

COMMISSION ON STATE MANDATES

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February 20, 2004

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

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

RE: Adopted **Statement** of Decision
False Reports of Police Misconduct, 00-TC-26
County of San Bernardino, Claimant
Penal Code Section 148.6; Statutes 1995, Chapter 590 et al.

Dear Ms. Ter Keurst: ,

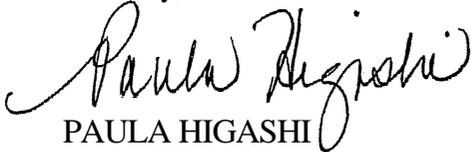
The Commission on State Mandates adopted the attached Statement of Decision on January 29, 2004. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a **specific** legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office. Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

- Claimant's Submission of Proposed Parameters and Guidelines. Pursuant to Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq., the claimant is responsible for submitting proposed parameters and guidelines 30 days from the adoption of the Statement of Decision. However, in accordance with the Commission's February 2, 2004 correspondence, an extension of this deadline is granted to **March 22, 2004**. See Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq. for guidance in preparing and filing a timely submission.
- Review of Proposed Parameters and Guidelines. Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 15 days of service. The claimant and other interested parties may submit written rebuttals. (See Cal. Code Regs., tit. 2, § 1183.11.)

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

Please contact Tina Poole at (916) 323-8220 if you have any questions.

Sincerely,



PAULA HIGASHI
Executive Director

Enclosures: Adopted Statement of Decision; Hearing Transcript

MAILED: _____
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FILE: _____
WORKING BINDER: _____
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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 148.6; Statutes 1995,
Chapter 590; Statutes 1996, Chapter 586;
Statutes 2000, Chapter 289;

Filed on July 2, 2001,

By County of San Bernardino, Claimant.

No, OO-TC-26

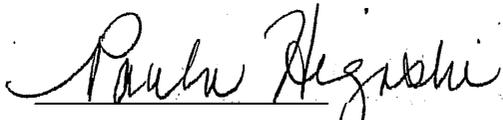
False Reports of Police Misconduct

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

(Adopted on January 29, 2004)

STATEMENT OF DECISION

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



PAULA HIGASHI, Executive Director

2-20-04

Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 148.6; Statutes 1995, Chapter 590; Statutes 1996, Chapter 586; Statutes 2000, Chapter 289;

Filed on July 2, 2001,

By County of San Bernardino, Claimant.

No. 00-TC-26

False Reports of Police Misconduct

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

(Adopted on January 29, 2004)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 29, 2004. Bonnie Ter Keurst appeared on behalf of the County of San Bernardino. Allan Burdick and Pamela Stone appeared on behalf of the California State Association of Counties. Susan Geanacou appeared on behalf of the Department of Finance (DOF).

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

The Commission adopted the staff analysis at the hearing by a vote of 4-1.¹

BACKGROUND

The Commission received a test claim filing on Penal Code section 148.6 from claimant, County of San Bernardino, on July 5, 2001.² Statutes 1995, chapter 590 (AB 1732) added section 148.6 to the Penal Code. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. It also required that any citizen filing a report must sign an informational advisory regarding the misdemeanor. AB 1732 was sponsored by the Los

¹ The motion was to approve the staff recommendation, with guidance that the development of the parameters and guidelines take into account any effect on the Peace Officers Bill of Rights (CSM-4499) parameters and guidelines,

² The test claim filing was dated July 2, 2001. June 30 fell on a Saturday in 2001, therefore the filing deadline for establishing a July 1, 1999 reimbursement period pursuant to Government Code section 17557, subdivision (c), and the operative regulations, was delivery or postmark by Monday, July 2, 2001. The potential reimbursement period for this claim begins no earlier than July 1, 1999.

Angeles County Professional Peace Officers Association and supported by a number of law enforcement agencies and associations.³ The goals of the legislation, according to a September 5, 1995 letter from Assemblywoman Paula Boland were to “discourage these malicious reports,” which could be damaging to the personnel record of the officer accused, and also to “save the state a substantial amount of money . . . , [which] could then be used towards putting officers out on the street, thereby enhancing public safety.”

In 2000, Penal Code section 148.6 was amended to add subdivision (a)(3): “The advisory shall be available in multiple languages,”

Claimant's Position

Claimant alleges that the test claim legislation requires the following reimbursable state-mandated activities:

- warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor;
- make the advisory available in the language of the complainant;
- explain the form to the citizen.

Claimant alleges costs from spending approximately 15 minutes explaining the form to the complainant. “Additionally, although the Department of Justice has provided translations of the forms, if the citizen desiring to make a complaint does not speak English, it takes additional time for staff to download and print the form in the language of the citizen complainant,” Claimant estimates annual costs for complying with Penal Code section 148.6 at \$52,000.

State Agency's Position-

*

The Department of Finance's (DOF's) August 9, 2001 response to the test claim allegations argues that there is no reimbursable state mandate stemming from the test claim legislation. First, DOF asserts: “Although Section 148.6 of the Penal Code may result in costs to local entities, those costs are not reimbursable because they are not unique to local government.” This argument is described and analyzed below, under “Issue 1 .”

Next, DOF critiques the time and cost estimates for the claimed activities, stating that some are discretionary, others are required by prior law, and ultimately, that providing the advisory on the legal consequences of filing a false report will result in a reduction of complaints filed, which “would more than offset any costs associated with this test claim.” These individual contentions will be described in greater detail in the analysis below. No comments were received on the draft staff analysis.

³ Claimant was not identified as a sponsor or supporter of the legislation.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend? “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.”⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁷ 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.⁸

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.’ 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

⁴ 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 .”

⁵ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727,735.

⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that, “activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.” The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or “draconian” consequences, (*Id.*, at p. 754.)

⁸ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836.

⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

legislation.¹⁰ Finally, the newly required activity or increased level of service must impose costs mandated by the state?

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 6.¹² 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.”¹³

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

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws, which, to implement, a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁴ Although the court has held that only one of these findings is necessary,¹⁵ both will be analyzed here in order to address one of the arguments presented by DOF.

DOF contends that the test claim legislation does not impose a reimbursable state-mandated program because it is not unique to local government. This directly counters the claimant’s assertion that:

The statutory scheme . . . imposes a unique requirement on local government. Only local government hires peace officers, and only local government is required to accept complaints against peace officers, Only local government is required to present to citizen complainants a warning that the making of a false report can be a misdemeanor.

DOF correctly argues that the test claim statute affects all law enforcement agencies in the state, including the California Highway Patrol, the University of California, the Department of Fish

¹⁰ *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹¹ *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.

¹² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹³ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280,

¹⁴ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

¹⁵ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521,537.

and Game, and the Department of Corrections, DOF states that the California Supreme Court decision in *County of Los Angeles* supports its position.¹⁶

However, the Commission finds that DOF misapprehends the decision in *County of Los Angeles* for support of its argument that the statutes relating to peace officers are not unique to local government and therefore not subject to reimbursement under the California Constitution.

