STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

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March 13, 2014

Ms. Wendy Watanabe
County of Los Angeles, Auditor-Controller
500 West Temple Street, Room 525
Los Angeles, CA 90012

Mr. Ed Jewik
County of Los Angeles, Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of Hearing**
Sheriff Court-Security Services, 09-TC-02
Government Code Sections 69920 et al.
County of Los Angeles, Claimant

Dear Ms. Watanabe and Mr. Jewik:

The draft staff analysis and proposed statement of decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft staff analysis by **April 3, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see http://www.csm.ca.gov/dropbox.shtml on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, May 30, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about May 16, 2014. 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. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Eric Feller at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
Executive Director

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ITEM ___
TEST CLAIM
DRAFT STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5

Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13)

California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007

Sheriff Court-Security Services

09-TC-02

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Attached is the draft proposed statement of decision for this matter. This draft proposed statement of decision also functions as the draft staff analysis, as required by section 1183.07 of the Commission on State Mandates' (Commission's) regulations.

Overview

This test claim is filed on behalf of counties seeking reimbursement for the cost of retiree health benefits for sheriff employees who provide court security services to the trial courts.
The claimant alleges that, before 2009, these costs were funded by the state through the Trial Court Funding program. The claimant contends that in 2009, the state shifted the cost of retiree health benefits for these employees to the counties and that, pursuant to article XIII B, section 6(c) of the California Constitution, reimbursement is required for these costs. Article XIII B, section 6(c), was added to the California Constitution in 2004 to expand the definition of a new program or higher level of service as follows: "A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." The claimant estimates the costs of its retiree health benefits at $4,813,476 for 2009-2010, and $4,890,183 for 2010-2011.[1]

[1] Claimant also includes cost estimates from the counties of Sacramento, Santa Clara, and Kern. Sacramento County estimated costs of $192,517 for 2009-2010, and $160,892 for 2010-2011.

A. History of trial court funding and sheriff court security.

Since at least 1883, counties have been responsible for providing law enforcement security to the trial courts.[2] Before the Trial Court Funding Act, counties had primary responsibility for funding the operation of trial courts, including expenses related to all non-judicial court personnel, and all operational and facilities costs of the superior, municipal, and justice courts.

In 1988, the Brown-Presley Trial Court Funding Act (Stats. 1988, ch. 945) was enacted as a grant program that provided significant state funding for trial courts. Beginning in 1989, counties were authorized to opt into the trial court funding program, and those that did, received state block grants and waived their claims for mandate reimbursement for existing mandates related to trial court operations. The block grants were available to pay for "*court operations*," defined in Government Code section 77003 to include the "salary, benefits, and public agency retirement contributions" for "those marshals and sheriffs as the court deems necessary for court operations." In exchange for the block grant funding, trial courts gave up their fees, fines and penalty revenue. If a county did not opt into the program, "court operations" remained a county cost. By 1989, all counties opted into the Brown-Presley Trial Court Funding Act.

The Judicial Council adopted Rule 810 of the California Rules of Court in 1988 to implement the Brown-Presley Trial Court Funding Act, and to further define "court operations" as provided in Government Code section 77003. In 1995, Rule 810 was amended to its present-day form. Effective January 1, 2007, Rule 810 was renumbered to Rule 10.810 and amended without substantive change. The rule defines "court operations" to include "the salaries and benefits for those sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts and the supervisors of those sheriff, marshal, and constable employees who directly supervise the court security function." Function 8 of the rule further states that court security services deemed necessary by the court "includes only the duties of (a) courtroom bailiff (b) perimeter security (i.e., outside the courtroom but inside the court facility), and (c) at least .25 FTE dedicated supervisors of these activities." The allowable costs included in the state block grant included the "salary, wages, and benefits" of sheriff employees and their supervisors.

In 1997, the Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850) removed the local "opt-in" provisions for trial court funding and transferred principal funding responsibility for trial court operations to the state beginning in fiscal year 1997-1998, freezing county contributions at fiscal year 1994-1995 levels. To implement the Act, Government Code section 68073(a) was amended to state that "Commencing July 1, 1997, and each year thereafter, no county or city and county shall be responsible to provide funding for 'court operations' as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996." In addition, sections 77200 and 77201 were added to the Government Code to provide the following:

Kern County estimated costs of $69,463 for both 2009-2010, and 2010-2011. Santa Clara County estimated costs of $455,915 for 2009-2010, and $582,768 for 2010-2011.

[2] See Government Code section 69922, derived from former Political Code, sections 4176 and 4157 (Stats. 1883, ch. 75).

- Beginning July 1, 1997, the state shall assume sole responsibility for the funding of court operations as defined in section 77003 and Rule 810 as it read on July 1, 1996, and allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council.
- In the 1997-1998 fiscal year, each county shall remit to the state in four equal installments, amounts identified and expended by the court for court operations during the 1994-1995 fiscal year. This payment is known as the maintenance of effort (MOE) payment.
- Except as specifically allowed for adjustments (i.e., if a county incorrectly or failed to report county costs as court operations in the 1994-1995 fiscal year), county remittances shall not be increased in subsequent years.

Beginning in fiscal year 1999-2000, the state provided counties additional relief by reducing their MOE payments for court operations pursuant to Government Code section 77201.1.

In 2002, the Legislature enacted the Superior Court Law Enforcement Act of 2002 (Stats. 2002, ch. 1010, SB 1396; adding Gov. Code §§ 69920, et seq.), which was sponsored by the Judicial Council and the California State Sheriffs Association to clarify the court operations and security costs paid by the state through the concept of a "contract law enforcement template." The 2002 Act further provides that the template *replaces* the definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court for sheriff court security costs. Government Code section 69927(a)(5) then defines the allowable costs for security personnel services to be included in the template and, for the first time, identifies examples of allowable benefits as follows:

> "Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, *including, but not limited to*, county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, worker's compensation paid to an employee in lieu of salary, worker's compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

In addition, the 2002 Act required the Judicial Council to adopt a rule establishing a working group on court security. The working group is required to recommend modifications to the template used to determine which security costs may be submitted by the courts to the Administrative Office of the Courts (AOC) pursuant to the 2002 Act.

The 2002 Act also enacted Government Code sections 69926 and 69927 to require the superior court and the sheriff or marshal's department to enter into an annual or multi-year memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment. By April 30 of each year, the sheriff or marshal is required to provide information as identified in the contract law enforcement template to the superior court in that county specifying the nature, extent, and basis of costs, including negotiated and projected salary increases for the following budget year. Actual court security allocations shall be subject to the approval of the Judicial Council and the funding provided by the Legislature. The AOC is required to use the actual salary and benefit costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance. Any new security cost categories identified by the sheriff or marshal that are not identified in the template "shall not be operative unless the funding is provided by the Legislature."[3]

The Judicial Council adopted the contract law enforcement template, effective May 1, 2003. Allowable benefits payable by the state under the 2002 Act are listed in section III of the template as follows:

> BENEFIT: This is the list of the allowable employer-paid labor-related employee benefits.
>
> County Health & Welfare (Benefit Plans)
>
> County Incentive Payments (PIP)
>
> Deferred Compensation Plan Costs
>
> FICA/Medicare
>
> General Liability Premium Costs
>
> Leave Balance Payout
>
> Premium Pay (such as POST pay, location pay, Bi-lingual pay, training officer pay)
>
> Retirement
>
> State Disability Insurance (SDI)
>
> Unemployment Insurance Cost
>
> Workers Comp Paid to Employee in lieu of salary
>
> Workers Comp Premiums

Section II of the template contains the list of 23 non-allowable costs. Retiree health benefits are not specifically identified in Section II as a non-allowable cost.

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[3] Exhibit --, Trial Court Financial Policies and Procedures (FIN 14.01, 6.2 Allowable Costs) adopted by the Judicial Council effective September 1, 2010, states the procedure as follows: "The court is responsible only for allowable cost categories that were properly billed before the enactment of the Superior Court Law Enforcement Act of 2002. The sheriff may not bill the court for any new allowable cost categories listed herein until the court has agreed to the new cost and new funding has been allocated to the court for this purpose."

B. The 2009 test claim statute excludes retiree health benefits from the sheriff court security costs payable by the state.

The 2009 test claim statute (Stats. 2009-2010, 4th Ex. Sess, ch. 22), in amending Government Code sections 69926(b), specified allowable benefit costs for court security personnel and expressly *excluded* retiree health benefits from costs of services payable by the state. It also defined retiree health benefits that are now excluded to include, but not be limited to, the current costs of future retiree health benefits for either currently employed or already retired personnel.

The 2009 statute also amended Government Code section 69927(a)(6)(A) as follows: "(A) The Administrative Office of the Courts shall use the ~~actual~~ average salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

Procedural History

Claimant filed the test claim on June 30, 2010.[4] The Judicial Council filed comments on August 16, 2010, arguing that the claim should be denied on several grounds.[5] The Department of Finance filed comments on August 17, 2010, contending that the test claim should be denied because the state was not responsible for the retiree health benefits before the enactment of the 2009 test claim statute.[6] The claimant filed rebuttal comments on September 15, 2010.[7]

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim. The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.[8]

Claims

The following chart provides a brief summary of the issues raised and staff's recommendation.

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[4] Exhibit A.

[5] Exhibit B.

[6] Exhibit C.

[7] Exhibit D.

[8] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

Subject	Description	Staff Recommendation
Government Code sections 69920, 69921, 69921.5, 69922, 69925, 69927 (Stats. 2002, ch. 1010, eff. Jan. 1, 2003), Government Code section 77212.5 (Stats. 1998, ch. 764, eff. Jan. 1, 1999), and the California Rules of Court, Rule 10.810(a), (b), (c), (d), and Function 8 (Court Security).	These statutes and Rule of Court contained old rules governing the allowable costs paid by the state for sheriff court security services under the 1997 Lockyer-Isenberg Trial Court Funding Act and the 2002 Superior Court Law Enforcement Act.	*Deny*. The test claim was filed beyond the statute of limitations for these code sections and Rule and, thus, the Commission does not have jurisdiction. In addition, a Rule of Court is not subject to article XIII B, section 6.
Government Code section 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22.	As amended, section 69927 states the following: "The Administrative Office of the Courts shall use the ~~actual~~ *average* salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."	*Deny*. Government Code section 69927, as amended in 2009, does not result in a reimbursable state-mandated program. This section requires the AOC to act, but does not impose any required duties or costs on counties.
Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22.	This statute excludes retiree health benefits from the cost of sheriff court security services provided to the trial courts. The Legislature added the following language to the statute: "In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. *For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any*	*Partial Approve*. Section 69926(b), as amended in 2009, imposes a new program or higher level of service within the meaning of article XIII B, section 6(c), and costs mandated by the state, and therefore constitutes a reimbursable state-mandated program for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003, and only for existing employees *hired before July 28, 2009*, to provide sheriff

	costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel. (Emphasis added.)"	court security services in criminal and delinquency matters, who have a vested right to such benefits: • Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and • Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922. In addition, revenue received by a county eligible to claim reimbursement in fiscal year 2011-2012 for this program from the 2011 Public Safety Realignment Act (Gov. Code, §§ 30025, 30027) shall be identified and deducted as offsetting revenue from any claim for reimbursement.

Analysis

A. The Commission does not have jurisdiction over the 1998 and 2002 statutes or the California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security).

Government Code section 17551(c) requires that: "Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Section 1183 of the Commission's regulations defines the phrase "within 12 months" of incurring costs to mean "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."

This test claim was timely filed with respect to the enactment of Statutes 2009-2010, 4th Ex. Session, chapter 22 (SB 13). However, the test claim was filed well beyond 12 months following the effective dates of the Statutes 1998, chapter 764 (AB 92), which amended Government Code section 77212.5 (eff. Jan. 1, 1999); Statutes 2002, chapter 1010 (SB 1396), which added and amended Government Code sections 69920, 69921, 69921.5, 69922, 69925, and 69927 (eff. Jan. 1, 2003); and, the effective date of Rule 10.810, as added in 1988 and last amended in 1997. In addition, there is no evidence in the record to support a finding that the claimant first incurred increased costs as a result of the 1998 and 2002 statutes, or the Rules of Court as last amended in 1997, later than the 12-month period after these laws became effective. Moreover, Rules of Court are not subject to the reimbursement requirement of article XIII B, section 6. Rules of Court are adopted by the Judicial Council, an agency within the judicial branch, and establish procedures and rules for the courts.[9] Article XIII B, section 6, however, applies to mandates imposed by "the Legislature or any state agency" and does not extend to requirements imposed by the judicial branch of government.

Accordingly, the Commission does not have jurisdiction over Government Code sections 69920, 69921, 69921.5, 69922, 69925, 69927 (Stats. 2002, ch. 1010, eff. Jan. 1, 2003), Government Code section 77212.5 (Stats. 1998, ch. 764, eff. Jan. 1, 1999), and the California Rules of Court, Rule 10.810(a), (b), (c), (d), and Function 8 (Court Security).

