

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



November 14, 2005

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

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

Re: **Final Staff Analysis, Proposed Statement of Decision, and Hearing Date**
Local Recreational Areas: Background Screenings, 01-TC-11
City of Los Angeles - Department of Recreation and Parks, Claimant
Statutes 2001, Chapter 777
Public Resources Code, Section 5164; Subdivision (b)(1) and (b)(2).

Dear Mr. Fujita:

The final staff analysis and proposed Statement of Decision for this test claim are complete and are enclosed for your review.

Hearing

This test claim is set for hearing on Friday, **December 9, 2005** at 10:30 a.m. in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions on the above, please contact Eric Feller at (916) 323-8221.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

Enc. Final Staff Analysis and Proposed Statement of Decision

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ITEM 4
TEST CLAIM
FINAL STAFF ANALYSIS

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

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

City of Los Angeles, Claimant

EXECUTIVE SUMMARY

Claimant filed the test claim in February 2002. The test claim statute prohibits a city, county or special district from hiring a volunteer or employee for positions having supervisory or disciplinary authority over any minor at specified local agency recreational areas if the employee or volunteer has been convicted of specified crimes. It also requires these prospective volunteers or employees to be screened according to a stated procedure.

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

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

Staff recommends that the Commission adopt this analysis and approve the test claim for the activities listed above.

¹ Public Resources Code section 5164, subdivision (b)(2).

STAFF ANALYSIS

Claimant

City of Los Angeles

Chronology

02/08/02 Claimant files test claim with the Commission²
03/11/02 Department of Justice submits a statement of non-response³
05/03/02 Department of Finance files comments on test claim with the Commission⁴
10/11/05 Commission staff issues draft staff analysis⁵
11/01/05 Claimant submits comments on the draft staff analysis⁶
11/14/05 Commission issues final staff analysis and proposed Statement of Decision

Background

Public Resources Code section 5164 was enacted in 1993 (Stats. 1993, ch. 972) to prohibit a city, county or special district from hiring a volunteer or employee for positions having supervisory or disciplinary authority over any minor at specified local agency recreational areas if the employee or volunteer has been convicted of specified crimes. Section 5164 was enacted because of a volunteer coach's 1992 conviction for kidnapping and molesting a boy who was coached at Hoover Recreation Center in Los Angeles County. The coach was a registered sex offender whose background had not been inquired about by the recreation center.⁷ The Legislature's response was to enact section 5164.

The test claim statute (Stats. 2001, ch. 777, Assem. Bill No. 351)⁸ amended Public Resources Code section 5164 as follows (changes marked in ~~strikeout~~ and underline).

- (a) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor if ~~the~~ that person has been convicted of any offense specified in paragraph (1) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code, or any offense specified in paragraph

² Exhibit A.

³ Exhibit C.

⁴ Exhibit B.

⁵ Exhibit E.

⁶ Exhibit F.

⁷ Assembly Committee on Local Government, Analysis of Assembly Bill 1663, as amended April 12, 1993 (1993-1994 Reg. Sess.), page 2 (Exhibit D).

⁸ Section 5164 has been amended since the test claim filing by Statutes 2004, chapter 184, but the amendments are not part of this analysis.

(3) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code. However, this section shall not apply to a misdemeanor conviction under paragraph (3) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code unless ~~the~~ that person has a total of three or more misdemeanor or felony convictions specified in Section 11105.3 of the Penal Code within the immediately preceding 10-year period.

(b) (1) To give effect to this section, a county or city or city and county or special district ~~may~~ shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for ~~the~~ that person's criminal background.

(b) (2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency,^[9] and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to the subdivision.

Penal Code section 11105.3, subdivision (h)(3), (now Pub. Res. Code, § 5164 subd. (a)(2))¹⁰ listed the crimes for which to screen prospective employees or volunteers who would have supervisory or disciplinary authority over minors as follows:

- Assault with intent to commit rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or penetration of genitals or anus with a foreign object (Pen. Code, § 220)
- Unlawful sexual intercourse with a person under 18 (Pen. Code, § 261.5)
- Spousal rape (Pen. Code, § 262)
- Willful harm or injury to a child (Pen. Code, § 273a)
- Corporal punishment or injury of child (Pen. Code, § 273d)
- Willful infliction of corporal injury (Pen. Code, § 273.5)
- Sex offenses for which registration is required (Pen. Code, § 290) except the sexual battery offense in Penal Code 243.4, subdivision (d).