County of Los Angeles involved state-mandated increases in workers' compensation benefits, which affected public and private employers alike. The California Supreme Court found that the term "program" as used in article XIII B, section 6, and the intent underlying section 6 "was to require reimbursement to local agencies for the costs involved in carrying out functions **peculiar to government**, not for expenses incurred as an incidental impact of law that apply generally to all state residents and entities,"¹⁷ (Emphasis added.) Since the increase in workers' compensation benefits applied to all employees of private and public businesses, the court found that no reimbursement was required.

Here, the test claim legislation is to be followed by all law enforcement agencies, which by definition are public entities.¹⁸ The statutes do not apply "generally to all state residents and entities," such as private businesses. Thus, the test claim legislation meets this test for "program" in that it does not impose requirements that apply generally to all residents and entities of the state, but only upon those public entities that employ peace officers.

Next, the Commission finds that the test claim legislation satisfies the other test that triggers article XIII B, section 6, carrying out the governmental function of providing a service to the public, to the extent that the test claim legislation requires law enforcement agencies to provide complainants with information concerning the right to file a complaint against a police officer, including an advisory of the misdemeanor charge that may be filed if the individual knowingly makes a false complaint. As discussed by the **court in *Camel Valley***, police protection is one "of the most essential and basic functions of local government,"¹⁹ Therefore, governmental functions required of law enforcement agencies, ultimately provide a service to the public. Accordingly, the Commission finds that providing the advisory constitutes a "program" and, thus, is subject to article XIII B, section 6 of the California Constitution.

However, this finding is only for city and county-level law enforcement agencies. School district employers of peace officers claims for these statutes are represented in a separate test claim filing, *False Reports of Police Misconduct, K-14* (02-TC-09). Therefore, the analysis that follows is limited to mandate findings on behalf of city and county (local agency) claimants.

¹⁶ *County of Los Angeles, supra*, 43 Cal.3d 46,

¹⁷ *Id.* at pages 56-57; *City of Sacramento, supra*, 50 Cal.3d at page 67.

¹⁸ Penal Code section 830 et seq.

¹⁹ *Carmel Valley, supra*, 190 Cal.App.3d at page 537.

Issue 2: Does the test claim legislation impose a new program or higher level of service within an existing program upon city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution?

Penal Code Section 148.6

Penal Code section 148.6, as added by Statutes 1995, chapter 590, and amended by Statutes 1996, chapter 586, and Statutes 2000, chapter 289, follows:

(a)(1) Every person who files any allegation of **misconduct** against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.

(2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:

You have the right to make a complaint against a police officer for any improper police conduct. California law requires' this agency to have **a procedure** to investigate **citizens'** complaints, You have a right to a written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports or findings **relating** to complaints must be retained by this agency for at least five years.

It is against the law to make a complaint that you know to be false. If you make a complaint against an **officer** knowing that it is false, you can be prosecuted on a misdemeanor charge.

I have read and understood the above statement.

Complainant

(3) The advisory shall be available in multiple languages.

(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the **officer** from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

Statutes 1996, chapter 586 amended the original language, adding what is now subdivision (b), an additional misdemeanor for knowingly filing a false civil claim against a peace officer in his or her official capacity, with the intent to harass the officer. Statutes 2000, chapter 289 amended the section, adding subdivision (a)(3): "The advisory shall be available in multiple languages."

Claimant does *not* allege a reimbursable state mandate from the addition of the new misdemeanor charges to the Penal Code. The California Constitution, and the Government Code expressly disallow a mandate finding for such reimbursement. Article XIII B, section 6 provides “that the Legislature may, but need not, provide such subvention of funds for the following mandates: . . . (b) Legislation defining a new crime or changing an existing definition of a crime,” In addition, Government Code section 17556, subdivision (g) provides that the Commission shall not **find** costs mandated by the state if the **test** claim statute “**created** a new **crime** or infraction . . . , but only for that portion of the statute directly relating to the **enforcement** of the crime or infraction.” Thus Penal Code section 148.6, subdivision (a)(1) and subdivision (b) do not impose a new program or higher level of service **on law** enforcement ‘agencies, and do not impose costs mandated by the state.

Claimant alleges that Penal Code section 148.6 imposes a reimbursable state mandate by requiring a law enforcement agency to: warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor; make the advisory available in the language of the complainant; and explain the form to the citizen.

Regarding the **final** alleged activity, **DOF’s** response dated August 9,200 1, asserts:

[T]he test claim statute does not require **local law’ enforcement** agencies to read and explain the advisory **form** to potential complainants. Therefore, any costs resulting from the time that a local agency spends reading and explaining the **form** to potential complainants are not reimbursable because those actions are done at the discretion of that agency.

Claimant, in a letter dated February 2 1, 2002, responded that **DOF’s** “expectation that citizens be handed a document to read and sign is not realistic,” and:

presumes that the citizen:

1. Will have no questions, or
2. Will understand all **terms** used in the **form**, or
3. Is **calm** enough to take the time to read all the information, or
4. Can read in their spoken language, or
5. Can read, or
6. Will sign the document, or
7. Is even present. (They may have submitted their complaint in a letter mailed to the law enforcement agency.)

Despite claimant’s concerns, the Commission **first** looks to the plain meaning of the statutory language when **identifying** a reimbursable state-mandated program. According to the California Supreme Court: .

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.²⁰ (Citations omitted.)

The plain language of Penal Code section 148.6 does not require a law enforcement agency to read the document aloud, explain the document, answer questions, or make sure the complainant is “calm enough to take the time to read all the information.” As further evidence that the statute does not require the advisory to be read aloud and explained to the complainant, Senate Bill 2 13 3, as introduced, sought to amend Penal Code section 148.6 from “a peace officer shall require the complainant to read and sign the following advisory;” to “a peace officer shall read the following advisory to the complainant, provide the complainant with a written copy of this advisory and require the complainant to acknowledge this advisory by his or her signature, prior to filing the complaint.”²¹ Instead, when the bill was chaptered as Statutes 2000, chapter 289, this amendment was removed and the Legislature only added a requirement that the advisory be available in multiple languages (discussed below). Thus, the Legislature considered an amendment requiring greater action on the part of peace officers, but chose not to implement it when adopting the final version of the bill. The Commission agrees with DOF’s assertion that any explanatory or other additional activities are undertaken at the discretion of the law enforcement agency, and thus are not reimbursable. The Commission finds that the plain language of the statute imposes a new program or higher level of service for city and county law enforcement agencies when accepting an allegation of peace officer misconduct, for requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2).