B. Government Code section 69927, as amended in 2009, does not result in a reimbursable state-mandated program.

The 2009 test claim statute amended Government Code section 69927(a)(6)(A) to provide that the AOC shall use average costs, rather than actual costs, when determining the funding request for the trial courts to be presented to the Department of Finance. That section states the following: "The Administrative Office of the Courts shall use the ~~actual~~ *average* salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

This section requires the AOC to act, but does not impose any required duties or costs on counties. Thus, the Commission finds that Government Code section 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22, does not impose a reimbursable state-mandated program on counties.

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[9] California Constitution, article VI, section 6. See also Government Code section 68500 *et seq.*

C. Government Code section 69926(b), as amended in 2009, imposes a partial new program or higher level of service on counties within the meaning of article XIII B, section 6(c).

The remaining issue in this case is whether the 2009 amendment to Government Code section 69926(b), which excluded retiree health benefits from the state funding for sheriff court security services mandates a new program or higher level of service within the meaning of article XIII B, section 6(c).

1. <u>The 2004 amendment to article XIII B, section 6.</u>

In 2004, Proposition 1A added subdivision (c) to article XIII B, section 6. Article XIII B, section 6(c) defines a mandated new program or higher level of service to include "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." In its summary of the proposition, the Legislative Analyst's Office (LAO) stated the following:

> The measure also appears to expand the circumstances under which the state would be responsible for reimbursing cities, counties, and special districts for carrying out new state requirements. Specifically, the measure defines as a mandate state actions that transfer to local government financial responsibility for a required program for which the state previously had complete or partial financial responsibility. Under current law, some such transfers of financial responsibilities may not be considered a state mandate.[10]

As indicated by LAO, some transfers of financial responsibility from the state to local government before the adoption of Proposition 1A were determined by the courts to require reimbursement only when the state had borne the entire cost of the program at the time article XIII B, section 6 was adopted in 1979 and retained administrative control over the program before and after the test claim statute. Reimbursement was denied where the state was only partially responsible for the cost of a jointly funded program under prior law and the state later shifted additional costs to local government.

The plain language of section 6(c), however, expands the definition of a "new program or higher level of service" to include shifts in funding for *existing programs* that are funded jointly by the state and local agencies. A mandated new program or higher level of service includes transfers by the Legislature from the state to the local agencies "complete *or* partial financial responsibility for a required program for which the State *previously* had complete *or* partial financial responsibility."

In addition, to determine if the transfer of costs is new or increases the level of service of an existing program, section 6(c) directs the Commission to look at whether the state "previously" had any financial responsibility for the program. Recent decisions by the courts have compared the test claim statute with the law in effect *immediately before* the enactment of the test claim statute to determine if a mandated cost is new or increases the level of service in an existing

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[10] Exhibit --, LAO summary of Proposition 1A, August 2004.

program.[11] Thus, a test claim statute shifting the financial responsibility of a program from the state to the local agencies must be compared to the law in effect immediately before the enactment of the test claim statute to determine if the shift or transfer of costs constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c).

2. The 2009 amendment to Government Code section 69926(b) imposes a new program or higher level of service within the meaning of article XIII B, section 6(c).

The 2009 statute added the following underlined language to section 69926(b):

> The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, costs of services, and terms of payment. <u>The cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay. *In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel*. (Emphasis added.)</u>

Section 69926 as amended by the test claim statute, however, remained in the law only until June 27, 2012, when Government Code section 69926 was repealed to implement the statutory realignment of superior court security funding (Stats. 2011, ch. 40), in which the Trial Court Security Account was established to fund court security. Thus, the issue whether the 2009 amendment to Government Code section 69926(b) imposes a new program or higher level of service is relevant only to a potential period of reimbursement from July 28, 2009 to June 27, 2012.

State law, since 1883, has required the county sheriff to provide court security services to the courts in criminal and delinquency matters.[12] There is no dispute that providing court security services for criminal and delinquency actions of the court is a "required program" within the meaning of article XIII B, section 6(c), that is imposed uniquely on counties by the state and

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[11] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

[12] Government Code section 69922. That statute also requires the county sheriff to attend *noncriminal* actions *if* the presiding judge makes the determination that the attendance of the sheriff at that action is necessary for reasons of public safety. Providing security services for noncriminal actions at the request of the presiding judge is not a requirement imposed by the state and, thus, not subject to the reimbursement requirements of article XIII B, section 6. Appropriations required to comply with mandates of the courts are not eligible for reimbursement under article XIII B, section 6. (Cal. Const., art. XIII B, § 9.)

provides a service to protect the safety of the public. Furthermore, the program, both before and after the enactment of the 2009 test claim statute, is partially funded by the state. Government Code sections 77300, 77201, and 77201.1 require the state to assume sole responsibility for the funding of court operations, defined to include sheriff court security services, beginning in fiscal year 1997-1998, and further require specified counties to remit maintenance of effort payments to the state each year for the amounts identified and expended by the court for court operations during the 1994-1995 fiscal year.

The parties dispute, however, whether the 2009 amendment to Government Code section 69926(b), which excluded retiree health benefits from the state funding for sheriff court security services, constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c), or simply clarifies existing law.

The Judicial Council contends that under prior law (the 2002 Law Enforcement Act and the contract law enforcement template), retiree health benefits were not included in the list of allowable employer paid labor-related employee benefits and, therefore, those costs were not funded by the state before the enactment of the 2009 test claim statute.

Although the contract law enforcement template does not expressly list retiree health benefit costs as an allowable cost for county employees, it does identify "County Health & Welfare (Benefit Plans)," a broadly worded phrase, as an allowable cost. In addition, retiree health benefit costs are *not* identified in the template's list of *non*-allowable costs. Thus, the plain language of the template is not as clear as the Judicial Council suggests.

Staff finds that under the law immediately preceding the 2009 test claim statute, the cost of retiree health care benefits for sheriff employees providing court security services in criminal and delinquency matters was an allowable cost paid by the state, as long as the cost was included in the county's cost for court operations and properly billed to the state under the trial court funding program before January 1, 2003. This conclusion is based on the following findings:

- The allowable benefit in the contract law enforcement template for "County Health and Welfare (Benefit Plans)" is broad and has meaning under existing law. When the Legislature directed the Judicial Council to establish the working group to develop the template in light of its definition of allowable costs for security personnel services, there existed in law a comprehensive statutory scheme enacted in 1963 (Gov. Code, §§ 53200, et seq.) authorizing local agencies, including counties, to provide health and welfare benefits to their employees, including benefits for retiree health care. Government Code section 53200(d) defines "health and welfare benefit" to mean any one of the following: "hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance or benefits, whether provided on an insurance or service basis, and includes group life insurance as defined in subdivision (b) of this section." Section 53201 then authorizes the legislative body of the local agency to provide for any health and welfare benefits, as defined in section 53200, for the benefit of its retired employees. Sections 53202.1 and 53205.2 also provide that the local agency may approve several insurance policies, including one for health, and that when granting the approval of a health benefit plan, the governing board "*shall give preference to such health benefit plans as do not terminate* *upon retirement of the employees affected* . . . ." It is presumed that the Legislature was aware of the counties' broad authority to provide health and welfare benefits to employees when it enacted the 2002 Superior Court Law Enforcement Act and defined allowable "salary and benefit" costs for security personnel services to include "county health and welfare" benefits.

- The record filed by the Judicial Council with its comments supports the finding that the cost of retiree health care benefits for sheriff employees providing court security services in criminal and delinquency matters was an allowable cost paid by the state under prior law.[13] Exhibit 12 to the Judicial Council's comments, is a memorandum of responses prepared by the AOC and the California State Sheriffs Association (dated July 10, 2003, *after* the template became effective in May 2003), to court security questions submitted at the "SB 1396" (2002 Superior Court Law Enforcement Act) training sessions. On page 4 of the document is the following question presented by attendees: "Is the payment of premiums for lifetime health benefits in retirement an allowable cost?" The answer provided states the following: "Yes. Payment of retirement benefits, such as health insurance should be locally negotiated."

  Exhibit 15 is a letter from the Executive Clerk for the Superior Court for the County of Los Angeles to the Director of the AOC, dated January 10, 2007, with documents attached to the letter showing that the county included retiree health costs for deputies and sergeants, at a rate of 2.780 percent, in fiscal year 1994-1995 (the base year for determining the county's maintenance of effort payment for trial court funding) in its maintenance of effort payments to the state. The letter took the position that each court should be allocated funding for retiree health benefits if the costs were paid by the court in the past.

  Exhibit 16 is the response from the Director of the AOC, agreeing that payment of retirement health insurance costs for sheriff security personnel is "authorized to extent the expenditures were included in the Counties Maintenance of Effort (MOE) payment (which was established after the state assumed responsibility for state funding on January 1, 1998), if the court has paid these costs since that time, and if no new method of cost calculation has been adopted which would have the effect of expanding financial liability." Thus, the Director of the AOC agreed that the County of Los Angeles properly billed the court for retiree health benefits for sheriff deputies providing security services before the enactment of the Superior Court Law Enforcement Act of 2002 pursuant to Government Code section 69927(a).

  And finally, Exhibit 17 is a staff analysis from the AOC to the Judicial Council, dated October 8, 2008, recognizing five counties that historically included retiree health costs for sheriff court security in the maintenance of effort contracts as follows: "Court security retiree health costs of $4.98 million have historically been included in maintenance of effort (MOE) contracts for five courts since the passage of state trial court

[13] Exhibit B.

funding. These five courts have been billed for these costs by the sheriff and have paid for them."

Staff further finds that Government Code section 69927(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, excludes retiree health benefit costs from the costs payable by the state for the required sheriff court security program, transferring those costs to counties as specified in the analysis. Thus, section 69927(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

Furthermore, as analyzed in the proposed statement of decision, current health benefit premiums paid to retirees or their beneficiaries after retirement on a pay-as-you-go basis have not been transferred by the state and do *not* constitute a new program or higher level of service for counties.

D. The 2009 amendment to Government Code section 69926(b) imposes costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

The Judicial Council argues that there is no state law requiring the county to pay retiree health benefits to sheriff deputies since the benefit is subject to local collective bargaining agreements. Thus, it argues that any transfer of costs is triggered by a discretionary decision of the county and is not mandated by the state. It is correct that the state does not require counties to provide retiree health care benefits to employees. Counties are authorized by Government Code sections 53200 et seq., to provide those benefits and a county, like other local agencies, is required by the Meyers-Milias-Brown Act (MMBA) to negotiate those benefits with employee groups through the collective bargaining process. (Gov. Code, §§ 3500-3510.)

Staff finds that the state, with the enactment of the 2009 test claim statute, has not mandated counties to incur costs for retiree health benefits for *new employees* performing sheriff court security services in criminal and delinquency matters that are *hired after* the effective and operative date of the test claim statute (July 28, 2009). After that date, counties are on notice that retiree health benefits will no longer be covered by the trial court funding program and can negotiate contracts for new employees providing those services to exclude the provision of retiree health benefits.

Counties continue to have the authority to provide retiree health benefits to new employees pursuant to Government Code section 53200 et seq., but are not required by state law to do so. Moreover, there is no evidence in the record that a county is practically compelled to provide retiree health benefits to new employees hired after July 28, 2009, to perform the required program. Such a showing requires concrete evidence in the record showing that a county has no alternative, but is forced to hire new employees to provide sheriff court security services in criminal and delinquency matters in order to comply with their contracts with the court, and forced to offer retiree health benefits as part of the compensation package to obtain qualified employees. Without concrete evidence in the record, the Commission cannot make such a finding based on instinct alone.[14]

However, the test claim statute imposes costs mandated by the state for the payment of retiree health benefits to employees hired *before* July 28, 2009, to provide sheriff court security services in criminal and delinquency matters, who have a vested right to such benefits. Vested rights, once acquired by an express or implied contract, extend beyond the expiration of an MOU and a county has no discretion to later unilaterally change or impair vested rights of existing employees. Such an action is barred by the contracts clause of the United States and California Constitutions.[15] Thus, when the test claim statute was enacted in 2009 to exclude and shift the costs of retiree health benefits from the state to the counties for existing sheriff employees providing security services for criminal and delinquency matters, a county that provided vested retiree health benefits to sheriff employees could not legally stop honoring those vested rights. Under these circumstances, a county has no choice or discretion but to continue incurring retiree health benefit costs for these existing employees.

For fiscal year 2011-2012, however, offsetting revenue in the form of realignment funds (2011 Public Safety Realignment Act, Gov. Code, §§ 30025, 30027) have been appropriated by the state to counties for sheriff court security services, which, if applied to pre-fund retiree health benefits of existing employees providing these services, reduces any costs incurred under this mandated program. Thus, to the extent this funding has been used by the county to pre-fund the costs of retiree health benefits of existing employees providing sheriff court security services, the funding shall be identified and deducted from any costs claimed for this mandated program.

Conclusion

Staff finds that Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003, and only for existing employees *hired before July 28, 2009,* to provide sheriff

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[14] *Department of Finance, supra,* 170 Cal.App.4th 1355, 1369, concurring opinion by Presiding Justice Scotland.