⁹ If the local agency takes the fingerprints, it may charge a fee not to exceed \$10 (Pen. Code, § 13300, subd. (e)). Other entities may charge more; see <<http://ag.ca.gov/fingerprints/publications/contact.htm>> [as of August 18, 2005] (Exhibit D).

¹⁰ Former Penal Code section 11105.3, subdivision (h)(3), was amended by Statutes 2004, chapter 184, and moved to Public Resources Code section 5164, subdivision (a)(2).

- Any felony or misdemeanor conviction within 10 years of the date of the employer's request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10-year period.¹¹

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

Claimant's Position

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

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

As of November 2001, the City of Los Angeles Department of Recreation and Parks has hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of \$3904.00. It is estimated that the City will incur a total cost of approximately

¹¹ Statutes 2004, chapter 184, amended this provision as follows: "(B) Any felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request. (C) Any felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8 of part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years."

\$32,000 to achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002).¹²

The claim includes a declaration certifying that the costs stated are true and correct.¹³ Claimant concurred with the draft staff analysis.¹⁴

State Agency Positions

The Department of Finance (DOF) and Department of Justice (DOJ) each filed comments on the test claim. DOF, in a letter received May 3, 2002, states that, "as a result of our review, we have concluded that the statute may have resulted in costs mandated by the state."¹⁵

The DOJ, in a letter received March 11, 2002, states that the test claim statute "does not modify DOJ processing procedures. As such, the DOJ is submitting a statement of non-response to the Commission on State Mandates."¹⁶

No state agency filed comments on the draft staff analysis.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution¹⁷ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁸ "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

¹² Exhibit A. A claimant must incur at least \$1000 in costs to file a test claim with the Commission or a reimbursement claim with the State Controller's Office (Gov. Code, § 17564, subd. (a)).

¹³ Exhibit A.

¹⁴ Exhibit F.

¹⁵ Exhibit B.

¹⁶ Exhibit C.

¹⁷ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in 2004) provides:

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

¹⁸ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

impose.”¹⁹ 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.²⁰

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.²¹

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.²² 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.²³ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”²⁴

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁵

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 6.²⁶ 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.”²⁷

¹⁹ *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

²⁰ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²¹ *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*).

²² *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.)

²³ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

²⁴ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

²⁵ *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.

²⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁷ *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.

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

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

The test claim statute states that the local agency “shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a).”²⁸ The offenses inquired after include assault with intent to commit specified sexual acts upon a child (Pen. Code, § 220), unlawful sexual intercourse with a person under 18 (Pen. Code, § 261.5), spousal rape (Pen. Code, § 262), willful harm or injury to a child (Pen. Code, § 273a), corporal punishment or injury of child (Pen. Code, § 273d), willful infliction of corporal injury (Pen. Code, § 273.5), sex offenses for which registration is required (Pen. Code, § 290) except the sexual battery offense in Penal Code 243.4, subdivision (d), or any felony or misdemeanor conviction within 10 years of the date of the employer’s request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10-year period.

The test claim statute also states that the local agency “shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for that person’s criminal background.”²⁹

Both of these activities are mandatory because the statutory language uses the word “shall.”³⁰ “[The local agency] *shall* require each prospective employee or volunteer to complete an application ... [The local agency] *shall* screen ... any such prospective employee or volunteer....” [Emphasis added.] Therefore, staff finds that the test claim statute imposes state-mandated activities on local agencies to: (1) require prospective employees or volunteers to complete an application that inquires into their criminal histories, and (2) effect criminal background screenings, pursuant to Penal Code section 11105.3, for prospective employees or volunteers having supervisory or disciplinary authority over minors.

Subdivision (b)(2) of section 5164, which preceded the test claim statute, states that the local agency, when requesting DOJ records, “shall include the prospective employee’s or volunteer’s fingerprints, ... and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice.”³¹ Even though this provision was in preexisting law, the test claim statute amendment to subdivision (b)(1), which required local agencies to screen potential employees and volunteers, makes the (b)(2) screening procedures a requirement. Therefore, the screening procedure (except for taking fingerprints) in subdivision (b)(2) also imposes a state-mandated activity on local agencies.