Regarding the statutory requirement that “the advisory shall be available in multiple languages,” claimant alleges that this provision means that the advisory shall be available in the language of the complainant. DOF, on the contrary, argues that having the advisory available in “only one language. in addition to English would serve to comply with the law.” DOF also references the Dymally-Alatorre Bilingual Services Act, and asserts this law previously required local agencies “to provide translated materials?

Government Code section 7290 et seq., known as the Dymally-Alatorre Bilingual Services Act,²² requires state and local agencies to provide certain bilingual services to people who would otherwise be “precluded from utilizing public services because of language barriers.” Specifically Government Code section 7295 requires local agencies to provide non-English translation of “any materials explaining services available” into language spoken by a “substantial number of the public served by the agency.” The statute concludes: “The determination of when these materials are necessary when dealing with local agencies shall be left to the discretion of the local agency.” Penal Code section 148.6, by specifically requiring that the advisory be available in multiple languages, has removed that determination from the local agency’s discretion. Therefore, the Commission finds that the prior law of the Bilingual Services Act does not preclude a finding of a new program or a higher level of service,

²⁰ *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911.

²¹ Senate Bill 33, as introduced.

²² Statutes 1973, chapter 1182.

Claimant acknowledges that “the Department of Justice has provided translations of the forms,” but asserts that if the complainant “does not speak English, it takes additional time for staff to download and print the form in the language of the citizen complainant.”²³ DOF disagrees with this methodology and asserts “A more efficient process would be to download the form once from the Department of Justice website and make photocopies of that form to have available as needed.” Claimant responds: “Local law enforcement agencies are better able to determine the frequency and number of forms needed in additional languages.” The Commission finds that this is an appropriate issue to defer for parameters and guidelines. California Code of Regulations, title 2, section 1183.1 requires a successful test claimant to submit proposed parameters and guidelines including “a description of the most reasonable methods of complying with the mandate.”

However, claimant and DOF have an additional disagreement requiring a legal finding: DOF asserts that having the form available in “only one language in addition to English would serve to comply with the law.” Claimant contends, “because of the variety and non-conformity of non-English languages and dialects, might not the law enforcement agency encounter a situation in which a version of the form has not been developed by the Department of Justice?” The Commission finds that the statutory language calls for a practical interpretation that neither argument supports.

Again, subdivision (a)(3) simply requires “The advisory shall be available in multiple languages.” DOF focuses on the word “multiple,” and contends that it “merely means ‘more than one.’” Although this is a recognized definition of the word, it is also a synonym to “many,” “numerous,” and “several.” The Legislature, by use of the word “multiple” likely did not intend to require individual law enforcement agencies to provide translations in every conceivable language or dialect. Nor did it likely intend that agencies serving diverse immigrant populations would merely make available a single translation other than English, in order to comply with the bare minimum expressed in the statutory language. The Department of Justice, under the authority of the state Attorney General, has created translations of the advisory and made them available via its website, according to the test claim declarations, to law enforcement agencies statewide. Use of any or all of these translated advisories, as necessary, is a reasonable interpretation of the statutory meaning of “make the advisory available in multiple languages.”

Thus, the Commission finds that Penal Code section 148.6, subdivision (a), sections (2) and (3), imposes a new program or higher level of service for city and county law enforcement agencies for the following activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). (Pen. Code, § 148.6, subd. (a)(2).)²⁴
- Make the advisory available in multiple languages, utilizing the translations available from the State. (Pen. Code, § 148.6, subd. (a)(3).)²⁵

²³ Test Claim Filing, page 2.

²⁴ As added by Statutes 1995, chapter 590; reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

Issue 3: Does the test claim legislation found to require a new program or higher level of service also impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose “costs mandated by the state,” Government Code section 175 14 defines “costs mandated by the state” as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. Claimant estimated costs of \$200 or more for the test claim allegations.²⁶ The Commission finds that claimant met this threshold showing.

The Commission shall not find costs mandated by the state, as defined in section 17514, in certain instances, (Gov. Code, § 17556,) Claimant states that none of the Government Code section 17556 exceptions apply. DOF disagrees, claiming potential offsetting savings to costs arising from the statute.²⁷ DOF argues that “having the form available in multiple languages will reduce the number of complaints filed, thereby providing substantial saving to law enforcement agencies.” But DOF offers no evidence in support of its argument for this alleged offset. Accordingly, the Commission finds that none of the section 17556 exceptions apply. For the activities listed below, the Commission finds that they impose costs mandated by the state upon city and county law enforcement agencies within the meaning of Government Code section 17514.

CONCLUSION

The Commission concludes that Penal Code section 148.6, subdivision (a), sections (2) and (3), imposes a new program or higher level of service for city and county law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 175 14, for the following specific new activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2). (Pen. Code, § 148.6, subd. (a)(2).)²⁸
- Make the advisory available in multiple languages, utilizing the translations available from the State. (Pen. Code, § 148.6; subd. (a)(3).)²⁹

²⁵ As amended by Statutes 2000, chapter 289; reimbursement period begins no earlier than January 1,200 1, the operative date of the statute.

²⁶ As required by Government Code section 17564 at the time the claim was filed. Current statute and regulations require claims filed to exceed \$1000.

²⁷ The Commission shall not find costs if “[t]he 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 , . , .” (Gov. Code, § 17556, subd. (e).)

²⁸ As added by Statutes 1995, chapter 590; reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

The Commission denies any remaining alleged activities or costs, including any ~~from~~ Penal Code section 148.6, subdivision (a)(1), as added by Statutes 1995, chapter 590, and subdivision (b) as added by Statutes 1996, chapter 586, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

²⁹ As amended by Statutes 2000, chapter 289; reimbursement period begins no earlier than January 1, 2001, the operative date of the statute.

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PUBLIC HEARING
COMMISSION ON STATE MANDATES

RECEIVED
FEB 20 2004
COMMISSION ON
STATE MANDATES

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**CERTIFIED
COPY**

TIME: 9:30 a.m.
DATE: January 29, 2004
PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: YVONNE K. FENNER, CSR License #10909, RPR

A P P E A R A N C E S

COMMISSION MEMBERS

JAMES TILTON, Chairperson
Representative of Donna Arduin, Director
State Department, of Finance

WALTER BARNES
Representative of Steve Westly
State Controller

JAN BOEL
Acting Director, Office of Planning and Research

JOHN S. LAZAR
City Council Member
Turlock City Council

WILLIAM SHERWOOD
Representative of Philip Angelides
State Treasurer

COMMISSION STAFF

PAULA HIGASHI, Executive Director
NANCY PATTON, Assistant Executive Director
CAMILLE SHELTON, Senior Commission Counsel
KATHERINE TOKARSKI, Commission Counsel

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1 PUBLIC PRESENTATIONS

2 MATT AGUILERA

State of California, Department of Finance

3 ALLAN BURDICK, Director

4 California State Association of Counties

5 SUSAN S. GEANACOU, Senior Staff Attorney

State of California, Department of Finance

6 ARTHUR M. PALKOWITZ, Manager

7 Office of Resource Development

San Diego City Schools

8 KEITH B. PETERSEN, MPA, JD, President

9 SixTen and Associates

10 DAVID E. SCRIBNER, Executive Director

Schools Mandate Group

11 PAM STONE

12 CSAC SB 90 Committee

13 BONNIE TER KEURST

14 County of San Bernardino

15 --o0o--

AGENDA INDEX

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1 Motion carries.