[15] California Constitution, article 1, section 9; U.S. Constitution, article I, section 10; *International Brotherhood v. City of Redding* (2013) 210 Cal.App.4th 1114, 1119, citing *Litton Fin. Printing Div. v. NLRB* (1991) 501 U.S. 190, 207.

court security services in criminal and delinquency matters, who have a vested right to such benefits:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

In addition, revenue received by a county eligible to claim reimbursement in fiscal year 2011-2012 for this program from the 2011 Public Safety Realignment Act (Gov. Code, §§ 30025, 30027) shall be identified and deducted as offsetting revenue from any claim for reimbursement.

All other statutes, rules, code sections, and allegations pled in this claim are denied.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to partially approve the test claim. Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the statement of decision following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	Case No.: 09-TC-02
Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5 Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13) California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007. Filed on June 30, 2010, by County of Los Angeles, Claimant	*Sheriff Court-Security Services* 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: May 30, 2014*)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 30, 2014. [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 sections 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

This test claim is filed on behalf of counties seeking reimbursement for the cost of retiree health benefits for sheriff employees who provide court security services to the trial courts.
Before 2009, the claimant alleges that these costs were funded by the state through the Trial Court Funding program. The claimant contends that in 2009, the state shifted the cost of retiree health benefits for these employees to the counties and that, pursuant to article XIII B, section 6(c) of the California Constitution, reimbursement is required for these costs. Article XIII B, section 6(c), was added to the California Constitution in 2004 to expand the definition of a new program or higher level of service as follows: "A mandated new program or higher level of

service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." The claimant has pled statutes enacted in 1998, 2002, and 2009, and California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8, as added in 1988 and last amended in 2007. Both the Department of Finance (Finance) and Judicial Council of California (Judicial Council) dispute this claim.

The Commission concludes that Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003, and only for existing employees *hired before July 28, 2009,* to provide sheriff court security services in criminal and delinquency matters, who have a vested right to such benefits:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

In addition, revenue received by a county eligible to claim reimbursement in fiscal year 2011-2012 for this program from the 2011 Public Safety Realignment Act (Gov. Code, §§ 30025, 30027) shall be identified and deducted as offsetting revenue from any claim for reimbursement.

All other statutes, rules, code sections, and allegations pled in this claim are denied.

COMMISSION FINDINGS

I. Chronology

06/30/10	Claimant County of Los Angeles filed the *Sheriff Court-Security Services* test claim, 09-TC-02 with the Commission. [16]
08/16/10	Judicial Council filed comments on the test claim.[17]
08/17/10	Finance filed comments on the test claim.[18]
09/15/10	Claimant County of Los Angeles filed rebuttal comments.[19]

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[16] Exhibit A.

[17] Exhibit B.

[18] Exhibit C.

[19] Exhibit D.

II. Background

This test claim is filed on behalf of counties seeking reimbursement for the cost of retiree health benefits for sheriff employees who provide court security services to the trial courts. The claimant contends that the state shifted the cost of retiree health benefits for these employees to the counties in 2009 and that, pursuant to article XIII B, section 6(c) of the California Constitution and the *Lucia Mar Unified School District* case, reimbursement is required.[20]

Since at least 1883, counties have been responsible for providing law enforcement security to the trial courts.[21] In 1947, Government Code section 26603 was added by the Legislature to require the sheriff to "attend all superior courts held within his county and obey all lawful orders and directions of all courts held within his county."[22] As last amended in 1982, section 26603 stated the following:

> Except as otherwise provided by law, whenever required, the sheriff shall attend all superior courts held within his county provided, however, that a sheriff shall attend a civil action only if the presiding judge or his designee makes a determination that the attendance of the sheriff at such action is necessary for reasons of public safety. The sheriff shall obey all lawful orders and directions of all courts held within his county.[23]

Before the Trial Court Funding Act, counties had primary responsibility for funding the operation of trial courts, including expenses related to all non-judicial court personnel, and all operational and facilities costs of the superior, municipal, and justice courts. The state paid the salaries of superior court judges and retirement benefits of superior and municipal court judges, and funded the appellate courts, the Judicial Council, and the Administrative Office of the Courts (AOC). The arrangement was later found to result in disparate funding among California's 58 counties, leading to potential disparities in the quality of justice across the state.[24]

In 1985, the first Trial Court Funding Act (Stats. 1985, ch. 1607) was enacted as a grant program that provided block grants to counties based on a formula of reimbursement for statutorily authorized judicial positions.[25] If a county opted into the program, it waived claims for

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[20] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830.

[21] See former Political Code, sections 4176 and 4157 (Stats. 1941, ch. 1110, Stats. 1923, ch. 108, Stats. 1897, ch. 277, Stats. 1893, ch. 234, Stats. 1891, ch. 216 and Stats. 1883, ch. 75).

[22] Former Government Code section 26603 (Stats. 1947, ch. 424).

[23] Statutes 2002, chapter 1010 (the Superior Court Law Enforcement Act of 2002, SB 1396) repealed section 26603 and recast the same requirements in Government Code section 69922.

[24] Claudia Ortega "The Long Journey to State Funding" California Courts Review, Winter 2009, page 7. (Exhibit --.) See also the legislative findings in Government Code section 77100(c), Statutes 1985, chapter 1607, reenacted in Statutes 1988, chapter 945.

[25] Exhibit --, Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) page 11.

reimbursement under article XIII B, section 6 for any state-mandated local program.[26] However, no funds were appropriated to implement the 1985 Act.[27]

In 1988, the Brown-Presley Trial Court Funding Act (Stats. 1988, ch. 945) was enacted as a grant program that provided significant state funding for trial courts. Beginning in 1989, counties were authorized to opt into the trial court funding program,[28] and those that did, received state block grants and waived their claims for mandate reimbursement for existing mandates related to trial court operations.[29] The block grants were available to pay for "*court operations*," defined in Government Code section 77003 to include the "salary, benefits, and public agency retirement contributions" for "those marshals and sheriffs as the court deems necessary for court operations." In exchange for the block grant funding, trial courts gave up their fees, fines and penalty revenue. If a county did not opt into the program, "court operations" remained a county cost. By 1989, all counties opted into the Brown-Presley Trial Court Funding Act.[30]

The Judicial Council adopted Rule 810 of the California Rules of Court in 1988 to implement the Brown-Presley Trial Court Funding Act, and to further define "court operations" as provided in Government Code section 77003. In 1995, Rule 810 was amended to its present-day form. Effective January 1, 2007, Rule 810 was renumbered to Rule 10.810 and amended without substantive change.[31] The rule defines "court operations" to include "the salaries and benefits for those sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts and the supervisors of those sheriff, marshal, and constable employees who directly supervise the court security function."[32] Function 8 of the rule further states that court security services deemed necessary by the court "includes only the duties of (a) courtroom bailiff (b) perimeter security (i.e., outside the courtroom but inside the court facility), and (c) at least .25 FTE dedicated supervisors of these activities." The allowable costs included in the state block grant are described in Function 8 of the rule as follows:

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[26] Former Government Code sections 77203.5 and 77005 (Stats. 1985, ch. 1607) stated: "The initial decision by a county to opt into the system pursuant to section 77300 shall constitute a waiver of all claims of reimbursement for state-mandated local programs not theretofore approved by. . . .the Commission on State Mandates."

[27] Exhibit --, Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) page 11.

[28] Former Government Code section 77004 defined "option county" as, "a county which has adopted the provisions of this chapter for the current fiscal year."

[29] Former Government Code sections 77203.5 and 77005 (Stats. 1988, ch. 945).

[30] Exhibit --, Claudia Ortega "The Long Journey to State Funding" California Courts Review, Winter 2009, page 9.

[31] The 2007 amendment changed one internal citation in function 11, pertaining to county general services ("indirect costs.")

[32] California Rules of Court, Rule 10.810(a)(3).

- Salary, wages, and benefits (including overtime) of sheriff, marshal, and constable employees who perform the court's security, i.e., bailiffs, weapons-screening personnel;
- Salary, wages, and benefits of supervisors of sheriff, marshal, and constable employees whose duties are greater than .25 FTE dedicated to this function;
- Sheriff, marshal, and constable employee training.

Costs *not* included in the state funding include the following: other sheriff, marshal, or constable employees; court attendant training (Function 10)[33]; overhead costs attributable to the operation of the sheriff and marshal offices; costs associated with the transportation and housing of detainees from the jail to the courthouse; service of process in civil cases; services and supplies, including data processing, not specified above as allowable; and supervisors of bailiffs and perimeter security personnel of the sheriff, marshal, or constable office who supervise these duties *less than* .25 FTE time.

In 1991, the Trial Court Realignment and Efficiency Act (Stats. 1991, ch. 90) increased state funding for trial courts and streamlined court administration through trial court coordination and financial information reporting.[34] The state block grants, however, were not enough to cover all trial court costs.[35] By 1997, counties bore about 60 percent of trial court costs for court operations, as specified, and the state grants bore the remaining 40 percent.[36]

In 1997, the Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850) removed the local "opt-in" provisions for trial court funding and transferred principal funding responsibility for trial court operations to the state beginning in fiscal year 1997-1998, freezing county contributions at fiscal year 1994-1995 levels.[37] The Legislature declared its intent in section 3 of the 1997 Act to do the following:

- Provide state responsibility for funding trial court operations beginning in fiscal year 1997-1998.

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[33] A "court attendant" is a non-armed, non-law enforcement employee of the court who performs those functions specified by the court, except those functions that may only be performed by armed and sworn personnel. A court attendant is not a peace officer or public safety officer. (Gov. Code, § 69921.) The court may use a court attendant in courtrooms hearing noncriminal and non-delinquency actions. (Gov. Code, § 69922.)

[34] Exhibit --, udicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) page 11.

[35] Exhibit --, Claudia Ortega "The Long Journey to State Funding" California Courts Review, Winter 2009, page 7.

[36] Exhibit --, Assembly Committee on the Judiciary, Analysis of Assembly Bill 233 (1997-1998 Reg. Sess.), as amended March 10, 1997, page 1.

[37] Statutes 1997, chapter 850, section 3.

- Provide that county contributions to trial court operations shall be permanently capped at the same dollar amount as that county provided to court operations in the 1994-1995 fiscal year, with adjustments to the cap, as specified.
- Provide that the state shall assume full responsibility for any growth in costs of trial court operations thereafter.
- Provide that the obligation of counties to contribute to trial court costs shall not be increased in any fashion by state budget action relating to the trial courts.
- Return to counties the revenue generated from fines and forfeitures pursuant to the Government, Vehicle, and Penal Codes to allow counties the opportunity to obtain sufficient revenue to meet their obligation to the state.

The Legislature further declared its intent to continue to define "court operations" as the phrase was then defined on July 1, 1996, by Government Code section 77003 and Rule 810 (defined to include the salaries, wages, and benefits for sheriff personnel providing courtroom bailiff and perimeter security services, and their dedicated supervisors, and employee training) recognizing, however, that issues remained regarding which items of expenditure are properly included in the definition of court operations. The Legislature stated its intent "to reexamine this issue during the 1997-98 fiscal year, in the hopes of reflecting any agreed upon changes in subsequent legislation."[38]

To implement the 1997 Trial Court Funding Act, Government Code section 68073(a) was amended to state that "Commencing July 1, 1997, and each year thereafter, no county or city and county shall be responsible to provide funding for 'court operations' as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996."[39] In addition, sections 77200 and 77201 were added to the Government Code to provide the following:

- Beginning July 1, 1997, the state shall assume sole responsibility for the funding of court operations as defined in section 77003 and Rule 810 as it read on July 1, 1996, and allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council.
- In the 1997-1998 fiscal year, each county shall remit to the state in four equal installments, amounts identified and expended by the court for court operations during the 1994-1995 fiscal year. This payment is known as the maintenance of effort (MOE) payment.
- Except as specifically allowed for adjustments (i.e., if a county incorrectly or failed to report county costs as court operations in the 1994-1995 fiscal year), county remittances shall not be increased in subsequent years.

[38] Statutes 1997, chapter 850, section 3(d).

[39] In 2002, section 68073 was renumbered to section 70311. Section 70311(a) currently states the following: "Commencing July 1, 1997, and each year thereafter, no county or city and county is responsible to provide funding for "court operations," as defined in Section 77003 and Rule 10.810 of the California Rules of Court, as it read on January 1, 2007."

Beginning in fiscal year 1999-2000, the state provided counties additional relief by reducing their MOE payments for court operations pursuant to Government Code section 77201.1.[40] As a result, only 20 of the largest counties were required to make MOE payments for court operations at a reduced rate. The MOE payment for the claimant, County of Los Angeles, was reduced from $291,872,379 to $175,330,647.