Although the test claim statute requires the local agency to submit fingerprints to DOJ, the local agency is not required to take them. Subdivision (b)(2) of the test claim statute requires the local

²⁸ Public Resources Code section 5164, subdivision (b)(1).

²⁹ *Ibid.*

³⁰ Public Resources Code section 15 states, “‘Shall’ is mandatory and ‘may’ is permissive.”

³¹ Public Resources Code section 5164, subdivision (b)(2).

agency to submit the fingerprints, but states that they “may be taken by the local agency.” If the local agency takes the fingerprints, it may charge a fee not to exceed \$10, and other entities may charge more.³² Since whether the local agency takes the fingerprints is permissive, and the prints may be taken by the local agency or another entity at the expense of the prospective employee or volunteer, staff finds that taking fingerprints is not a state-mandated activity and therefore, not subject to article XIII B, section 6.

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

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, it must constitute a “program,” defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.³³ Only one of these findings is necessary to trigger article XIII B, section 6.³⁴

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

Issue 2: Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before enacting the test claim legislation.³⁵ Each activity is discussed separately.

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

³² Penal code section 13300, subdivision (e). As to other entities’ ability to charge more, see <<http://ag.ca.gov/fingerprints/publications/contact.htm>> [as of August 18, 2005] (Exhibit D).

³³ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

³⁴ *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

³⁵ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

Prior law prohibited a local agency from hiring an individual convicted of an offense specified in Penal Code section 11105.3 subdivision (h)(1) and (h)(3).³⁶ There was no previous requirement, however, for prospective employees or volunteers to complete an application that inquires after their criminal histories. Therefore, staff finds that requiring prospective employees or volunteers to complete an application that inquires after their criminal histories is a new program or higher level of service.

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

Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department [DOJ]. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged to a nonprofit organization. ...³⁷

As to the DOJ fee, the test claim statute states that no fee is required for a prospective volunteer.³⁸

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

Subdivision (b)(2) predates the test claim statute, so if the local agency elected to screen a prospective employee or volunteer, the local agency was required to comply with the procedure in (b)(2). As discussed above, however, enactment of the test claim statute made the screening mandatory for local agencies. Therefore, as a new requirement, staff finds that local agency screening of employees or volunteers for positions having supervisory or disciplinary authority over minors is a new program or higher level of service. The screening procedure outlined in Penal Code section 11105.3 and subdivision (b)(2) of the test claim statute requires forwarding to DOJ the following: (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ form, and (3) DOJ's fingerprint processing fee³⁹ (except that no fee is required for a prospective volunteer).⁴⁰

³⁶ The offenses are now listed in Public Resources Code section 5164 subdivision (a)(2).

³⁷ Penal Code section 11105.3, subdivision (b). The current DOJ fee is \$32. See <<http://www.ag.ca.gov/fingerprints/forms/fees.pdf>> [as of October 3, 2005] (Exhibit D).

³⁸ Public Resources Code section 5164, subdivision (b)(2).

³⁹ Penal Code section 11105.3, subdivision (b).

⁴⁰ Public Resources Code section 5164, subdivision (b)(2).

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

In order for the test claim statute’s activities to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the activities must impose increased costs mandated by the state.⁴¹ In addition, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines “costs mandated by the state” as follows:

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

In its test claim, claimant states that it “hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of \$3904.00. It is estimated that the City will incur a total cost of approximately \$32,000 to achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002).” Therefore, the claimant has shown costs sufficient to state a claim.⁴²

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

The test claim statute requires local agencies to:

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

⁴¹ *Kern High School Dist.*, *supra*, 30 Cal. 4th 727, 736; *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

⁴² The claimant must incur a minimum of \$1000 to file a claim. Government Code section 17564, subdivision (a).

- For prospective employees only, paying DOJ's fingerprint processing fee⁴³ (no fee is required for a prospective volunteer).⁴⁴

Applications: Requiring local agencies to require each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a),⁴⁵ is a new state-mandated activity, and none of the exceptions in Government Code section 17556 to finding costs mandated by the state apply to it. In order to comply, local agencies must revise and print job applications that inquire as to the applicants' criminal history. This would be a one-time activity. Therefore, staff finds that this one-time activity imposes "costs mandated by the state" within the meaning of Government Code sections 17514.