2 MS. HIGASHI: This brings us to item 8, and
3 Commission Counsel Katherine Tokarski will present this
4 item.

5 MS. TOKARSKI: Claimant, County of San
6 Bernardino, alleges that Penal Code section 148.6
7 requires the claimant to engage in the following
8 reimbursable state-mandated activities: Warn all
9 citizens making a complaint against a peace officer and
10 advise that a false report can be a misdemeanor; make the
11 advisory available in the language of the complainant,
12 and explain the form to the citizen. Claimant alleges
13 costs from spending approximately 15 minutes explaining
14 the form to each complainant.

15 Department of Finance's initial response to the
16 test claim allegations argued that there was no
17 reimbursable state mandate stemming from the test claim
18 legislation.

19 Staff concludes that Penal Code section 148.6,
20 subdivision (a), sections (2) and (3), imposes a new
21 program or higher level of service for city and county
22 law enforcement agencies within the meaning of
23 article XIII B, section 6, of the California Constitution
24 and imposes costs mandated by the State pursuant to
25 Government Code section 17514 for the enforcement agency ,

1 to, one, require the complainant to read and sign the
2 advisory prescribed and, two, make the advisory available
3 in multiple languages utilizing the translations
4 available from the State.

5 Staff recommends denial of any remaining alleged
6 activities or costs. Staff recommends that the
7 Commission adopt the final staff analysis, which
8 partially approves this test claim for cities and
9 counties.

10 CHAIRPERSON TILTON: Will the witnesses introduce
11 themselves and give us your comments, please.

12 MS. TER KEURST: I am Bonnie Ter Keurst. I'm
13 representing the County of San Bernardino.

14 MR. BURDICK: Allan Burdick on behalf of the
15 California State Association of Counties.

16 MS. GEANACOU: Susan Geanacou, Department of
17 Finance.

18 CHAIRPERSON TILTON: Go ahead. Who wants to
19 start off?

20 MS. TER KEURST: Thank you for seeing me. I
21 looked at the claim. And basically when I received the
22 staff analysis, I agreed with it. As I thought about it,
23 I decided I really wanted to at least address two items
24 briefly as a matter of record.

25 The original test claim did, in fact, address

1 three issues: Presenting the advisory to complainants
2 for signature, explaining the form, and having it
3 available in the multiple languages. The piece I would
4 like to address is explaining the form.

5 The Department of Finance did reject that item,
6 claiming it was not reimbursable because the items are
7 discretionary. I agree with the staff comments on that
8 and the Department of Finance in that there is no
9 directive to read and explain the form. However, I think
10 there is an intent that goes without saying in that the
11 primary goal of the police force is to serve the public.

12 I took a scenario. I said if an out-of-country
13 visitor -- because these forms are available in lots of
14 languages. If an out-of-country visitor walks into the
15 police station to file a complaint, the first problem is
16 going to be to establish his or her language. The second
17 item is going to be to deal with the fact that we have to
18 provide the form in that language. Those two items are
19 by their very nature going to require some kind of time
20 element.

21 Then I think it is safe to assume that if that
22 person is from another country, there might be a need to
23 explain the legal terminology in the document that we're
24 giving them or at least explain why we're asking them to
25 sign it. So there is some time involved. While it might

1 be, considered discretionary to explain the form to the
2 complainants, I do feel there is a legal responsibility,
3 and possibly a moral one, to make sure that the
4 complainant understands what it is that he is signing.

5 This law is in place, but in some regards there's
6 some holes because the law states that we are requiring a
7 signature. And my question was what happens if they
8 refuse to sign. And I haven't been able to find anybody
9 that has given me an answer yet. Or what happens if they
10 just don't sign the document? Do we still accept the
11 claim? What is the responsibility of the person who
12 perceives that they have an injustice? And if there is
13 that responsibility to that person which exists because
14 of the laws as they are today, do we have a
15 responsibility to make sure that they understand? And if
16 so, is that responsibility a direct result of this Penal
17 Code 148.6?

18 The second piece that I would like to have on
19 record is the fact that in the course of preparing this
20 claim, it becomes evident to me that there's going to
21 have to be some kind of training within the sheriff's
22 department, or the district attorneys is I think another
23 department that can hand out this form, just in knowing
24 that they have to keep a log or a record of the
25 responses, that there has to be proper record retention

1 distribution of documents. While it all well could be
2 very minimal, I think it still needs to be a part of the
3 process.

4 And those are my comments.

5 MR. BURDICK: Mr. Chairman, Members of the
6 Commission, thank you very much for allowing us to be
7 here today. Just a couple comments.

8 First of all, this is -- I think that we agree
9 with the primary findings of the Commission staff as
10 related to what are the mandated activities. I think the
11 issue is the last paragraph in the -- of their statement,
12 the conclusion which -- which talks about the limitation
13 of the -- of the activities, and the costs claimed by the
14 test claimant are included in the test claim.

15 I think that the concern is that those are
16 activities that probably would be better left to looking
17 at the parameters and guidelines in terms of, you know,
18 what are the costs. Whether San Bernardino's costs that
19 are included in the claim are eligible or not, I don't
20 think that's part of the test claim.

21 Secondly, I know very often we get to the
22 parameters and guideline stage, we sit down and look at
23 what is really required, what are people doing. This is
24 the first time that other law enforcement agencies are
25 brought in, and the people on the task really look at

1 this.

2 At this point there's been no discussion, I don't
3 think, amongst any of the professionals in the field what
4 takes place. There's just been exchange of some
5 documents amongst the various parties. And very often we
6 get into a discussion on parameters and guidelines about
7 an activity, and the Commission staff will say, well,
8 based on the statement of decision, even though that
9 may -- they may have agreed that might be allowable, they
10 say we can't consider that because the statement of
11 decision limits us from finding that in some way in terms
12 of looking at.

13 And that, I think, is what the concern is about
14 the last statement of the -- of the -- of the conclusion,
15 which recommends the denial of any remaining alleged
16 activities or costs and how that will be interpreted and
17 what it may be. It seems to me that the issue is you
18 found what the mandate is. Now the provision ought to be
19 to move forward, develop the parameters and guidelines,
20 and then for the staff to look at those and have an
21 opportunity for people to look at this, find out how do
22 we carry this out, what is really involved in this
23 process.