In addition, the 1997 Trial Court Funding Act gave the Judicial Council and its administrative body, the AOC, responsibility for financial oversight of the trial courts.[41]

One year after the Lockyer-Isenberg Trial Court Funding Act, Government Code section 77212.5 (Stats. 1998, ch. 764) was enacted to require trial courts in which court security services were provided by the sheriff's department as of July 1, 1998, to enter into agreements with the sheriff's departments, beginning July 1, 1999, to address the scope and type of security services the sheriff's department would provide as follows:

> Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

The statute was enacted to clarify that county sheriffs would continue to provide deputies for the trial court security program under contract. The Assembly Floor Analysis for the 1998 statute states the following:

> This bill clarifies that the status quo shall be maintained where the sheriff's department currently provides security services (e.g., bailiffs) to the trial courts as of July 1, 1998. The supporters of this bill are concerned that under current trial court funding law it is unclear how security services shall be provided. This bill requires county sheriffs to continue to provide deputies for trial court security under contract.
>
> Currently county sheriffs provide security services for trial courts in 53 counties. Marshals provide security as court employees in the remaining five counties. The trial courts that employ Marshals are not required to hire sheriffs under this bill.
>
> Currently state appellate courts are funded by the state and security is provided by the California Highway Patrol.
>
> Supporters assert that the bill would ensure a continuity of public safety services in California trial courts.[42]

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[40] Statutes 1998, chapter 406.

[41] Government Code sections 77202-77208.

[42] Exhibit --, Assembly Floor Analysis (May 5, 1997), Concurrence in Senate Amendments, Analysis of AB 92 (1997-1998 Reg. Sess.) page 1. See also, Senate Rules Committee, Office of Senate Floor Analyses, Analysis of AB 92 (1997-1998 Reg. Sess.) page 1, which states that the bill reflected an agreement that security services would not transfer from the counties to the

In 1999, Government Code section 77212.5 was amended to address those five counties (San Bernardino, Orange, San Diego, Shasta, and Merced) in which court security services were provided by the marshal's office rather than sheriff deputies. Historically, court security for superior courts was provided by the sheriff's department and security for municipal courts was provided by the marshal's office. With trial court unification combining superior and municipal court functions, most trial courts consolidated court security services with the sheriff's department. The 1999 statute allows those counties to abolish the marshal's office and transfer the court security duties from the marshal's office to the sheriff's department. Subdivision (b) was added to section 77212.5 to state the following: "Commencing on July 1, 1999, and thereafter, the trial courts of a county in which court security was provided by the marshal's office as of July 1, 1998, shall, if the marshal's office is abolished, enter into agreement regarding the provision of court security services with the successor sheriff's department."[43]

Statutes 2002, chapter 1010, enacted the Superior Court Law Enforcement Act of 2002 (SB 1396; adding Gov. Code §§ 69920, et seq.), which was sponsored by the Judicial Council and the California State Sheriffs Association to clarify the court operations and security costs paid by the state. A letter from the Judicial Council urging the Governor to sign the bill stated the following:

> California Rules of Court, Rule 810, function 8 defines allowable and unallowable state costs for court security, but the details are ambiguous. For example, the rule says that equipment is an allowable cost, but it does not specify what type of equipment. Because Rule 810 does not provide specificity in the areas of equipment and personnel costs, it has been subject to different interpretations across the state.[44]

The 2002 Act addressed the lack of clarity in Function 8 of former Rule 810 through the concept of a "contract law enforcement template," defining the template in Government Code section 69921(a) as "a document that is contained in the Administrative Office of the Courts' financial policies and procedures manual that accounts for and further defines allowable costs, as described in paragraphs (3) to (6), inclusive, of subdivision (a) of Section 69927." Government Code section 69927(a) states the Legislature's intent for the Act as follows:

> It is the intent of the Legislature in enacting this section to develop a definition of the court security component of court operations that modifies Function 8 of Rule 810 of the California Rules of Court in a manner that will standardize billing and accounting practices and court security plans, and identify allowable law

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California Highway Patrol (which would provide security if the state supplied the personnel). The bill was deemed a codification of existing practice.

[43] Statutes 1999, chapter 641 (SB 1196). Today, the sheriff departments in all counties, except Shasta and Trinity Counties, provide security services to the courts. (Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010.)

[44] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 9. A similar letter to the Governor from the California State Sheriffs Association is provided as Exhibit 10 to the Judicial Council comments.

> enforcement security costs after the operative date of this article. It is not the intent of the Legislature to increase or decrease the responsibility of a county for the cost of court operations, as defined in Section 77003 or Rule 810 of the California Rules of Court, as it read on July 1, 1996, for court security services provided prior to January 1, 2003. It is the intent of the Legislature that a sheriff or marshal's court law enforcement budget not be reduced as a result of this article. Any new court security costs permitted by this article shall not be operative unless the funding is provided by the Legislature.

Section 69927(a)(1) requires the Judicial Council to adopt a rule establishing a working group on court security. The working group is required to recommend modifications to the template used to determine which security costs may be submitted by the courts to the AOC pursuant to the 2002 Act. Section 69927(a)(1) further states that the template *replaces* the definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court as follows: "[t]he template shall be a part of the trial court's financial policies and procedures manual and used *in place of* the definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court." (Emphasis added.) Section 69927(a)(5) defines the allowable costs for security personnel services to be included in the template and, for the first time, identifies examples of allowable benefits as follows:

> "Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, *including, but not limited to*, county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, worker's compensation paid to an employee in lieu of salary, worker's compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

The 2002 Act also repealed Government Code section 77212.5, which required the court and the sheriff or marshal to enter into an agreement for the provision of court security services. In its place, Government Code section 69926 was enacted to require the superior court and the sheriff or marshal's department to enter into an annual or multi-year memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment. By April 30 of each year, the sheriff or marshal shall provide information as identified in the contract law enforcement template to the superior court in that county specifying the nature, extent, and basis of costs, including negotiated and projected salary increases for the following budget year. Actual court security allocations shall be subject to the approval of the Judicial Council and the funding provided by the Legislature.[45] AOC shall use the actual salary

[45] Government Code section 69926(c).

and benefit costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance.[46] Any new security cost categories identified by the sheriff or marshal that are not identified in the template "shall not be operative unless the funding is provided by the Legislature."[47]

The Judicial Council adopted the contract law enforcement template, effective May 1, 2003.[48] Section I of template identifies the following allowable court security costs: court security personnel approved in the budget or provided at special request of the court; salary, wages and benefits (including overtime as specified) of sheriff, marshal, constable employees including, but not limited to, bailiffs, holding cell deputies, and weapons screening personnel; salary, wages and benefits of court security supervisors who spend more than 25percent of their time on court security functions; and negotiated and projected salary increases. Allowable benefits are listed in section III, the addendum of the template as follows:

> BENEFIT: This is the list of the allowable employer-paid labor-related employee benefits.
>
> County Health & Welfare (Benefit Plans)
>
> County Incentive Payments (PIP)
>
> Deferred Compensation Plan Costs
>
> FICA/Medicare
>
> General Liability Premium Costs
>
> Leave Balance Payout
>
> Premium Pay (such as POST pay, location pay, Bi-lingual pay, training officer pay)
>
> Retirement
>
> State Disability Insurance (SDI)
>
> Unemployment Insurance Cost
>
> Workers Comp Paid to Employee in lieu of salary

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[46] Government Code section 69927(a)(1)(5)(A).

[47] Government Code section 69927(a). Exhibit --, Trial Court Financial Policies and Procedures (FIN 14.01, 6.2 Allowable Costs) adopted by the Judicial Council effective September 1, 2010, states the procedure as follows: "The court is responsible only for allowable cost categories that were properly billed before the enactment of the Superior Court Law Enforcement Act of 2002. The sheriff may not bill the court for any new allowable cost categories listed herein until the court has agreed to the new cost and new funding has been allocated to the court for this purpose."

[48] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 13.

Workers Comp Premiums

Section II of the template contains the list of 23 non-allowable costs as follows: other sheriff or marshal employees (not working in the court); county overhead cost attributable to the operation of the sheriff/marshal offices; departmental overhead of sheriffs and marshals that is not in the list of Section I allowable costs; service and supplies, including data processing, not specified in Section I; furniture; basic training for new personnel to be assigned to court; transportation and housing of detainees from the jail to the courthouse; vehicle costs used by court security personnel in the transport of prisoners to court; the purchase of new vehicles to be utilized by court security personnel; vehicle maintenance exceeding the allowable mileage reimbursement; transportation of prisoners between the jails and courts or between courts; supervisory time and costs where service for the court is less than 25percent of the time on duty; costs of supervision higher than the level of Captain; service of process in civil cases; security outside of the courtroom in multi-use facilities which results in disproportionate allocation of cost; any external security costs (i.e., security outside court facility, such as perimeter patrol and lighting); extraordinary security costs (e.g., general law enforcement activities within court facilities and protection of judges away from the court); overtime used to staff another function within the sheriff's office if an employee in that function is transferred to court security to maintain necessary coverage; construction or remodeling of holding cells; maintenance of holding facility equipment; facilities alteration or other than normal installation in support of perimeter security equipment; video arraignment equipment; costs of workers compensation/disability payments to disabled sheriff or marshal employees who formerly provided security, while the full costs of those positions continue to be funded by the courts.

On July 10, 2003, the AOC and the California State Sheriff's Association prepared a memorandum of responses to court security questions submitted at the "SB 1396" (2002 Superior Court Law Enforcement Act) training sessions. On page 4 of the document is the following question presented by attendees: "Is the payment of premiums for lifetime health benefits in retirement an allowable cost?" The answer provided states the following: "Yes. Payment of retirement benefits, such as health insurance should be locally negotiated."[49]

In 2006, requests for security funding from the trial courts for fiscal year 2006-2007 increased by $44 million, eleven percent over the previous fiscal year. According to a report from the AOC to the Judicial Council, dated October 18, 2006, the amount requested was "well in excess of the amount of funding available to address mandatory security cost changes in FY 2006-2007." Thus, the AOC sent surveys to the trial courts that required more detailed information on salary, retirement, and benefit costs of court security personnel, and it became apparent that some counties included retiree health benefit costs in the amounts reported. The AOC took the position that "all items that are not SB 1396 [Superior Court Law Enforcement Act of 2002] allowable were eliminated," and that retiree health care benefits were non-allowable costs and,

[49] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 12.

thus, the AOC deducted those costs from the requests for funding.[50] The Judicial Council adopted the staff recommendation on October 20, 2006.[51]

A number of trial courts took issue with the disallowance of sheriff retiree health benefits. In January 2007, the Superior Court of Los Angeles County sent a letter to the Administrative Director of the Courts, addressing the shortfall in funding as follows:

> According to AOC management, the inclusion of Retiree Health is "Not appropriate as part of the mid-step salary calculation." Our analysis (Attachment 1) shows the exclusion of the Retiree Health percentage from the reimbursement rates results in a $3.9 million reduction in our total security request.
>
> Accordingly, the Court intends to adjust the Sheriff's monthly billing to exclude the Retiree Health costs included in its billings. Because the Court has already reimbursed through November 30, 2006, the December billing will include a lump-sum adjustment retroactive to July 1, 2006.
>
> At the last Trial Court Budget Working Group meeting, concerns were expressed by this Court and a number of other trial courts that Retiree Health may have been included in the MOE [maintenance of effort payment of the county]. AOC staff indicated that if Courts could substantiate this claim, funding of this item might have to continue. Our review of this matter identified the attached document (Attachment II), which clearly shows Retiree Health costs were included in the deputy and sergeant rates in FY 1994-95. It is likely that the County will contest this adjustment based on this fact. It is our contention that the cost of Retiree Health should be restored as part of the security budget.
>
> [¶¶]
>
> Further reductions in LASC's security operation would seriously impact the Court's security structure. We have discussed this matter with the Sheriff's Department but do not foresee an easy solution. In meetings with the Sheriff's staff, we have been advised that these reductions may violate not only our preexisting contractual obligations, but also the provisions of the Superior Court Law Enforcement Act of 2002 that require funding to be sought on the basis of actual costs, and which prohibit changes in standards and guidelines that increase a County's obligations for Court operations costs or reduce a Sheriff's law enforcement budget. We fully expect that the Sheriff may initiate litigation

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[50] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 14.

[51] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 15 (Letter from the Los Angeles Superior Court to the Administrative Director of the Courts, dated January 10, 2007).

> concerning these matters and want to take this opportunity to apprise you of this possibility.[52]

The Administrative Director of the Courts responded on January 30, 2007, stating the following:

> First, I believe that the sheriff's post-retirement health costs should be considered for approval as a specific cost pursuant to the procedures established in the Government Code (i.e., Working Group on Court Security should review and recommend that the Judicial Council amend the template, the Council approve the amendment and the legislative and executive branches approve the funding). If these are new costs which have been incurred after 2002, these costs would not be allowable until the executive and legislative branches have adjusted the base budgets of the courts to reflect the new costs. If the legislative and executive branches agree to assume responsibility for these costs, the manner by which they are calculated may be determined by how the legislative and executive branches address the implication of new accounting standards.
>
> Notwithstanding the above process, the payment of retirement health insurance cost for the sheriff's security personnel are authorized if expenditures were included in the Counties Maintenance of Effort Payment (MOE) (which was established after the state assumed responsibility for state funding on January 1, 1998), if the court has paid these costs since that time, and if no new method of cost calculation has been adopted which would have the effect of expanding financial liability. As would be true with any financial obligation, the means of calculating the retirement health insurance cost should be periodically reviewed to ensure that the methodology and calculation is representative of actual costs incurred. Again, the method of calculating such retirement health care costs may be affected by how the legislative and executive branches address the implications of new accounting standards. You have provided documentation dated May 10, 1995 (the base year for calculating the county MOE for state funding) explaining how the county determined the costs of security personnel. Please provide the documentation on the amount in the county MOE dedicated to this cost, documentation that these costs have been paid for all past years, and a schedule of the base funding in your budget for this cost for the years from FY 1999-2000 to FY 2005-06.[53]

Five superior courts (Los Angeles, Contra Costa, Kern, Sacramento, and Santa Clara counties) submitted documentation that they paid the sheriff for the costs of retiree health benefits in the base year 1994-1995. Based on the documentation, the Judicial Council reimbursed these five courts for the costs of sheriff retiree health benefits in fiscal year 2008-2009. The report prepared for the Judicial Council by the AOC on October 8, 2008, notes the one-time funding to

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[52] *Ibid*.