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

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

[W]e look to the intent of the Legislature in enacting the law, being careful to give the statute's words their plain, commonsense meaning. If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.⁴⁶

Public Resources Code section 5164 states that the local agency "shall screen, pursuant to Section 11105.3 of the Penal Code, any ... prospective employee or volunteer" According to Penal Code section 11105.3, DOJ's fee for screening may be paid by "the employer, human resource agency, or applicant for the actual cost of processing the request."⁴⁷ The fee authority in 11105.3 is authority for a fingerprint-processing fee granted to DOJ.

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

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

⁴³ Penal Code section 11105.3, subdivision (b).

⁴⁴ Public Resources Code section 5164, subdivision (b)(2).

⁴⁵ These offenses were listed in former Penal Code section 11105.3 prior to Statutes 2004, chapter 184.

⁴⁶ *In re Jennings* (2004) 34 Cal. 4th 254, 263 (Exhibit D).

⁴⁷ Penal Code section 11105.3, subdivision (b), as amended by Statutes 1992, chapter 1227. Prior to this amendment, section 11105.3 stated that DOJ may charge a fee to be paid by "the requester."

for the background screening,⁴⁸ even though this original statute made the screening provision permissive (and prohibited hiring an employee or volunteer who had been convicted of specified crimes). However, neither the plain meaning of section 5164, nor section 11105.3 of the Penal Code support this stated legislative intention.

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

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

Conclusion

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

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). (Pub. Res. Code, § 5164, subd. (b)(1)). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants’ criminal history.
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to DOJ: (1) the prospective employee’s or volunteer’s fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ’s fingerprint processing fee (no fee is required for a prospective volunteer).⁴⁹ (Pub. Res. Code, § 5164, subds. (b)(1) & (b)(2)).

Recommendation

Staff recommends that the Commission adopt this analysis and approve the test claim.

⁴⁸ Senate Committee on Appropriations, Analysis of Assembly Bill 1663, as amended August 18, 1993 (1993-1994 Reg. Sess.), page 1 (Exhibit D).

⁴⁹ Public Resources Code section 5164, subdivision (b)(2).

ITEM 5
TEST CLAIM
PROPOSED STATEMENT OF DECISION

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

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

City of Los Angeles, Claimant

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, 2005 hearing on the above-named test claim.¹

Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page two, which accurately reflects the staff recommendation to approve the test claim. Minor changes, including those 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 4 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 2006 Commission hearing.

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:

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

Filed on February 8, 2002

By City of Los Angeles, Claimant

No. 01-TC-11

*Local Recreational Areas: Background
Screenings*

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, 2005)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on December 9, 2005. [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 to approve the test claim at the hearing by a vote of [vote count will be included in the final Statement of Decision].

BACKGROUND

Public Resources Code section 5164 was enacted in 1993 (Stats. 1993, ch. 972) to prohibit a city, county or special district from hiring a volunteer or employee for positions having supervisory or disciplinary authority over any minor at specified local agency recreational areas if the employee or volunteer has been convicted of specified crimes. Section 5164 was enacted because of a volunteer coach's 1992 conviction for kidnapping and molesting a boy who was coached at Hoover Recreation Center in Los Angeles County. The coach was a registered sex offender whose background had not been inquired about by the recreation center.² The Legislature's response was to enact section 5164.

The test claim statute (Stats. 2001, ch. 777, Assem. Bill No. 351)³ amended Public Resources Code section 5164 as follows (changes marked in ~~strikeout~~ and underline).

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

³ Section 5164 has been amended since the test claim filing by Statutes 2004, chapter 184, but the amendments are not part of this analysis.

- (a) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor if ~~the~~ that person has been convicted of any offense specified in paragraph (1) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code, or any offense specified in paragraph (3) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code. However, this section shall not apply to a misdemeanor conviction under paragraph (3) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code unless ~~the~~ that person has a total of three or more misdemeanor or felony convictions specified in Section 11105.3 of the Penal Code within the immediately preceding 10-year period.
- (b) (1) To give effect to this section, a county or city or city and county or special district ~~may~~ shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for ~~the~~ that person's criminal background.
- (b) (2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency,^[4] and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to the subdivision.