24 This is going to be a fairly small-dollar
25 mandate, obviously. It's probably going to limit it to

1 larger law enforcement agencies. I doubt very seldom if
2 a lot of the smaller, particularly rural agencies are
3 going to have these kinds of issues.

4 This statute was adopted and the intent of the
5 author is, in her statement, Assemblywoman Bolin, on the
6 bill was that they are trying to discourage the filing of
7 false or unfounded reports of police misconduct. So
8 they're trying to get citizens who are filing things to
9 look at that, give a second thought, make sure that they
10 have some kind of an adequate case before they file it.
11 Because once it gets filed, very often it has -- even if
12 it's unfounded, it may show up in law enforcement
13 personnel's jacket, and they don't want that.

14 So that was the whole intent is to say, you know,
15 we're trying to discourage people from doing something
16 that may be unfounded later on or something else that
17 maybe be false. And so I think, you know, what the staff
18 tends to -- Commission staff tends to relay a lot onto a
19 case which talks about the usual and ordinary meaning of
20 the language that they read in the statute. And so part
21 of, I think, what San Bernardino and other people may be
22 arguing is, well, does that usual and ordinary meaning
23 mean when you have to give something to a person, have
24 them sign it. It says, you know, make sure they read it,
25 so you're supposed to make sure they do that. Does that

1 also mean understand it before they sign it or if they
2 have any questions -- I think those are questions that
3 are worth discussion amongst the people and what happens
4 in the real world.

5 So I think at this point I think what the test
6 claimant and the local agencies are requesting is that
7 you not put that limitation in the final paragraph, that
8 you leave that to the parameter and guideline process.
9 And then when we come back, if there is any question
10 about activities, whatever, that could be discussed and
11 evidence can be presented to you, So I think at this
12 point it would be just to delete that provision of the
13 recommendation and indicate that the specific activities
14 and possible potential costs that could be associated
15 with those would be left to the parameter and guideline
16 process and not be prevented from any discussion or
17 consideration because of the fact that this paragraph was
18 included as part of your action today.

19 Thank you very much.

20 CHAIRPERSON TILTON: Katherine, do you have a
21 comment?

22 MS. TOKARSKI: The reason -- well, there is
23 multiple reasons that's in there, but one of the reasons
24 is that the way that the claimant pled their allegations
25 was very specific, and a number of the activities that

1 they alleged stemming from the test claim statute was not
2 clearly part of the statute and the remaining one being
3 addressed today was being required to read and explain
4 the item to the claimant, and that is not required by the
5 legislation as I read it.

6 And so that final paragraph, along with denying
7 any potential -- because it's pled as Penal Code statute
8 148.6, that has other sections to it besides the sub
9 (a)(2) and sub (a)(3) that were found to impose a
10 reimbursable state mandate. There's sub (a)(1) and
11 there's subdivision (b), which are misdemeanor
12 provisions, and those are not reimbursable. There's a
13 number of things that they were pleading that were found
14 to not be reimbursable, but you're free to change the --

15 CHAIRPERSON TILTON: Appreciate it.

16 MS. TOKARSKI: -- language.

17 CHAIRPERSON TILTON: Let me ask the Department of
18 Finance, and then I've got a couple questions.

19 MS. GEANACOU: We agree with the staff analysis,
20 and I'm concerned that removing the language from that
21 last paragraph would basically open up anew some of the
22 claimed activities that were found not to be reimbursable
23 in the analysis such as reading to and perhaps helping
24 the filer or the person filing the claim of misconduct to
25 understand what he or she is signing. And nothing on the

1 face of the statute suggests that that is a duty of the
2 law enforcement entity, and I think for that reason the
3 staff analysis as written is correct.

4 CHAIRPERSON TILTON: Okay. Let me make a
5 comment, if I can. I've got a question here in terms of
6 the fundamentals of whether this is an increased cost at
7 all. And given the number of claims we have stacked up,
8 Paula, I think it's appropriate for us to provide some
9 narrowing of the staff work that has to be done to
10 conclude what the costs are of these claims, so I feel
11 the staff recommendation is a solid one.

12 But also there's some comments in the analysis in
13 terms of -- that lead me to believe there's also a
14 possibility that this is a savings. Maybe it's the
15 comments you made about the intent. If, in fact, the
16 results of this law are -- is to reduce the number of
17 claims made against staff, there's a reduced workload
18 through the process of these claims. I think that was
19 made by Finance.

20 And, Finance, you have no documentation to
21 whether that's a savings or not. I think it's something
22 that ought be looked at. I don't think we have enough
23 information in front of us today to conclude either way,
24 to be honest, in terms of whether this is actually an
25 increased cost or not, but more work needs to be done.

1 So my belief is we ought to provide some clear
2 direction to staff. One of the things I want you to do
3 is see whether or not there is any information you can
4 obtain in terms of whether there are real savings to this
5 law and it's not a cost as part of your duties through
6 the P and G, I guess, is the proper process.

7 Paula, can you give me a response or comment to
8 that comment?

9 MS. HIGASHI: I think I'm going to -- I think on
10 the cost savings issue in terms of the legal
11 determination that would have to be made, I'm going to
12 defer to Ms. Shelton to respond because that a 17556
13 analysis that's part of the staff analysis.

14 MS. SHELTON: Well, first let me say that the
15 issue of whether there are increased costs mandated by
16 the State is a finding that you have to make on this test
17 claim. You can't delay that and make that finding at the
18 parameters and guidelines because that's a key element
19 for finding whether something is or is not reimbursable.
20 So you need to make that finding now.

21 The only provision that we have in statute is
22 17556, subdivision (e), and that says if -- the
23' Commission shall not find costs mandated by the State if
24 the statute or executive order provides for offsetting
25 savings to local agencies or school districts which

1 resulted in no net cost to the local agencies or school
2 districts. And in this case, we found that the
3 legislation did impose two new requirements. Even though
4 they may be saving in the long run, we do not have any
5 evidence in the record, none provided today, to show that
6 they have not incurred increased costs for those two new
7 activities.

8 If -- you have the option. If you wanted to
9 continue it, we would need to get substantial evidence in
10 the record from the Department of Finance and any
11 rebuttal from the claimant on that issue, which we can
12 do.

13 MS. TER KEURST: Can I comment that?

24 CHAIRPERSON TILTON: Please.

15 MS. TER KEURST: The initial claim or the initial
16 law wh-en it was enacted by Bolin, she sent a letter to
17 Governor Pete Wilson. Her intent was not to use the
18 money to finance this legislation. The intent, and I'm
19 quoting from her letter of September 5, 1995:

20 "By reducing the amount of frivolous
21 claims against peace officers, AB 1732 will
22 also save the State a substantial amount of
23 money. This cost savings could then be used
24 for putting more officers on the street,
25 thereby enhancing public safety."

1 So while I think there was an attempt to say,
2 yeah, we're spending a lot of money on these court cases,
3 out let's put it where it's needed, which is in public
4 safety, not in administrative costs.