[53] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 16.

these counties and also states that the funding issue for retiree health benefits continues to be pursued as follows:

> Court security retiree health costs of $4.98 million have historically been included in maintenance of effort (MOE) contracts for five courts since before the passage of state trial court funding. These five courts have been billed for these costs by the sheriff and have paid for them. The courts have not been funded for these costs the past two years, but the proposal is to use one-time funding from the TCTF and one-time security carryover funding to address these costs in FY 2008-2009, while full state funding to address this issue continues to be pursued.[54]

The 2009 test claim statute (Stats. 2009-2010, 4th Ex. Sess, ch. 22) was a court omnibus budget trailer bill enacted as an urgency statute effective July 28, 2009, in light of the Governor's declaration of a fiscal emergency.[55] In amending Government Code sections 69926(b), it specified allowable benefit costs for court security personnel and expressly *excluded* retiree health benefits from costs of services payable by the state. It also defined retiree health benefits that are now excluded to include, but not be limited to, the current costs of future retiree health benefits for either currently employed or already retired personnel. The 2009 statute added the following underlined language to section 69926(b):

> The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, costs of services, and terms of payment. The cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay. *In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel*. (Emphasis added.)

The 2009 statute also amended Government Code section 69927(a)(6)(A) as follows: "(A) The Administrative Office of the Courts shall use the ~~actual~~ average salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

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[54] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 17.

[55] Exhibit --, Senate Floor Analysis, Senate Bill 13, 2009-2010 Fourth Extraordinary Session, July 8, 2009.

III. Positions of the Parties and Interested Parties

A. Claimant's Position

The claimant alleges that the test claim statutes and Rule of Court 10.810 impose a reimbursable state-mandated program under article XIII B, section 6 for the costs of retiree health benefits for sheriff personnel who provide security services to superior courts. According to claimant, on July 28, 2009, the state stopped paying for retiree health benefits for these personnel thereby shifting the costs from the state to the counties in violation of the *Lucia Mar Unified School Dist.* case and article XIII B, section 6(c).[56] Claimant includes a declaration with the test claim that estimates the costs of its retiree health benefits at $4,813,476 for 2009-2010, and $4,890,183 for 2010-2011. Claimant also includes cost estimates from the counties of Sacramento, Santa Clara, and Kern. Sacramento County estimated costs of $192,517 for 2009-2010, and $160,892 for 2010-2011. Kern County estimated costs of $69,463 for both 2009-2010, and 2010-2011. Santa Clara County estimated costs of $455,915 for 2009-2010, and $582,768 for 2010-2011. This accounts for four of the five counties affected by the 2009 test claim statute that were reimbursed for retiree health benefits for personnel who provided court security services in fiscal year 2008-2009, as described in section II. Background above.

In comments received in September 2010, claimant rebuts the Judicial Council's observation that no state law requires the county to pay for retiree health benefits. "All that is required, according to the State Controller's Office "Local Agencies Mandated Cost Manual," is that the '. . . compensation paid and the benefits received are appropriately authorized by the governing board.' And this has been done." Claimant also disagrees with the Finance's position that the test claim statutes do not result in a reimbursable state-mandated program.

B. Department of Finance Position

Finance argues that this test claim should be denied. According to comments received in August 2010, Finance "believes the state did not transfer the costs of the retiree health benefits to the counties, and the test claim is not a reimbursable mandate." Finance points out that unlike the case of *Lucia Mar Unified School Dist. v. State of California*, the state was not previously responsible for the retiree health benefits. Finance also states that "costs of the retiree health benefits were not explicitly included in the definition of 'costs of service' in any of the statutory requirements plead by the claimant." Accordingly, Finance argues that the obligation to pay for retiree health benefits is "permissive and not required by law."

C. Judicial Council Position

The Judicial Council argues that this test claim should be denied for the following reasons:

- The 2009 amendment to Government Code section 69926(b) excluding retiree health benefits from allowable costs merely clarifies existing law for what costs are allowable when a sheriff provides court security services.
- There is no state law requiring the sheriff to pay retiree health benefits to its deputies. Thus, any transfer of costs is triggered by a discretionary decision of the county.

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[56] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830.

- Even if the costs were not voluntary, increases in costs, as opposed to increases in the level of service, do not result in a reimbursable state-mandated program.
- The claimant has requested legislative mandates that the sheriff be required to provide security to the superior courts and, thus, no reimbursement is required.
- The claimant cannot claim reimbursement for expenses associated with retiree health benefits for sheriff deputies who are already retired and not currently providing services to the courts. The Superior Court Law Enforcement Act of 2002, in Government Code section 69927(a)(6) only authorizes trial courts to pay for benefits of current employees ("Allowable costs for security personnel services, … means the salary and benefits of an employee …..").

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[57] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[58]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[59]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[60]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[61]

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

[58] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[59] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[60] *San Diego Unified School Dist., supra,* 33 Cal.4th at pgs. 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[62]

In 2004, article XIII B, section 6 was amended by the voter's approval of Proposition 1A, which added subdivision (c) to define a mandated new program or higher level of service to include "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."[63]

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.[64] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[65] 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."[66]

A. The Commission has jurisdiction to determine if Government Code sections 69926 and 69927, as amended by Statutes 2009, 4th Ex. Sess., chapter 22, imposes a reimbursable state-mandated program, but does not have jurisdiction over the 1998 and 2002 statutes or the California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security).

There is no issue regarding the Commission's jurisdiction over Government Code section 69926 and 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22. The test claim was filed June 30, 2010, within one year of July 28, 2009, the effective date of this test claim statute.

The test claim, however, was filed beyond the statute of limitations for the remaining statutes and Rules of Court pled.

Government Code section 17551(c) requires that: "Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order,

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61 *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835.

62 *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.

63 Proposition 1A, November 2004.

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

65 *County of San Diego, supra,* 15 Cal.4th 68, 109.

66 *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.

whichever is later."[67] Section 1183 of the Commission's regulations defines the phrase "within 12 months" of incurring costs to mean "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."

The test claim in this case was filed on June 30, 2010, well beyond 12 months following the effective dates of the earlier test claim statutes enacted in 2002 (Gov. Code, §§ 69920, 69921, 69921.5, 69922, 69925, and 69927, eff. Jan. 1, 2003) and 1998 (Gov. Code § 77212.5, eff. Jan. 1, 1999), and the effective date of Rule 10.810, as added in 1988 and last amended in 1997. In addition, there is no evidence in the record to support a finding that the claimant first incurred increased costs as a result of the 1998 and 2002 statutes, or the Rules of Court as last amended in 1997, later than the 12-month period after these laws became effective. The test claim focuses mainly on Government Code section 69926, as amended in 2009, which excluded retiree health benefits from the costs paid by the state for sheriff court security services. According to page 17 of the test claim: "This test claim was timely filed within a year of enactment of SB 13 (Chapter 22, Statutes of 2009) which shifted the costs of retiree health benefits from the State to the County on July 28, 2009."

Moreover, Rules of Court are not subject to the reimbursement requirement of article XIII B, section 6. Rules of Court are adopted by the Judicial Council, an agency within the judicial branch, and establish procedures and rules for the courts.[68] Article XIII B, section 6, however, applies to mandates imposed by "the Legislature or any state agency" and does not extend to requirements imposed by the judicial branch of government.[69]

Accordingly, the Commission does not have jurisdiction over Government Code sections 69920, 69921, 69921.5, 69922, 69925, and 69927 (Stats. 2002, ch. 1010, eff. Jan. 1, 2003), Government Code section 77212.5 (Stats. 1998, ch. 764, eff. Jan. 1, 1999), and the California Rules of Court, Rule 10.810(a), (b), (c), (d), and Function 8 (Court Security).

B. Government Code section 69927, as amended in 2009, does not result in a reimbursable state-mandated program.

The 2009 test claim statute amended Government Code section 69927(a)(6)(A) to provide that the AOC shall use average costs, rather than actual costs, when determining the funding request for the trial courts to be presented to the Department of Finance. That section states the following: "The Administrative Office of the Courts shall use the ~~actual~~ *average* salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

This section requires the AOC to act, but does not impose any required duties or costs on counties. Thus, the Commission finds that Government Code section 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22, does not impose a reimbursable state-mandated program on counties.

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[67] Government Code, section 17551(c) (Stats. 2004, ch. 890) effective Jan. 1, 2005.

[68] California Constitution, article VI, section 6. See also Government Code section 68500 *et seq.*

[69] A "local agency" eligible to claim reimbursement is defined to include a "city, county, special district, authority, or political subdivision of the state," and does not include the courts.

C. Government Code section 69926(b), as amended in 2009, imposes a partial new program or higher level of service on counties within the meaning of article XIII B, section 6(c).

The remaining issue in this case is whether the 2009 amendment to Government Code section 69926(b), which excluded retiree health benefits from the state funding for sheriff court security services mandates a new program or higher level of service within the meaning of article XIII B, section 6(c). The Commission finds that section 69926(b), as amended by the 2009 test claim statute, results in a reimbursable state-mandated program pursuant to article XIII B, section 6(c), under the circumstances specified below.

1. <u>The 2004 amendment to article XIII B, section 6(c)</u>

In 2004, Proposition 1A added subdivision (c) to article XIII B, section 6. Article XIII B, section 6(c) defines a mandated new program or higher level of service to include "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." In its summary of the proposition, the Legislative Analyst's Office (LAO) stated the following:

> The measure also appears to expand the circumstances under which the state would be responsible for reimbursing cities, counties, and special districts for carrying out new state requirements. Specifically, the measure defines as a mandate state actions that transfer to local government financial responsibility for a required program for which the state previously had complete or partial financial responsibility. Under current law, some such transfers of financial responsibilities may not be considered a state mandate.[70]

As indicated by LAO, some transfers of financial responsibility from the state to local government before the adoption of Proposition 1A were determined by the courts to require reimbursement only when the state had borne the entire cost of the program at the time article XIII B, section 6 was adopted in 1979 and retained administrative control over the program before and after the test claim statute.

The line of cases starts with the California Supreme Court's 1988 decision in *Lucia Mar Unified School Dist. v. Honig*, where the court first determined that reimbursement under article XIII B, section 6 is required, not only when the state mandates local government to perform new activities, but also when the state compels local government to accept financial responsibility in whole or in part for a governmental program which was funded *entirely* by the state before the advent of article XIII B, section 6.[71] The statute involved in *Lucia Mar* required the state to operate schools for severely handicapped students. Before 1979, school districts were required by statute to contribute local funding for the education of pupils residing in the district and attending the state schools. These provisions, however, were repealed effective July 12, 1979, when the state assumed full responsibility to fund the state-operated schools. Thus, the state's

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[70] Exhibit --, LAO summary of Proposition 1A, August 2004.

[71] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836.

responsibility to fully fund these schools existed when article XIII B, section 6 became effective on July 1, 1980, and continued until Education Code section 59300 became effective on June 28, 1991, to require the school district of residence to pay the state operated school an amount equal to ten percent of the excess annual cost of education for each pupil attending a state-operated school.[72] The court held that "unquestionably, the contributions called for in section 59300 are used to fund a 'program' within [article XIII B, section 6], for the education of handicapped children is clearly a governmental function of providing a service to the public, and the section imposes requirements on school districts not imposed on all the state's residents."[73] In addition, the program was "new" to local school districts since at the time section 59300 became effective, school districts were not required to contribute to the education of students from their districts at state schools.[74] The court stated the following:

> The fact that the impact of the section is to required plaintiffs to contribute funds to operate the state schools for the handicapped rather than to themselves administer the program does not detract from our conclusion that it calls for the establishment of a new program within the meaning of the constitutional provision. To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIII B. That article imposes spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIII A, which severely limited the taxing power of local governments. Section 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities.[75]

Although the court found a new program, it remanded the claim back to the Commission to determine if school districts are mandated by the state to make the contributions to fund the state-operated schools, or whether school districts had other options for educating these pupils.[76]

In 1997, the California Supreme Court in *County of San Diego v. State* also approved reimbursement based on a statute that shifted financial responsibility from the state to the counties for the care of medically indigent adults.[77] Medically indigent adults were not linked to a federal category of disability for purposes of federal disability benefits, but lacked the income and resources to afford health care.[78] In 1971, the state extended Medi-Cal coverage to these

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[72] *Id.* at pages 832-833.