Penal Code section 11105.3, subdivision (h)(3), (now Pub. Res. Code, § 5164 subd. (a)(2))⁵ listed the crimes for which to screen prospective employees or volunteers who would have supervisory or disciplinary authority over minors as follows:

- Assault with intent to commit rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or penetration of genitals or anus with a foreign object (Pen. Code, § 220)
- Unlawful sexual intercourse with a person under 18 (Pen. Code, § 261.5)
- Spousal rape (Pen. Code, § 262)

⁴ If the local agency takes the fingerprints, it may charge a fee not to exceed \$10 (Pen. Code, § 13300, subd. (e)). Other entities may charge more; see <<http://ag.ca.gov/fingerprints/publications/contact.htm>> [as of August 18, 2005].

⁵ Former Penal Code section 11105.3, subdivision (h)(3), was amended by Statutes 2004, chapter 184, and moved to Public Resources Code section 5164, subdivision (a)(2).

- Willful harm or injury to a child (Pen. Code, § 273a)
- Corporal punishment or injury of child (Pen. Code, § 273d)
- Willful infliction of corporal injury (Pen. Code, § 273.5)
- Sex offenses for which registration is required (Pen. Code, § 290) except the sexual battery offense in Penal Code 243.4, subdivision (d).
- Any felony or misdemeanor conviction within 10 years of the date of the employer's request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10-year period.⁶

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

Claimant's Position

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

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

⁶ Statutes 2004, chapter 184, amended this provision as follows: "(B) Any felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request. (C) Any felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8 of part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years."

As of November 2001, the City of Los Angeles Department of Recreation and Parks has hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of \$3904.00. It is estimated that the City will incur a total cost of approximately \$32,000 to achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002).⁷

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

State Agency Positions

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

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

No state agency filed comments on the draft staff analysis.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution⁸ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁹ "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."¹⁰ A test claim statute or executive order may impose a reimbursable state-mandated

⁷ A claimant must incur at least \$1000 in costs to file a test claim with the Commission or a reimbursement claim with the State Controller's Office (Gov. Code, § 17564, subd. (a)).

⁸ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in 2004) provides:

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

⁹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

¹⁰ *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

program if it orders or commands a local agency or school district to engage in an activity or task.¹¹

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.¹²

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.¹³ 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.¹⁴ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁵

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁶

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 6.¹⁷ 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.”¹⁸

¹¹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹² *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*).

¹³ *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.)

¹⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹⁶ *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.

¹⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁸ *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.

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

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

The test claim statute states that the local agency “shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a).”¹⁹ The offenses inquired after include assault with intent to commit specified sexual acts upon a child (Pen. Code, § 220), unlawful sexual intercourse with a person under 18 (Pen. Code, § 261.5), spousal rape (Pen. Code, § 262), willful harm or injury to a child (Pen. Code, § 273a), corporal punishment or injury of child (Pen. Code, § 273d), willful infliction of corporal injury (Pen. Code, § 273.5), sex offenses for which registration is required (Pen. Code, § 290) except the sexual battery offense in Penal Code 243.4, subdivision (d), or any felony or misdemeanor conviction within 10 years of the date of the employer’s request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10-year period.

The test claim statute also states that the local agency “shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for that person’s criminal background.”²⁰

Both of these activities are mandatory because the statutory language uses the word “shall.”²¹ “[The local agency] *shall* require each prospective employee or volunteer to complete an application ... [The local agency] *shall* screen ... any such prospective employee or volunteer...” [Emphasis added.] Therefore, the Commission finds that the test claim statute imposes state-mandated activities on local agencies to: (1) require prospective employees or volunteers to complete an application that inquires into their criminal histories, and (2) effect criminal background screenings, pursuant to Penal Code section 11105.3, for prospective employees or volunteers having supervisory or disciplinary authority over minors.

Subdivision (b)(2) of section 5164, which preceded the test claim statute, states that the local agency, when requesting DOJ records, “shall include the prospective employee’s or volunteer’s fingerprints, ... and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice.”²² Even though this provision was in preexisting law, the test claim statute amendment to subdivision (b)(1); which required local agencies to screen potential employees and volunteers, makes the (b)(2) screening procedures a requirement. Therefore, the screening procedure (except for taking fingerprints) in subdivision (b)(2) also imposes a state-mandated activity on local agencies.

Although the test claim statute requires the local agency to submit fingerprints to DOJ, the local agency is not required to take them. Subdivision (b)(2) of the test claim statute requires the local

¹⁹ Public Resources Code section 5164, subdivision (b)(1).

²⁰ *Ibid.*

²¹ Public Resources Code section 15 states, “‘Shall’ is mandatory and ‘may’ is permissive.”