5 CHAIRPERSON TILTON: Right. So that states
6 then- -- that supports my -- I don't have the facts in
7 front of me, supports my general conclusion that there's
8 a high probability because the legislature thought so
9 when they passed bill, in fact, there are net savings out
10 of this -- this bill.

11 MS. TER KEURST: And I would agree with that, but
12 the legislature also recognized that there was a state
13 mandate in both the instances. It does recognize that
14 there are costs associated with this. There are
15 substantial savings. The two don't go together.

16 CHAIRPERSON TILTON: Why not?

17 MS. TER KEURST: Because the savings, according
18 to this, is -- her intent was to have a savings to the
19 State.

20 CHAIRPERSON TILTON: But I --

21 MS. TER KEURST: And it's the local agencies that
22 have got the cost.

23 CHAIRPERSON TILTON: Well, aren't there savings
24 to the local agency if you have to deal with adverse
25 actions against your employee based on a claim being made

1 by citizens in terms of --

2 MS. TER KEURST: And that I would -- from a
3 logical standpoint possibly, but I don't have any
4 documentation in front of me to support that.

5 CHAIRPERSON TILTON: That's my concern. Neither
6 do I. All I have is a sense that there -- the intents of
7 the bill was to provide -- to mitigate or reduce the
8 number of accusations made against staff, which the whole
9 process -- the county and the sheriff must process in
10 terms of those, but we don't have any data in front of us
11 to conclude that.

12 MS. STONE: Chairman Tilton, my name is Pam
13 Stone. I'm with the CSAC SB 90 Committee, and I'd like
14 to address the issue of cost savings. Obviously there
15 was an intent to cut down on the number of frivolous and
16 unfounded complaints against peace officers.
17 Mr. Chairman, and Members of the Commission, there have
18 been a lot of test claims revolving around the
19 investigation of officer -- of complaints against
20 officers.

21 If there are any cost savings, it would result in
22 a reduction in the total number of Peace Officer Bill of
23 Rights cases that is covered by that particular test
24 claim. Generally when there is a complaint -- and trust
25 me, I have spent more time on this than I ever wanted to

1 know having worked with the claimant on the POBOR test
2 claim.

3 When a complaint of police misconduct is given to
4 any law enforcement agency, whether it's local or even at
5 the state level, and it forms the basis of a Peace
6 Officer Bill of Rights investigation -- and there are
7 substantial privileges and safeguards that are given to
8 those officers. If there are any savings as a result of
9 the lack or the diminution in actual claims filed, you
10 will find that cost savings by fewer POBOR cases being
11 filed.

12 And therefore, although you're not going to be
13 able ever to estimate because it's purely speculative on
14 how many people would file unfounded complaints against
15 peace officers because they basically want leverage, you
16 will find your net savings in a reduction in the total
17 POBOR cases that are filed.

18 Thank you.

19 MR. BURDICK: Mr. Chairman, I think that what
20 this is showing us is that, as you're indicating and I
21 would agree, that there needs to be looked at all these
22 issues, but these are normally the kinds of things that
23 come up when we -- after you find a mandate and we get to
24 that point and then you sit down on the parameters and
25 guidelines and you can really then get the experts and

1 get into details and look at these issues of offsetting
2 savings and so forth. And that's what the parameters and
3 guidelines are intended to do is to specify that.

4 And that's what I'm saying is that I just feel
5 that, you know, in terms of trying to overly limit and --
6 and I know that some of the things that San Bernardino
7 probably said should not be considered as -- may not be
8 considered as mandates or not. I'm not sure. I
9 haven't -- am not totally as familiar with their
10 individual claim as maybe I should be. But I think at
11 this point I just didn't want to preclude when we get
12 into these discussions the staff coming back and saying,
13 well, the test claim limits us from talking about that or
14 considering that as part of this particular discussion,
15 but instead to say, okay, we found the mandates you found
16 under the provision, now how do you interpret those and
17 what are the costs associated with those?

18 And I don't think that the costs and activities,
19 if they're not -- that were in the test claim, if they're
20 not specified in your statement of decision do not
21 indicate that you found that you're supporting those or
22 there's any evidence of those. You just haven't -- you
23 just haven't put a limitation on the -- on what we can
24 look at when we do the parameters and guidelines. And I
25 think that all of the issues that are discussed -- have

1 been discussed are those kinds of things that are
2 parameter and guidelines issues.

3 So that's the only thing that we're trying to
4 say. Let's not limit it now. We have had, in the past,
5 situations where you've got to parameters and guidelines
6 and come back and said, well, the Commission's decision
7 seems to restrict us from going there, even though I
8 think at that point staff would have said those are
9 eligible costs, those are reasonable, but we can't go
10 there. And that's the only thing I'm trying to say is
11 don't prevent the locals and the staff from saying that
12 we can't go there if they think it's right.

13 CHAIRPERSON TILTON: Walter,

14 MR. BARNES: Sure. A couple of things. I
15 actually think the paragraph should stay in, and I say so
16 because I think the worst thing that we can do is provide
17 vague guidance with regard to the drafting of the
18 parameters and guidelines. And I think unless we feel
19 that there are some activities that, in fact, should be
20 approved that have been left out of this list, then I
21 think that giving the complete guidance to the staff and
22 to the claimants and to the stakeholders and the
23 Department of Finance and the Controller's Office is
24 really part of our job. And I think that we should do
25 that.

1 , Having said that, I also think that we could go
2 ahead and approve this as it is today or vote on it as it
3 is today. I agree with you. I think the issue of
4 offsetting costs'or offsetting savings is always on the
5 table. Every parameters and guidelines has **reference** to
6 that. And I think that we can give some direction to the
7 staff and again to the stakeholders associated with this
8 that we think that's a valid issue to take a look at in
9 terms of describing, you know, the offsetting savings in
10 connection with this particular mandate.

11 So I don't think we need to, you know, do more
12 than that in terms of changing the -- the recommendation,
13 because the recommendation itself would just identify
14 that, and the parameters and guidelines will always deal
15 with the offsetting costs or savings. I think it's
16 appropriate for us to pass on to the staff and to the
17 claimants that we're going to be looking to see how they
18 deal with that in connection with the parameters and
19 guidelines.

20 I also have a question that I'd like to put
21 forward which has to do with the requirement in here, as
22 I understand it, that basically it requires -- it
23 requires that the citizen filing the report has to sign
24 this' advisory claim. And I -- you know, I understood
25 your comments with regard to, you know, people may not

1 understand the form or may need to have some explanation,
2 whatever. But I guess one of the questions I have is
3 what happens if they **don't** sign it, period? What does
4 that do, you know, to our recommendation here? I mean,
5 is that -- is the fact that they engaged in a conduct
6 that had -- that did not have the specific outcome, i.e.,
7 a signed, you know, statement, make that not a mandate --
8 a mandated activity? And --

9 MS. TOKARSKI: Well, the statement prior to
10 the -- the advisory language is at page 7 of the
11 analysis. And it says:

12 "Any law enforcement agency accepting an
13 allegation of misconduct against a peace
14 officer shall require the complainant to read
15 and sign the following advisory all in boldface
16 type," meaning that the advisory needs to be
17 printed out in boldface type.