[73] *Id.* at page 835.

[74] *Ibid.*

[75] *Lucia Mar, supra*, 44 Cal.3d at pages 835-836.

[76] *Id.* at pages 836-837. The matter was later resolved with the special education test claims.

[77] *County of San Diego v. State* (1997) 15 Cal.4th 68, 91.

[78] *Id*. at page. 77.

individuals and, at the time the voters adopted article XIII B, section 6 in 1979, the state administered and bore full financial responsibility for the medical care of medically indigent adults under the Medi-Cal program. In 1982, the state then excluded medically indigent adults from the Medi-Cal program, "knowing and intending that the 1982 legislation would trigger the counties' responsibility to provide medical care as providers of last resort under [Welfare and Institutions Code] section 17000."[79] The court held that the 1982 statute mandated a "new program" on counties by compelling them to accept financial responsibility in whole or in part for a program for the medical care of medically indigent adults, "which was funded entirely by the state before the advent of article XIII B."[80] Addressing an issue raised in the dissenting opinion, the majority court stressed that:

> We do not hold that "whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state." [Dis. opn., post, at p. 116.) Rather, we hold that section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before the adoption of section 6. *Whether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us.*[81]

The *Lucia Mar* and *County of San Diego* holdings, however, were not applied in cases (1) where the state did not administer the program, but instead provided reimbursement assistance to local government that later ended; (2) where the state was only partially responsible for the cost of a jointly funded program under prior law and the state later shifted additional costs to local government; and (3) where the state shifted costs between two local agencies. In such cases, reimbursement was denied. For example, the claim in *County of Los Angeles II* addressed a Penal Code statute that allowed an indigent defendant charged with capital murder to request funds for the payment of investigators, experts, and others expenses necessary for the preparation of his or her defense at trial.[82] For several years after the enactment of the statute, the Legislature appropriated funds to reimburse counties for their costs under the Penal Code statute. In fiscal year 1990-1991, however, no appropriation was made, forcing the counties to pay for the expenses out of their general funds. The counties then filed a test claim for the reimbursement of costs to provide investigators and experts for the defense of indigent criminal defendants in capital murder cases. The court determined that reimbursement was not required under article XIII B, section 6 on the ground that providing experts, investigators, and other ancillary services to indigent defendants was always required by federal law under the constitutional guarantees of due process under the Fourteenth Amendment and the Sixth Amendment right to counsel.[83] The court also found that there was no shift in costs from the state to the counties because the program had never been operated or administered by the state.

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[79] *Id.* at page 98.

[80] *Ibid*.

[81] *County of San Diego, supra*, 15 Cal.4th at page 99, fn. 20 (Emphasis added).

[82] *County of Los Angeles v. State of California* (1995) 32 Cal.App.4th 805.

[83] *Id.* at page 815.

Thus the program was not a "new program" to counties. The state merely reimbursed counties in their operation of a local program.

> In contrast, the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under section 987.9. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility. There has been no shift of costs from the state to the counties and Lucia Mar is, thus, inapposite.[84]

City of El Monte v. Commission on State Mandates involved statutes that required redevelopment agencies to contribute 15 percent of their revenues to the local Educational Revenue Augmentation Fund (ERAF) to help pay for each school and community college district located within the redevelopment area. [85] The ERAF statutes were enacted in response to a shortfall in state revenues and a period of severe fiscal difficulty brought about by the economic recession in the early 1990's.[86] The court held that reimbursement under article XIII B, section 6 was not required because before the enactment of the ERAF statutes, the state was not responsible for the entire cost of school funding. Rather, a substantial portion of local property tax revenues were used for the support of schools and, thus, the responsibility to pay for education before the enactment of the test claim statutes shifting additional costs to schools, had already been a state and locally shared responsibility. The court determined that the utilization of additional local property taxes in support of schools and community colleges was not a "new program" within the meaning of article XIII B, section 6, distinguishing *Lucia Mar*.[87]

In *City of San Jose v. State of California*, the court found that *Lucia Mar* was not applicable because the test claim statute did not shift costs from the state to cities, but from counties to cities and, thus, reimbursement was not required.[88] *City of San Jose* involved a statute authorizing counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other local entities. The court recognized that the Legislature was entitled to make policy decisions in order to assist counties in bearing the financial responsibilities of running jails. However, the costs of operating county jails, including the expense of capture, detention, and prosecution of persons charged with crime, were traditionally borne by counties under state statute, and not by the state.[89] Thus, the

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[84] Id. at page 817.

[85] *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266.

[86] *Id.* at page 272.

[87] *Id*. at page 279.

[88] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

[89] *Id.* at page 1815, citing to *County of Lassen v. State of California* (1992) 4 Cal.App.4th 1151, 1156.

program was not new to local government. The court held that “nothing in article XIII B prohibits the shifting of costs between local governmental entities.[90]

Proposition 1A was adopted in 2004, after the court decided the above cases and, thus, the interpretation of article XIII B, section 6(c) is an issue of first impression requiring the Commission to determine what the provision requires. The principles of constitutional interpretation are similar to those governing statutory construction. The aim of constitutional interpretation is to determine and effectuate the intent of the voters who enacted the constitutional provision. To determine that intent, the Commission, like a court, must begin by examining the constitutional text, giving the words their ordinary meaning.[91] In addition, the words must be interpreted in harmony with other relevant portions of the Constitution.[92] In this respect, it is appropriate to apply the same meaning to terms used in a constitutional amendment that are also stated in existing provisions of the Constitution when those terms have been judicially interpreted and put into practice, unless it is apparent from the language used that a more general or restricted sense was intended.[93]

The plain language of article XIII B, section 6(c) states that “a mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.” The plain language of section 6(c) still requires a finding that the statute mandates a program within the meaning of article XIII B, section 6, and imposes costs mandated by the state. As previously interpreted by the courts, the statute must compel local agencies to incur increased costs mandated by the state for a program that carries out the governmental function of providing a service to the public or, to implement a state policy, imposes unique requirements on local agencies that do not apply to all residents and entities in the state.[94]

> The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: “Additionally, this measure (1) Will not allow the state government to force programs on local

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[90] *Ibid*. See also, *City of El Monte, supra,* 83 Cal.App.4 th 266, 279, finding a shift of costs between two local agencies in the school funding ERAF shift from redevelopment agencies to schools.

[91] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 418.

[92] *State Bd. of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 822.

[93] *Sacramento County v. Hickman* (1967) 66 Cal.2d 841, 849.

[94] *San Diego Unified School Dist., supra,* 33 Cal.4th at pages 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

> governments without the state paying for them." (Ballot Pamp., Amend. To Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18 …). In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.[95]

The plain language of section 6(c), however, expands the definition of a "new program or higher level of service" to include shifts in funding for existing programs that are funded jointly by the state and local agencies. A mandated new program or higher level of service includes transfers by the Legislature from the state to the local agencies "complete *or* partial financial responsibility for a required program for which the State *previously* had complete *or* partial financial responsibility." Thus, the court's specific holding in *City of El Monte* that denied reimbursement for the ERAF shift because the state never had complete financial responsibility to fund schools, no longer applies.[96]

In addition, to determine if the transfer of costs is new or increases the level of service of an existing program, section 6(c) directs the Commission to look at whether the state "previously," had any financial responsibility for the program. The word "previously" is not specifically defined in the provision. Before the adoption of Proposition 1A, a shift of financial responsibility for a governmental program from the state to local government was considered "new" and, thus, a "new program," when it followed the fact that the state initially had complete financial responsibility for the program *at the time* article XIII B, section 6 was adopted in 1979. As indicated by the Supreme Court in the *County of San Diego* case, "[w]hether the state may discontinue assistance that it initiated *after* section 6's adoption is a question that is not before us.[97] For purposes of interpreting section 6(c), however, it does not make sense to determine the financial responsibilities of a program in 1979 when section 6(c) was added by the voters 25 years later in 2004, which now expands the definition of a mandated new program or higher level of service to include shifts of costs in *existing* programs with shared financial responsibilities.[98] Such an interpretation may ignore many years of legislation enacted after

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[95] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 875.

[96] This interpretation is consistent with the analysis of Proposition 1A by LAO, which recognized that section 6(c) "may increase future state costs or alter future state actions regarding local jointly funded state-local programs. While it is not possible to determine the cost to reimburse local agencies for potential future state actions, our review of state measures enacted in the past suggests that, over time, increased state reimbursement costs may exceed a hundred million dollars annually." (Exhibit --.)

[97] *County of San Diego, supra*, 15 Cal.4th at page 99, fn. 20 (Emphasis added).

[98] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, providing that the rules of interpretation of a constitutional provision require a court to look at what the voters intended when they enacted the provision.

1979 that impacts an existing program, and adds a limitation to section 6(c), which is not included in the plain language adopted by the voters.[99]

Rather, the dictionary defines the word "previously" as "existing or happening prior to something else in time or order."[100] In addition, recent decisions by the courts have compared the test claim statute with the law in effect *immediately before* the enactment of the test claim statute to determine if a mandated cost is new or increases the level of service in an existing program.[101] Thus, the Commission finds that a test claim statute shifting the financial responsibility of a program from the state to the local agencies must be compared to the law in effect immediately before the enactment of the test claim statute to determine if the shift or transfer of costs constitutes a new program or higher level of service within the meaning of article XIII B,
section 6(c).

2. **The 2009 amendment to Government Code section 69926(b) imposes a new program or higher level of service within the meaning of article XIII B, section 6(c).**

The 2009 statute added the following underlined language to section 69926(b):

> The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, costs of services, and terms of payment. <u>The cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay.</u> <u>*In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs*</u>

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[99] *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 301, where the court stated that "To determine this intent [of a constitutional provision], we look first to the plain language of the law, read in context, and will not add to the law or rewrite it to conform to an assumed intent not apparent from the language."

[100] Webster's II New College Dictionary (1986), page 876.

[101] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, where the court held that "the statutory requirements here at issue – immediate suspension and mandatory recommendation of expulsion for students who possess a firearm, and the limitation upon the ensuing options of the school board (expulsion or referral) – reasonably are viewed as providing a "higher level of service" to the public under the commonly understood sense of that term: (i) the requirements are new in comparison with the preexisting scheme in view of the circumstances that they did not exist prior to the enactment of the [test claim statute]."

of future retiree health benefits for either currently employed or already retired personnel. (Emphasis added.)

This 2009 provision, however, remained in the law only until June 27, 2012, when Government Code section 69926 was repealed to implement the statutory realignment of superior court security funding enacted in Assembly Bill 118 (Chapter 40 of the Statutes of 2011), in which the Trial Court Security Account was established to fund court security.[102] Thus, the issue whether the 2009 amendment to Government Code section 69926(b) imposes a new program or higher level of service is relevant only to a potential period of reimbursement from July 28, 2009 to June 27, 2012.

As described in Section II. Background, state law, since 1883, has required the county sheriff to provide court security services to the courts. As last amended in 2002, Government Code section 69922 requires the sheriff to attend all criminal and delinquency actions in the superior court held within his or her county, and to attend noncriminal actions *if* the presiding judge makes the determination that the attendance of the sheriff at that action is necessary for reasons of public safety. Providing security services for noncriminal actions at the request of the presiding judge is not a requirement imposed by the state and, thus, not subject to the reimbursement requirements of article XIII B, section 6.[103] However, providing court security services for criminal and delinquency actions of the court is a "required program" within the meaning of article XIII B, section 6(c), that is imposed uniquely on counties by the state and provides a service to protect the safety of the public. Furthermore, the program, both before and after the enactment of the 2009 test claim statute, is partially funded by the state. Government Code sections 77300, 77201, and 77201.1 require the state to assume sole responsibility for the funding of court operations, defined to include sheriff court security services, beginning in fiscal year 1997-1998, and further require specified counties to remit maintenance of effort payments to the state each year for the amounts identified and expended by the court for court operations during the 1994-1995 fiscal year.

The parties dispute, however, whether the 2009 amendment to Government Code section 69926(b), which excluded retiree health benefits from the state funding for sheriff court security services, constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c), or simply clarifies existing law. This issue is addressed below.

a) Prior Law

Immediately before the 2009 amendment to Government Code section 69926(b), the allowable costs paid by the state to counties for providing sheriff security services to the courts for criminal

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[102] Government Code sections 69926 was repealed by Statutes 2012, chapter 41 (SB 1021), effective June 27, 2012. In its place, the Legislature added section 69923 to deal with the costs of sheriff court security services and a new section 69926, which does not include the underlined language at issue in this case. There has been no test claim filed on Statutes 2012, chapter 41, and, thus, this decision does not reach the issue whether 2012 statute creates a reimbursable state-mandated program.