²² Public Resources Code section 5164, subdivision (b)(2).

agency to submit the fingerprints, but states that they “may be taken by the local agency.” If the local agency takes the fingerprints, it may charge a fee not to exceed \$10, and other entities may charge more.²³ Since whether the local agency takes the fingerprints is permissive, and the prints may be taken by the local agency or another entity at the expense of the prospective employee or volunteer, the Commission finds that taking fingerprints is not a state-mandated activity and therefore, not subject to article XIII B, section 6.

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

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, it must constitute a “program,” defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.²⁴ Only one of these findings is necessary to trigger article XIII B, section 6.²⁵

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

Issue 2: Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before enacting the test claim legislation.²⁶ Each activity is discussed separately.

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

²³ Penal code section 13300, subdivision (e). As to other entities’ ability to charge more, see <<http://ag.ca.gov/fingerprints/publications/contact.htm>> [as of August 18, 2005].

²⁴ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

²⁵ *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

²⁶ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

Prior law prohibited a local agency from hiring an individual convicted of an offense specified in Penal Code section 11105.3 subdivision (h)(1) and (h)(3).²⁷ There was no previous requirement, however, for prospective employees or volunteers to complete an application that inquires after their criminal histories. Therefore, the Commission finds that requiring prospective employees or volunteers to complete an application that inquires after their criminal histories is a new program or higher level of service.

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

Any request for records under subdivision (a) shall include the applicant’s fingerprints, which may be taken by the requester, and any other data specified by the department [DOJ]. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged to a nonprofit organization. ...²⁸

As to the DOJ fee, the test claim statute states that no fee is required for a prospective volunteer.²⁹

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

Subdivision (b)(2) predates the test claim statute, so if the local agency elected to screen a prospective employee or volunteer, the local agency was required to comply with the procedure in (b)(2). As discussed above, however, enactment of the test claim statute made the screening mandatory for local agencies. Therefore, as a new requirement, the Commission finds that local agency screening of employees or volunteers for positions having supervisory or disciplinary authority over minors is a new program or higher level of service. The screening procedure outlined in Penal Code section 11105.3 and subdivision (b)(2) of the test claim statute requires forwarding to DOJ the following: (1) the prospective employee’s or volunteer’s fingerprints, (2) any other data specified by DOJ on a DOJ form, and (3) DOJ’s fingerprint processing fee³⁰ (except that no fee is required for a prospective volunteer).³¹

²⁷ The offenses are now listed in Public Resources Code section 5164 subdivision (a)(2).

²⁸ Penal Code section 11105.3, subdivision (b). The current DOJ fee is \$32. See <<http://www.ag.ca.gov/fingerprints/forms/fees.pdf>> as of October 3, 2005.

²⁹ Public Resources Code section 5164, subdivision (b)(2).

³⁰ Penal Code section 11105.3, subdivision (b).

³¹ Public Resources Code section 5164, subdivision (b)(2).

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

In order for the test claim statute’s activities to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the activities must impose increased costs mandated by the state.³² In addition, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines “costs mandated by the state” as follows:

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

In its test claim, claimant states that it “hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of \$3904.00. It is estimated that the City will incur a total cost of approximately \$32,000 to achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002).” Therefore, the claimant has shown costs sufficient to state a claim.³³

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

The test claim statute requires local agencies to:

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

³² *Kern High School Dist.*, *supra*, 30 Cal. 4th 727, 736; *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

³³ The claimant must incur a minimum of \$1000 to file a claim. Government Code section 17564, subdivision (a).

- For prospective employees only, paying DOJ's fingerprint processing fee³⁴ (no fee is required for a prospective volunteer).³⁵

Applications: Requiring local agencies to require each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a),³⁶ is a new state-mandated activity, and none of the exceptions in Government Code section 17556 to finding costs mandated by the state apply to it. In order to comply, local agencies must revise and print job applications that inquire as to the applicants' criminal history. This would be a one-time activity. Therefore, the Commission finds that this one-time activity imposes "costs mandated by the state" within the meaning of Government Code sections 17514.

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

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

[W]e look to the intent of the Legislature in enacting the law, being careful to give the statute's words their plain, commonsense meaning. If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.³⁷

Public Resources Code section 5164 states that the local agency "shall screen, pursuant to Section 11105.3 of the Penal Code, any ... prospective employee or volunteer" According to Penal Code section 11105.3, DOJ's fee for screening may be paid by "the employer, human resource agency, or applicant for the actual cost of processing the request."³⁸ The fee authority in 11105.3 is authority for a fingerprint-processing fee granted to DOJ.