18 There's no reference to what would happen if they
19 refuse to sign it. I would imagine that each department
20 has their own mechanism for dealing with something like
21 that, but it doesn't change the fact that the peace
22 officer agency is required to hand them this advisory,
23 attempt to get them to sign it. And if they don't, they
24 don't. But the activity, the basic activity of giving
25 them a form is still there, regardless of whether the

1 individual chooses to sign it or not.

2 MR. BARNES: So let me just say so your -- I
3 guess the question is that in our listing of two specific
4 activities, we say in accepting an allegation requiring
5 the claimant to read and sign the advisory in Penal Code
6 blah, blah, blah, it's just that they are requiring them
7 to do so, but the fact that they don't does not impact
8 the mandated costs associated with at least attempting to
9 do that.

10 MS. TOKARSKI: That's what I'm getting at.

11 MR. BARNES: Okay. Again, that may be something,
12 advice, you may want to give to the parameters and
13 guideline people to say how you would deal with that
14 situation. I think the concept here is that there is an
15 activity put out. And I would like to try to make sure
16 that the claimants aren't penalized by the fact that
17 somebody decides they just don't want to sign it, don't
18 understand it or whatever, and walks away.

19 MS. SHELTON: Can I just help on the distinction
20 between the --

21 CHAIRPERSON TILTON: Sure.

22 MS. SHELTON: -- test claim and the parameters
23 and guidelines? These activities here that are
24 recommended for approval are those activities that are
25 expressly required by statute. These are legal findings.

1 It's a question of law at this stage.

2 If the Commission does adopt this staff
3 recommendation and it does go on to the parameters and
4 guidelines -- and in the parameters and guidelines these
5 two activities will be listed. But you also there have
6 the discretion to include any other activity in the Ps
7 and Gs that you find to be reasonably necessary to carry
8 out these two activities. So you have wiggle room with
9 respect to how they perform an activity and what is the
10 most reasonable way of doing that. So you can add more
11 activities in the parameters and guidelines than you have
12 here in the proposed decision.

13 CHAIRPERSON TILTON: Would you agree that in
14 those Ps and Gs, the analysis there, that you also would
15 look at savings because of those requirements? Or do we
16 need to --

17 MS. SHELTON: Yeah, I need to clear that up too.
18 If you want to approve this test claim, then you are
19 making a finding that there are increased costs mandated
20 by the state. If you want to look into the question of
21 whether there are real cost savings which result in no
22 increased costs and, in fact, net savings, then you would
23 need to continue this item, recommend to continue this --
24 make a motion to continue the item and have us look into
25 it. Because if this goes to parameters and guidelines,

1 you've already made the finding that there are increased
2 costs.

3 CHAIRPERSON TILTON: Help me then if we have a
4 process where we make those determinations now, you
5 actually go through the process of developing Ps and Gs
6 and the net result is savings. Do you come back and
7 bring back the initial issue back to the Commission or --

8 MS. SHELTON: Well, what may --

9 CHAIRPERSON TILTON: -- what are the results of
10 that?

11 MS. SHELTON: I'm sorry. What may happen is that
12 maybe the State Controller's Office would audit that
13 information and add an incorrect reduction to maybe deny
14 something altogether. But the Commission loses
15 jurisdiction over the issue if you make the decision that
16 there are increased costs mandated by the State today.

17 MR. BARNES: And I guess just to answer that is
18 that basically, you know, we won't know whether there are
19 savings associated with it until we actually get the
20 claims. And the claims would be filed based upon the
21 parameters and guidelines and our claiming instructions,
22 which is why I think to a certain extent, you know -- are
23 you advising us that instead of giving advice to people
24 in terms of developing the parameters and guidelines
25 about dealing with the issue of potential savings in the

1 parameters and guidelines, we should make some mention of
2 it in here? Or are you agreeing that giving that advice,
3 you know, deals with that?

4 Keep in mind that if there are things that the
5 claimants do not feel -- feel should be in the claim,
6 should be in the Ps and Gs, they certainly will come
7 before us in the Ps and Gs and tell us about it.

8 MS. SHELTON: It's very difficult to respond
9 because we have absolutely no evidence in the record of
10 any costs savings. And we have testimony that we
11 probably have two overlapping programs. One is POBOR,
12 and the other is this. And there hasn't been any type of
13 detailed look or audit into the two possibly connected
14 programs.

15 I can tell you that I tried to make this argument
16 before the California Supreme Court in School Site
17 Councils to say, you know, yes, you have funding, but we
18 don't know today whether that funding is adequate. And
19 the court rejected that and said, oh, they've got enough
20 funding. And they made the legal finding that there were
21 no increased costs mandated by the state. But there the
22 difference was you had evidence in the record, and here
23 we do not have anything.

24 CHAIRPERSON TILTON: Let me ask my question too.
25 Theoretically, if I'm understanding right, we could put

1 the item over and ask to do the assessment of savings and
2 could come back and say, yes, there's savings, but until
3 you get the cost side, even if we agree they're a new
4 workload, you're going to run into the same problem.
5 You're going to have a situation where -- where we would
6 not be able to conclude there are some savings, but I
7 don't know how we could conclude the net number if we
8 recognize, yes, we agree there's some new workload here.

9 MS. SHELTON: It's a very, very difficult
10 situation because you do have, as I said, an overlap of
11 programs. And we have not performed the audit, and we
12 definitely have two new activities that are mandated on
13 the local agency.

14 CHAIRPERSON TILTON: If the results of our action
15 today is to approve that there are increased costs here
16 but ask staff to go look at -- when you calculate how you
17 would estimate the costs of those increased activities
18 and look at savings and then we came back at P and G and
19 there was a net -- or basically you're identifying things
20 that are claimable; right?

21 MS. SHELTON: 'Well --

22 CHAIRPERSON TILTON: I guess I'm confused.

23 MR. BARNES: I think the hard part is that, you
24 know, as she says, until you actually get a claim, you're
25 not going to know. Because in effect the Ps and Gs will

1 not only list the allowable costs, it will also list the
2 requirements for determining whether or not there are
3 offsetting savings associated with those costs. And so
4 the only way you get to the claim is to have the Ps and
5 Gs. so --

6 MS.. SHELTON: Can I --

7 MR. BARNES: -- that's why I think to a certain
8 extent this can be worked out in the Ps and Gs with some
9 direction from us.