[103] Appropriations required to comply with mandates of the courts are not eligible for reimbursement under article XIII B, section 6. (Cal. Const., art. XIII B, § 9.)

and delinquency matters was governed by 2002 Superior Court Law Enforcement Act (Gov. Code, §§ 69920 et seq.) and the contract law enforcement template established to identify allowable costs. Government Code section 69921.5, as added by 2002 Act, required the presiding judge of each superior court to contract with the sheriff or marshal, subject to available funding, for the necessary level of law enforcement services in the courts. Section 69926(b) required that the annual or multiyear memorandum of understanding shall specify the agreed upon level of court security services, cost of services, and terms of payment. Section 69926(c) required the sheriff or marshal to provide information each year to the court specifying the proposed projected costs for the court security budget, including negotiated salary increases for the deputies that provide security services. The court security budget was then subject to the Judicial Council's approval and appropriation of funding by the Legislature.

To standardize billing and accounting practices, the Legislature enacted Government Code section 66227 to identify allowable law enforcement costs after January 1, 2003, the operative date of the 2002 Superior Court Law Enforcement Act. Section 66227(a) states the intent of the Act is to not increase or decrease the responsibility of a county for the cost of court operations for the court security services provided before January 1, 2003. Section 66227(a) further states that any new court security costs permitted by law are not operative unless the funding is approved and provided by the Legislature. The Judicial Council interprets this provision as requiring the court to pay for only those allowable costs that were properly billed under the trial court funding program before the Act as follows:

> The court is responsible only for allowable cost categories that were properly billed before the enactment of the Superior Court Law Enforcement Act of 2002. The sheriff may not bill the court for any new allowable cost categories listed herein until the court has agreed to the new cost and new funding has been allocated to the court for this purpose.[104]

Section 69927 then required the Judicial Council to establish a working group on court security to develop a contract law enforcement template that identifies allowable law enforcement security costs. Section 69927(a)(5), as added in 2002,[105] defined "allowable costs for security personnel services" for the template to mean "the salary and benefits of an employee, including, but not limited to," a long list of benefits including "county health and welfare" … and related benefits of law enforcement supervisory and line personnel." The contract law enforcement template became effective May 1, 2003, and identifies the following allowable court security costs for county employees in Section 1: court security personnel approved in the budget or provided at special request of the court; salary, wages and benefits (including overtime as specified) of sheriff, marshal, constable employees including, but not limited to, bailiffs, holding cell deputies, and weapons screening personnel; salary, wages and benefits of court security

[104] Exhibit --, Trial Court Financial Policies and Procedures (FIN 14.01, 6.2 Allowable Costs) adopted by the Judicial Council effective September 1, 2010.

[105] Government Code section 69927(a)(5) was renumbered to section 69927(a)(6) by the 2009 test claim statute.

supervisors who spend more than 25 percent of their time on court security functions; and negotiated and projected salary increases.

Allowable benefits for employees are listed in section III, the addendum of the template as follows:

> BENEFIT: This is the list of the allowable employer-paid labor-related employee benefits.
>
> County Health & Welfare (Benefit Plans)
>
> County Incentive Payments (PIP)
>
> Deferred Compensation Plan Costs
>
> FICA/Medicare
>
> General Liability Premium Costs
>
> Leave Balance Payout
>
> Premium Pay (such as POST pay, location pay, Bi-lingual pay, training officer pay)
>
> Retirement
>
> State Disability Insurance (SDI)
>
> Unemployment Insurance Cost
>
> Workers Comp Paid to Employee in lieu of salary
>
> Workers Comp Premiums

Section II of the template contains the list of 23 non-allowable costs as follows: other sheriff or marshal employees (not working in the court); county overhead cost attributable to the operation of the sheriff/marshal offices; departmental overhead of sheriffs and marshals that is not in the list of Section I allowable costs; service and supplies, including data processing, not specified in Section I; furniture; basic training for new personnel to be assigned to court; transportation and housing of detainees from the jail to the courthouse; vehicle costs used by court security personnel in the transport of prisoners to court; the purchase of new vehicles to be utilized by court security personnel; vehicle maintenance exceeding the allowable mileage reimbursement; transportation of prisoners between the jails and courts or between courts; supervisory time and costs where service for the court is less than 25 percent of the time on duty; costs of supervision higher than the level of Captain; service of process in civil cases; security outside of the courtroom in multi-use facilities which results in disproportionate allocation of cost; any external security costs (i.e., security outside court facility, such as perimeter patrol and lighting); extraordinary security costs (e.g., general law enforcement activities within court facilities and protection of judges away from the court); overtime used to staff another function within the sheriff's office if an employee in that function is transferred to court security to maintain necessary coverage; construction or remodeling of holding cells; maintenance of holding facility equipment; facilities alteration or other than normal installation in support of perimeter security equipment; video arraignment equipment; costs of workers compensation/disability payments to disabled sheriff or marshal employees who formerly provided security, while the full costs of those positions continue to be funded by the courts.

Government Code section 69927(b) concludes by stating that "[n]othing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost, as defined by Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996 …." As indicated in Section II. Background, Function 8 of Rule 810 previously defined allowable costs for sheriff court security services to include the "salary, wages, and benefits" of sheriff supervisory and line personnel.

The Judicial Council contends that retiree health benefits were not included in the list of allowable employer paid labor-related employee benefits and, therefore, those costs were not funded by the state before the enactment of the 2009 test claim statute. The Judicial Council states the following:

> Although sheriff retiree health benefits are not specifically identified in the list of allowable costs identified in Government Code section 69927(a)(6), the working group could have determined they were allowable because the use of the words [in the statute] "including, but not limited to" preceding the list of allowable items indicates that the Legislature intended the list to be illustrative and not exclusive. [Footnote omitted.] The first version of the Template, [footnote omitted] however, did not allow payment of sheriff retiree health benefits. Section I of the Template, titled "Allowable Cost Narratives," allows for the payment of "Salary, wages, and benefits" for sheriff employees. Section III of the Security Template, entitled "Addendum Narratives," includes a table that states "this is a list of *the* allowable employer-paid labor-related employee benefits." (Italics added.) This wording, in contrast to the use of the phrase "including, but not limited to" in Government Code section 69927(a)(6), makes the list exclusive. [Footnote omitted.] *Retiree health benefits are not included in the list.* Given that the Legislature made the Template the final word on what was an allowable cost, with its adoption, retiree health benefits were not allowable costs.[106]

Although the contract law enforcement template does not expressly list retiree health benefit costs as an allowable cost for county employees, it does identify "County Health & Welfare (Benefit Plans)," a broadly worded phrase, as an allowable cost. In addition, retiree health benefit costs are *not* identified in the template's list of *non*-allowable costs. Thus, the plain language of the template is not as clear as the Judicial Council suggests.

"County Health and Welfare (Benefit Plans)" is broad and does have meaning under existing law. When the Legislature directed the Judicial Council to establish the working group to develop the template in light of its definition of allowable costs for security personnel services, there existed in law a comprehensive statutory scheme enacted in 1963 (Gov. Code, §§ 53200, et seq.) authorizing local agencies, including counties, to provide health and welfare benefits to their employees, including benefits for retiree health care. Government Code section 53200(d)

[106] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010.

defines "health and welfare benefit" to mean any one of the following: "hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance or benefits, whether provided on an insurance or service basis, and includes group life insurance as defined in subdivision (b) of this section." Section 53201 then authorizes the legislative body of the local agency to provide for any health and welfare benefits, as defined in section 53200, for the benefit of its retired employees.[107] The courts have determined that section 53201 gives local agencies the power to provide their employees "*any* health and welfare benefits" for its officers, employees, and retired employees, with no limitation on the amount or kinds of benefits a local agency may provide.[108] Section 53202 states that the local agency may contract with one or more insurers, health service organizations, or legal service organizations when providing health and welfare benefits. Sections 53202.1 and 53205.2 then provide that the local agency may approve several insurance policies, including one for health, and that when granting the approval of a health benefit plan, the governing board "*shall give preference to such health benefit plans as do not terminate upon retirement of the employees affected*, and which provide the same benefits for retired personnel as for active personnel at no increase in costs to the retired person, provided that the local agency or governing board makes a contribution of at least five dollars ($5) per month toward the cost of providing a health benefits plan for the employee or the employee and the dependent members of his family."[109]

It is presumed that the Legislature was aware of the counties' broad authority to provide health and welfare benefits to employees when it enacted the 2002 Superior Court Law Enforcement Act and defined allowable "salary and benefit" costs for security personnel services to include

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[107] The legislative history of Government Code section 53201 was described in an opinion issued by the Attorney General's Office. It states the following:

> Section 53201 was enacted in 1949 (Stats. 1949, ch. 81, §1), initially allowing current officers and employees that opportunity to purchase their own group insurance. In 1957 (Stats. 1957, ch. 944, §2), the Legislature authorized local agencies to pay for the insurance if they so chose, and expanded the coverage to health and welfare benefits generally. In 1963, 'retired employees' (Stats. 1963, ch. 1773, §1) were added to the coverage ….

(85 Ops. Cal.Atty.Gen. 63 (2002).

[108] *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, 654.

[109] Emphasis added. In *Ventura County Retired Employees' Assn. v. County of Ventura* (1991) 228 Cal.App.3d 1594, 1598-1599, the court held that a county's initial decision to furnish health care benefits to retirees is discretionary and that section 53205.2 does not require a county to provide health care benefits to retirees which are equal to those provided to active employees. Rather, section 53205.2 requires only that the county give preference to health benefit plans that furnish retirees and active employees the same benefits at no cost increase to retirees. "Such a 'preference' should only be made if health plans are commercially available and actuarially sound."

"county health and welfare" benefits.[110] In fact, the plain language of Government Code section 69927(b), as added by the 2002 Act, shows that the Legislature was aware of the prior definition of allowable costs for sheriff court security services in Function 8 of Rule 810 and that it included all costs for salary, wages, and benefits provided by the county for sheriff supervisory and line personnel performing court security services. Section 69927(b) states that "[n]othing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost . . . [in] Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996 …."

In addition, there is nothing in the phrase "County Health and Welfare (Benefit Plans)," or other language adopted in the template, to suggest that the phrase means something different than the health and welfare benefits authorized by sections 53200 and 53201 for county employees, or that the phrase itself excludes retiree health benefits as suggested in the comments filed by the Judicial Council.

This interpretation is also supported by documents in the record filed by the Judicial Council. Exhibit 12 to the Judicial Council's comments, is a memorandum of responses prepared by the AOC and the California State Sheriffs Association (dated July 10, 2003, *after* the template became effective in May 2003), to court security questions submitted at the "SB 1396" (2002 Superior Court Law Enforcement Act) training sessions. On page 4 of the document is the following question presented by attendees: "Is the payment of premiums for lifetime health benefits in retirement an allowable cost?" The answer provided states the following: "Yes. Payment of retirement benefits, such as health insurance should be locally negotiated."[111] Exhibit 15 is a letter from the Executive Clerk for the Superior Court for the County of Los Angeles to the Director of the AOC, dated January 10, 2007, with documents attached to the letter showing that the county included retiree health costs for deputies and sergeants, at a rate of 2.780 percent, in fiscal year 1994-1995 (the base year for determining the county's maintenance of effort payment for trial court funding) in its maintenance of effort payments to the state. The letter took the position that each court should be allocated funding for retiree health benefits if the costs were paid by the court in the past. Exhibit 16 is the response from the Director of the AOC, agreeing that payment of retirement health insurance costs for sheriff security personnel is "authorized to extent the expenditures were included in the Counties Maintenance of Effort (MOE) payment (which was established after the state assumed responsibility for state funding on January 1, 1998), if the court has paid these costs since that time, and if no new method of cost calculation has been adopted which would have the effect of expanding financial liability." Thus, the Director of the AOC agreed that the County of Los Angeles properly billed the court for retiree health benefits for sheriff deputies providing security services before the enactment of the Superior Court Law Enforcement Act of 2002 pursuant to Government Code section 69927(a). And finally, Exhibit 17 is a staff analysis from the AOC to the Judicial Council, dated October 8, 2008, recognizing five counties that historically included retiree health costs for sheriff court security in the maintenance of effort contracts as follows:

[110] *Estate of McDill* (1975) 14 Cal.3d 831, 837.

[111] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 12.

> Court security retiree health costs of $4.98 million have historically been included in maintenance of effort (MOE) contracts for five courts since the passage of state trial court funding. These five courts have been billed for these costs by the sheriff and have paid for them.

Thus, the Commission finds that under the law immediately preceding the 2009 test claim statute, the cost of retiree health care benefits for sheriff employees providing court security services in criminal and delinquency matters was an allowable cost paid by the state, as long as the cost was included in the county's cost for court operations and properly billed to the state under the trial court funding program before January 1, 2003.

b) *Section 69926(b), as amended in 2009, transfers partial financial responsibility for the sheriff court security program from the state to the counties within the meaning of article XIII B, section 6(c)*

The 2009 test claim statute amended Government Code section 69926(b), effective July 28, 2009, to *exclude* retiree health benefits from sheriff court security services payable by the state under the trial court funding program. Section 69926(b) defines the excluded "retiree health benefits" to include, "but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel."