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

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

³⁴ Penal Code section 11105.3, subdivision (b).

³⁵ Public Resources Code section 5164, subdivision (b)(2).

³⁶ These offenses were listed in former Penal Code section 11105.3 prior to Statutes 2004, chapter 184.

³⁷ *In re Jennings* (2004) 34 Cal. 4th 254, 263.

³⁸ Penal Code section 11105.3, subdivision (b), as amended by Statutes 1992, chapter 1227. Prior to this amendment, section 11105.3 stated that DOJ may charge a fee to be paid by "the requester."

for the background screening,³⁹ even though this original statute made the screening provision permissive (and prohibited hiring an employee or volunteer who had been convicted of specified crimes). However, neither the plain meaning of section 5164, nor section 11105.3 of the Penal Code support this stated legislative intention.

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

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

CONCLUSION

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

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). (Pub. Res. Code, § 5164, subd. (b)(1)). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants’ criminal history.
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to DOJ: (1) the prospective employee’s or volunteer’s fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ’s fingerprint processing fee (no fee is required for a prospective volunteer).⁴⁰ (Pub. Res. Code, § 5164, subs. (b)(1) & (b)(2)).

³⁹ Senate Committee on Appropriations, Analysis of Assembly Bill No. 1663, as amended August 18, 1993 (1993-1994 Reg. Sess.), page 1.

⁴⁰ Public Resources Code section 5164, subdivision (b)(2).

Commission on State Mandates

Original List Date: 2/19/2002
Last Updated: 6/8/2005
List Print Date: 11/14/2005
Claim Number: 01-TC-11
Issue: Local Recreational Areas: Background Screenings

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Elaine Paul
Casitas Municipal Water District
1055 Ventura Avenue
P.O. Box 37
Oak View, CA 93022

Tel: (805) 649-2251
Fax: (805) 649-3001

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 894059
Temecula, CA 92589

Tel: (951) 303-3034
Fax:

Mr. Nick Dedier
Division of Criminal Justice Information Services
Department of Justice (D-01)
4949 Broadway, Room G111
Sacramento, CA 95820

Tel: (916) 227-3857
Fax: (916) 737-2129

Ms. Jocelyn Smeltzer
Folsom Aquatic Center
1200 Riley Street
Folsom, CA 95630

Tel: (916) 351-3532
Fax: (916) 000-0000

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Tel: (858) 514-8605
Fax: (858) 514-8645

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Tel: (916) 939-7901
Fax: (916) 939-7801

Ms. Jesse McGuinn
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814

Tel: (916) 445-8913
Fax: (916) 327-0225

Ms. Pam Stone
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Tel: (916) 485-8102
Fax: (916) 485-0111

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

Tel: (916) 368-9244
Fax: (916) 368-5723

Mr. Harold Fujita
City of Los Angeles
Department of Recreation and Parks
1200 W 7th Street, #310
Los Angeles, CA 90017

Claimant
Tel: (213) 928-9222
Fax: (213) 928-9210

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Mr. Steve Hardman
City of Moreno Valley
City Attorney's Office
14177 Fredricks Street
Moreno Valley, CA 92552

Tel: (909) 413-3032
Fax: (909) 413-3034

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Tel: (916) 727-1350
Fax: (916) 727-1734

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Tel: (916) 323-5849
Fax: (916) 327-0832

Mr. Steve Smith
Steve Smith Enterprises, Inc.
4633 Whitney Avenue, Suite A
Sacramento, CA 95821

Tel: (916) 483-4231
Fax: (916) 483-1403

Mr. Robert Miller

California Association for Park & Recreation Insurance
6341 Auburn Boulevard, Suite A
Citrus Heights, CA 95621-5203

Tel: (916) 722-5550

Fax:

Mr. J. Bradley Burgess

Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

Tel: (916) 677-4233

Fax: (916) 677-2283

Mr. Joe Rombold

School Innovations & Advocacy
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Tel: (800) 487-9234

Fax: (888) 487-6441

Ms. Ginny Brummels

State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

Mr. Gerald Shelton

California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Tel: (916) 445-0541

Fax: (916) 327-8306

