

[32] *Id.* at page 737.

[33] *Ibid.*

[34] *Id.* at page 743.

[35] *Ibid.*

[36] *Id.* at page 731.

[37] *Ibid.*

holding of *City of Merced* so as to preclude reimbursement ... whenever an entity makes an initial discretionary decision that in turn triggers mandated costs.'[38] In particular, the Court examines the factual scenario from *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, in which:

> 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 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. [Emphasis added.]

The Court did not rely on this analysis to reach its conclusions, thus the statements are considered dicta; however, the Commission recognizes that the Court was giving clear notice that the *City of Merced* "discretionary" rationale is not without limitation. What the Court did *not* do was disapprove either the *City of Merced,* or its own rationale and holding in *Kern High School Dist.*

Rather, the 2003 decision of the California Supreme Court in *Kern High School Dist.* remains good law, relevant, and its reasoning continues to apply in this case. The Supreme Court explained, "the proper focus under a legal compulsion inquiry is upon the nature of the claimants' participation in the underlying programs themselves.'[39] As indicated above, local agencies are not legally compelled by state law to dispute a presumption in a workers' compensation case. The decision and the manner in which to litigate such cases is made at the local level and is within the discretion of the local agency. Thus, the employer's burden to prove that the lower back injury is not arising out of and in the course of employment is also not state-mandated. The evidentiary burden is simply an aspect of having to defend against a workers' compensation lawsuit, if the employer chooses to do so.

There is no evidence in the law or in the record that local agencies are practically compelled by the state through the imposition of a substantial penalty to dispute such cases. While it may be true that local agencies will incur increased costs from workers' compensation claims as a result of the test claim legislation, as alleged by the claimant here, increased costs alone are not determinative of the issue of whether the legislation imposes a reimbursable state-mandated

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[38] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 887.

[39] *Kern High School Dist., supra*, 30 Cal.4th at page 743.

program. The California Supreme Court has repeatedly ruled that evidence of additional costs alone, even when those costs are deemed necessary by the local agency, do not result in a reimbursable state-mandated program under article XIII B, section 6:

> We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.[40]

Returning to the recently decided *San Diego Unified School Dist., supra,* 33 Cal.4th at pages 876-877, the Court held:

> Viewed together, these cases (*County of Los Angeles, supra,* 43 Cal.3d 46, *City of Sacramento, supra,* 50 Cal.3d 51, and *City of Richmond, supra,* 64 Cal.App.4th 1190) illustrate the circumstance that simply because a state law or order may *increase the costs* borne by local government *in providing services,* this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting "service to the public" under article XIII B, section 6, and Government Code section 17514. [Emphasis in original.]

Therefore, the potential for increased costs resulting from the statute, without more, does not impose a reimbursable state-mandated program.

Prior Test Claim Decisions on Cancer Presumptions

Finally, the claimant points to two prior test claim decisions approving reimbursement in cancer presumption workers' compensation cases. In 1982, the Board of Control approved a test claim on Labor Code section 3212.1, as originally added by Statutes 1982, chapter 1568 (*Firefighter's Cancer Presumption*). The parameters and guidelines authorize insured local agencies and fire districts to receive reimbursement for increases in workers' compensation premium costs attributable to Labor Code section 3212.1. The parameters and guidelines also authorize self-insured local agencies to receive reimbursement for staff costs, including legal counsel costs, in defending the section 3212.1 claims, and benefit costs including medical costs, travel expenses, permanent disability benefits, life pension benefits, death benefits, and temporary disability benefits paid to the employee or the employee's survivors.

In 1992, the Commission adopted a statement of decision approving a test claim on Labor Code section 3212.1, as amended by Statutes 1989, chapter 1171 (*Cancer Presumption – Peace Officers*, CSM 4416.) The parameters and guidelines authorize reimbursement to local law enforcement agencies that employ peace officers defined in Penal Code sections 830.1 and 830.2 for the same costs approved in the Board of Control decision in the *Firefighter's Cancer Presumption* test claim.

However, prior Board of Control and Commission decisions are not controlling in this case.

Since 1953, the California Supreme Court has held that the failure of a quasi-judicial agency to consider prior decisions on the same subject is not a violation of due process and does not

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[40] *County of Los Angeles, supra,* 43 Cal.3d at page 54; see also, *Kern High School Dist., supra,* 30 Cal.4th at page 735.

constitute an arbitrary action by the agency.[41] In *Weiss v. State Board of Equalization*, the plaintiffs brought mandamus proceedings to review the refusal of the State Board of Equalization to issue an off-sale beer and wine license at their premises. Plaintiffs contended that the action of the board was arbitrary and unreasonable because the board granted similar licenses to other businesses in the past. The California Supreme Court disagreed with the plaintiffs' contention and found that the board did *not* act arbitrarily. The Court stated:

> [P]laintiffs argument comes down to the contention that because the board may have erroneously granted licenses to be used near the school in the past it must continue its error and grant plaintiffs' application. That problem has been discussed: *Not only does due process permit omission of reasoned administrative opinions but it probably also permits substantial deviation from the principle of stare decisis.* Like courts, agencies may overrule prior decisions or practices and may initiate new policy or law through adjudication. (Emphasis added.) [42]

In 1989, the Attorney General's Office issued an opinion, citing the *Weiss* case, agreeing that claims previously approved by the Commission have no precedential value. Rather, "[a]n agency may disregard its earlier decision, provided that its action is neither arbitrary nor unreasonable [citing *Weiss, supra*, 40 Cal.2d. at 777]."[43] While opinions of the Attorney General are not binding, they are entitled to great weight.[44]

Moreover, the merits of a claim brought under article XIII B, section 6 of the California Constitution, must be analyzed individually. Commission decisions under article XIII B, section 6 are not arbitrary or unreasonable as long as the decision strictly construes the Constitution and the statutory language of the test claim statute, and does not apply section 6 as an equitable remedy.[45] The analysis in this case complies with these principles, particularly when recognizing the recent California Supreme Court statements on the issue of voluntary versus compulsory programs -- direction that the Commission must now follow. In addition, the Commission followed this same analysis in its most recent decisions regarding the issue of reimbursement for cancer presumption statutes.[46]

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[41] *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 776-777.

[42] *Id*. at page 776.

[43] 72 Opinions of the California Attorney General 173, 178, footnote 2 (1989).

[44] *Rideout Hospital Foundation, Inc. v. County of Yuba* (1992) 8 Cal.App.4th 214, 227.

[45] *City of San Jose, supra,* 45 Cal.App.4th at 1816-1817; *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280-1281.

[46] Test claim *Cancer Presumption for Law Enforcement and Firefighters* (01-TC-19) was denied at the May 27, 2004 Commission hearing, and *Cancer Presumption (K-14)* (02-TC-15) was denied at the July 29, 2004 Commission hearing.

Accordingly, the Commission finds that the test claim legislation is not subject to article XIII B, section 6 of the California Constitution because the legislation does not mandate a new program or higher level of service on local agencies.[47]

CONCLUSION

Based on the foregoing, the Commission concludes that CSAC-EIA does not have standing, and is not a proper claimant for this test claim. The Commission further concludes that Labor Code section 3213.2, as added by the test claim legislation, is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on local agencies.

[47] Because this conclusion is dispositive of the case, the Commission need not reach the other issues raised by the Department of Industrial Relations.