10 MS. SHELTON: Can I also say too that you have,
11 you know, like I said, two programs, POBOR, which has
12 already been approved, and we all know there is an audit
13 on the POBOR test claim, and there will be further work
14 to be done on that program. But if it turns out that the
15 intent of this legislation was to reduce the POBOR
16 claims, then you're simply going to just have a reduction
17 of the reimbursement claims that are filed under POBOR,
18 if this is working how it's supposed to.

19 So it's not really -- it would end up to be a
20 cost savings, but you have two separate programs. And if
21 it really works, one of the costs will go down in that
22 program.

23 MR. BARNES: Can you --

24 MS. HIGASHI: Commission Members, could I just --
25 I just want to interject something. I don't want to

1 confuse the proceeding any further, but I think you need
2 to have this information as you make your decision.

3 When the Commission statute was first enacted,
4 there was also another type of proceeding that was part
5 of it, and it was referred to as the cost savings claims.
6 The cost savings claims were a type of action that would
7 be filed only by state agencies, typically by the
8 Department of Finance, and they would be filed when a
9 program that was an existing mandate was amended by state
10 law or executive order and the reimbursable activities
11 either declined or changed or something occurred in which
12 the Department of Finance or the State Controller's
13 Office believed would result in a cost savings.

14 So then the burden was on the Department of
15 Finance as the moving party to put all the documentation
16 together and say the new statutes of 2000 resulted in
17 cancelling out five activities that are in the POBOR-I
18 test claim or something and to propose this action before
19 the Commission. The same process would have been
20 followed as for a test claim, but it was like a reverse
21 process.

22 When that statute was repealed, 17556 was not
23 changed, so that phrase remains in 17556, And so we've
24 had this difficulty of understanding and explaining how
25 to apply that ever since.

1 MS. SHELTON: And I can say it has never been
2 applied or argued by the Department of Finance with
3 evidence in the record.

4 CHAIRPERSON TILTON: Walter. ,

5 MR. BARNES: Actually, you bring up an
6 interesting point. And I forget who raised it, but this
7 is actually cutting into POBOR. And I'm wondering if
8 we're missing an opportunity here to basically add this
9 to POBOR.

10 MS. SHELTON: That, you can do at the parameters
11 and guidelines stage, if you want to somehow consolidate
12 or put a connection between the two or maybe even with
13 the claiming instructions. I don't know how you would do
14 that yet. I haven't looked into this in that level of
15 detail yet, but --

16 MR. BARNES: I mean, they were very much linked
17 together. And it's an additional activity.

18 MS. SHELTON: It's sort of linked together. This
19 program comes before POBOR even before it gets kicked
20 into gear.

21 MR. BARNES: Right. But, in fact, if this part
22 of the program, as you pointed out, if it goes right,
23 then essentially it does reduce down potentially POBOR.
24 So potentially is where the activity is, so I guess, you
25 know, again, I'm inclined to go ahead and approve the

1 staff recommendation, but maybe with some direction and
2 recommendation that they look into trying to incorporate
3 this within POBOR or at least make sure that if it's
4 going to be separately, that they -- they see how this
5 thing is supposed to interact with POBOR and with a
6 strong encouragement to try to combine the two together
7 when it comes back.

8 CHAIRPERSON TILTON: Jan, you had a comment.

9 MS. BOEL: It was answered.

10 CHAIRPERSON TILTON: That sounds like that
11 addresses my issue, I think, Walter, in terms of just
12 make sure that we look at that savings side also. You're
13 right. It will reduce the POBOR claims.

I 14 MR. BARNES: I'll make a recommendation that we
15 approve the staff recommendation with guidance to the
16 staff in developing the Ps and Gs that they take into
17 account how this would affect POBOR and in terms of
18 developing those. Does that give everybody enough
19 guidance?

20 CHAIRPERSON TILTON: I have a motion. Do I have
21 a second?

22 MR. SHERWOOD: Second.

23 CHAIRPERSON TILTON: Any further discussions?

24 (No audible response.)

25 CHAIRPERSON TILTON: Call the roll, Paula.

1 MS. HIGASHI: Mr. Barnes.

2 MR. BARNES: Aye.

3 MS. HIGASHI: Ms. Boel.

4 MS. BOEL: Aye.

5 MS. HIGASHI: Mr. Lazar.

6 MR. LAZAR: Aye.

7 MS. HIGASHI: Mr. Sherwood.

8 MR. SHERWOOD: Aye.

9 MS. HIGASHI: M r . Tilton.

10 CHAIRPERSON TILTON: No.

11 MS. HIGASHI: Motion is carried.

12 MR. BURDICK: Thank you very much.

13 MS. HIGASHI: With that I'd like to move to
14 item 13.

15 MS. TOKARSKI: This is the proposed statement of
16 decision on the item you just heard. Staff recommends
17 the Commission adopt proposed statement of decision
18 beginning on page 2 which accurately reflects the staff
19 recommendation on the test claim. Changes to reflect the
20 hearing testimony and the direction from the
21 Commissioners regarding the parameters and guidelines and
22 the vote count will be included when issuing the final
23 statement of decision.

24 CHAIRPERSON TILTON: Do I have a motion?

25 MR. BARNES: I move approval consistent with the

1 same guidance that we gave in connection with the test
2 claim.

3 CHAIRPERSON TILTON: Do I have second?

4 MR. SHERWOOD: Second.

5 CHAIRPERSON TILTON: Second. Any discussion?

6 (No audible response.)

7 CHAIRPERSON TILTON: Roll call.

8 MS. HIGASHI: Ms. Boel.

9 MS. BOEL: Aye.

10 MS. HIGASHI: Mr. Lazar.

11 MR. LAZAR: Aye.

12 MS. HIGASHI: Mr. Sherwood.

13 MR. SHERWOOD: Aye,

14 MS. HIGASHI: Mr. Barnes.

15 MR. BARNES: Aye.

16 MS. HIGASHI: Mr. Tilton.

17 CHAIRPERSON TILTON: Aye.

18 MS. HIGASHI: This brings us to item 15 in your
19 binders. Item 14 was adopted on the consent.

20 Item 15 is our annual rulemaking calendar that we
21 need to submit to the Office of Administrative Law, It
22 is presented here to include three potential rulemaking
23 actions.. One is regarding implementation of Bureau of
24 State Audits recommendations. We expect to see
25 legislation introduced during this session that will

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

February 20, 2004, I served the:

Adopted Statement of Decision
False Reports of Police Misconduct, 00-K-26
County of San Bernardino, Claimant
Penal Code Section 148.6; Statutes 1995, Chapter 590 et al

by placing a true copy thereof in an envelope addressed to:

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid,

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 20, 2004, at Sacramento, California.



VICTORIA SORIANO

Commission on State Mandates

Original List Date: 7/6/2001
Last Updated: 2/20/2004
List Print Date: 02/20/2004
Claim Number: 00-TC-26
Issue: False Reports of Police Misconduct

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