The Judicial Council asserts that reimbursement is not required for retiree health benefit costs associated with former sheriff deputies who are already retired since under prior law, the state did not pay for the health benefits of retired employees under the trial court funding program. Thus, those costs have not been shifted to the counties.

The Judicial Council is correct that under prior law, section 69926(a)(5), as added by the 2002 Superior Court Law Enforcement Act, defined the allowable costs for security personnel services to mean only the salary and benefits of "an employee." No funding was provided by the state under prior law for premium costs provided to already retired employees and their beneficiaries. Thus, the Commission agrees that any current health benefit payments to retirees or their beneficiaries during the period of reimbursement have not been transferred by the state and do not constitute a new program or higher level of service for counties.

However, as indicated above, the cost of retiree health care benefits for existing *employees* providing court security services in criminal and delinquency matters was an allowable cost paid by the state under prior law, as long as the cost was included in the county's cost for court operations and properly billed to the state under the trial court funding program before January 1, 2003. For those counties, retiree health care costs for employees providing the required security services are now excluded and have been transferred to the county. To hold, under the circumstances of this case, that a shift in funding of an existing required court security program from the state to the county is not a new program or higher level of service would violate the intent of article XIII B, section 6. Section 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of the constitutional restrictions on the taxing and spending power of the local entities.[112]

[112] *Lucia Mar, supra*, 44 Cal.3d at pages 835-836.

However, more analysis is required to determine what the new program or higher level of service "cost" is for a county. Under mandates law, a county must demonstrate actual costs incurred in a fiscal year to be reimbursed. Increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit are the costs that are eligible for reimbursement.[113] "We can only conclude that when the Constitution uses 'costs' in the context of subvention of funds to reimburse for 'the costs of such program,' that some actual cost must be demonstrated . . . ."[114] In this case, whether retiree health benefit "costs" have actually been incurred and can be demonstrated, will depend on how a county funds retiree health benefits.

As described in more detail in the next section, retiree health benefits, like salaries and pensions, are earned during an employee's working years. Several sources indicate, however, that most counties have historically funded these benefits on a "pay-as-you-go" basis *after* the employee retires. If a county has adopted the pay-as-you-go method, the county does not pre-fund retiree health benefit costs in the year services are provided like it does for pensions by making annual contributions to either the normal (or current) cost of the benefit or to unfunded liabilities associated with the benefit, but instead pays premium costs for retiree health benefits as the costs are incurred *after* employees have retired.[115] Thus, the pay-as-you-go method shifts current

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[113] Government Code section 17514; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284; see also, *County of Fresno v. State of California* (1990) 53 Cal.3d 482, 487, where the court noted that article XIII B, section 6 was "designed to protect the tax revenues of local government from state mandates that would require expenditure of such revenues."

[114] *County of Sonoma, supra*, 84 Cal.App.4th at page 1285.

[115] In *Retired Employees Association of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1188, the League of Cities and California State Association of Counties filed amicus briefs stating that "retiree health insurance benefits, unlike pensions, are not funded during the retiree's working years; that most of these benefits have been funded on a pay-as-you-go basis [*after* employees retire]…." This information is consistent with findings of the Public Post-Employment Benefits Commission, established under former Governor Schwarzenegger's Executive Order (S-25-06) dated December 28, 2006. The January 1, 2008 report issued by the Public Post-Employment Benefits Commission states, on pages 24 and 219, that the pay-as-you-go method for funding retiree health costs continues to be the predominate funding strategy used by those agencies and that 78 percent of the agencies do not prefund these benefits. And, finally, the LAO, in its December 19, 2013 review of an initiative for the 2014 ballot that proposes to amend the Constitution related to pensions for state and local governmental employees states the following:

> Unlike pension plans, few government employers prefund retiree health benefits. That is, most government employers and employees do not make annual contributions to either the normal cost or unfunded liabilities associated with the benefit. Instead, employers pay premium costs for retiree health benefits as they incur after employees have retired – a method or payment referred to as "pay-as-you-go." Some government employers recently started prefunding these benefits. In 2010-2011, the state paid about $1.4 billion towards these benefits

retiree health benefit costs earned by the employee in the current year to future taxpayers.[116] In past years, these costs were reported by the county only after retirement, and were not reflected as a cost or obligation incurred as counties receive employee services each year.

In 2004, however, the Government Accounting Standards Board issued statement 45 (GASB 45), which was intended to address the financial reporting of governmental entities using the pay-as-you-go approach for these types of post-employment benefits. GASB 45 requires all government entities, including counties, to start documenting in their accounting and financial reporting statements the unfunded liabilities for post-employment benefits, including retiree health benefits, by December 15, 2008. The liabilities for retiree health benefits, like those for pension systems, will be determined by actuaries and accountants based on assumptions of future health care cost inflation, retiree mortality, and investment returns. "This unfunded liability can be characterized as an amount, which, *if invested today*, would be sufficient (with future investment returns) to cover the future costs of all retiree health benefits *already earned* by current and past employees."[117]

Under GASB 45, government financial statements will list an actuarially determined amount known as an annual required contribution (ARC) for post-employment benefits like retiree health benefits. This contribution includes the following two costs:

- The normal cost – which represents that amount that needs to be set aside to fund future retiree health benefits *earned in the current year*.
- Unfunded liability costs – the amount needed to pay off *existing unfunded retiree health liabilities* over a period of no longer than 30 years.[118]

> for retired state and CSU employees. We estimate that local employers paid an equal or greater sum for these benefits for their employees and retirees.

[116] Exhibit --, "Retiree Health Care: A Growing Cost for Government," LAO, February 17, 2006. The LAO report states the following:

> The state (and nearly every other public entity nationwide) does not pay its current (or normal) costs for retiree health benefits each year. Consequently, the state fails to reflect in its budget the true costs of its current workforce. Since 1961, the state has been shifting costs to future taxpayers. The tens of billions of dollars in unfunded liabilities now owed by the state is the result of this approach. For this reason, the pay-as-you-go approach to retiree health care conflicts with a basic principle of public finance – expenses should be paid for in the year they are incurred. This principle requires decision makers to be accountable – through current budgetary spending – for the cost of whatever future benefits may be promised.

[117] *Ibid*; see also, "GASB Statement 45 on OPEB Accounting by Governments, A Few Basic Questions and Answers." (Exhibit --.)

[118] *Ibid*.

GASB 45, however, does not address how a governmental entity actually finances retiree health benefits, since that is a local policy decision. Thus, even though a county is required to report the amount needed to be set aside to fund future retiree health benefits earned in the current year and the existing unfunded retiree health liabilities, a county may continue to actually fund all retiree health benefit costs *after* employee retirements on a pay-as-you-go basis. When that occurs, 100 percent of the retiree health benefit costs will be an unfunded liability payable in future years.[119]

If a county defers payment for retiree health benefit costs until after their employees retire, the amounts reported in the annual financial statements as the county's annual required contribution pursuant to GASB 45 are not considered costs actually incurred by the entity in the fiscal year of reporting. Rather, as described in the case of *County of Orange v. Association of Orange County Deputy Sheriffs*, the unfunded liability simply represents an estimate projecting future contributions necessary to fund the benefit.[120] In *County of Orange*, the court addressed the issue whether the county's estimated unfunded actuarial accrued liability (UAAL) for pension benefits represented a debt subject to the municipal debt limitation imposed by the California Constitution, which prohibits a county from encumbering its general funds beyond the year's income without first obtaining the consent of two-thirds of the electorate.[121] Under the facts of the case, the county approved a pension increase for sheriff deputies to 3 percent at 50 in 2001, and renewed that agreement in subsequent contracts with the employee union for several years. Before adopting the resolution, the county secured an actuarial report that analyzed the financial impact of adopting the 3 percent at 50 formula for all years of service, both past and future, estimating the increase in the county's actuarial accrued liability between $99 and $100 million. A 2007 actuarial analysis concluded that the past service portion of the increased retirement benefit totaled $187 million. In 2008, the county adopted a resolution finding that, despite its prior resolutions increasing benefits, the enhanced benefits were unconstitutional.[122] The court held, however, that the unfunded actuarial accrued liability for the pension benefits did not constitute a debt or liability of the county, but an estimate projecting future contributions necessary to fund the benefit.[123] The court found persuasive a 1982 Attorney General's Opinion, finding that the state's unfunded liability for retirement did not violate the state debt limitation provision because the liability was based on estimates with no legally enforceable obligation yet existing, and applied that reasoning to the county's unfunded pension liability.

> In 1982, the Attorney General concluded that the state retirement system's "unfunded liability" did not violate the state debt limitation provision. The Attorney General explained that "[d]etermining how much income to the [state] Fund is necessary to pay all benefits as they become due is the business of

[119] *Ibid.*

[120] *County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 28, 36-37.

[121] *Id.* at page 33, referring to article XVI, section 18 of the California Constitution.

[122] *Id*. at pages 29-30.

[123] *Id*. at pages 36-37.

> actuaries. Actuaries predict future financial operations of an insurance or retirement system by making certain assumptions regarding the variables in the system." (65 Ops.Cal.Atty.Gen. 571, 572 (1982).)
>
> The state Public Employees' Retirement System (PERS) actuarial balance sheet showed an "unfunded actuarial liability" above the state debt limitation amount. The Attorney General concluded: "The actuarial term 'unfunded liability' fails to quantify as a legally enforceable obligation of any kind. As previously noted the very existence of such an 'unfunded liability' depends upon the making of an actuarial evaluation and the use of an evaluation method which utilizes the concept of an 'unfunded liability.' Further the amount of such an 'unfunded liability' in the actuarial evaluation of a pension system will depend upon how that term is defined for the particular valuation method employed. Finally the amount of such an 'unfunded liability,' however defined for the method used, depends upon many assumptions made regarding future events such as size of work force, benefits, inflation, earnings on investments, etc. In other words *an 'unfunded liability' is simply a projection made by actuaries based upon assumptions regarding future events. No basis for any legally enforceable obligation arises until the events occur and when they do the amount of liability will be based on actual experience rather than projections."* (65 Ops.Cal.Atty.Gen., *supra*, at p. 574, italics added.) Such calculations did not result in a legally binding debt or liability, but instead provided "useful guidance in determining the contributions necessary to fund a pension system." (*Ibid*.)
>
> . . . We find the analysis in the 1982 opinion persuasive, and that analysis supports the conclusion that a UAAL such as the $100 million cited by the County in this case is an actuarial estimate projecting the impact of a change in a benefit plan, rather than a legally enforceable obligation measured at the time of the County's 2001 resolution approving the 3% at 50 formula.[124]

The same reasoning applies to the unfunded projected costs of retiree health benefits that are reported by counties, which have adopted a pay-as-you-go approach, in their annual financial statements prepared in accordance with GASB 45. Those unfunded amounts, like pension projections, are simply estimates prepared by actuaries. With a pay-as-you-go approach, those amounts do not become actual debt or enforceable obligations until after the employee retires. And, as indicated above, amounts paid by a county in a current fiscal year after the employee retires are *not* costs that have been transferred by the test claim statute. Nor are those projected costs considered "actual costs incurred" within the meaning of article XIII B, section 6 because the projected estimates do not require the county to expend its limited tax revenues in the reporting year.[125]

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[124] *Ibid*.

[125] *County of Fresno*, *supra*, 53 Cal.3d at page 487.

However, some local government employers have recently started to prefund their retiree health benefits, making annual contributions as current year costs.[126] In its comprehensive annual financial report for the fiscal year ending June 30, 2012, the County of Los Angeles reported that the county's contribution during fiscal year 2011-2012 for health care benefits for retirees and their dependents was on a pay-as-you-go basis only. However, in May 2012, the County established a trust account for the purpose of holding and investing assets to prefund the retiree health program. The report states the following:

> The OPEB Trust is the County's first step to reduce its OPEB unfunded liability. It will provide a framework where the Board of Supervisors can begin making contributions to the trust and transition, over time, from "pay-as-you-go" to "pre-funding." The OPEB Trust does not modify the County's benefit programs.[127]

In the County's annual financial report for fiscal year ending June 30, 2013, it reports that the "During FY 2012-2013, the County made contributions to prefund the growing liability for retiree healthcare benefits in the amount of $448.8 million."[128] The report shows a 2012-2013 contribution made by the county in the amount of $889,871 for retiree health benefits for county employees, a portion of which would be applicable to county sheriff employees providing sheriff court security services in criminal and delinquency matters.[129]

Thus, the Commission finds that the amounts actually contributed by a county each fiscal year after the enactment of the 2009 test claim statute to prefund the future retiree health benefit costs earned in the current fiscal year of an employee providing court security services in criminal and delinquency matters are the costs that represent the new program or higher level of service for the sheriff court security program and require the county to expend tax revenues in that fiscal year. This finding is consistent with the Office of Management and Budget (OMB) Circular A-87 (2 CFR Part 225, Appendix B(f)), a provision contained in all parameters and guidelines adopted by the Commission, which allows reimbursement for only those retiree health benefit costs that are funded for that fiscal year and have been paid to either (a) an insurer or other benefit provider as current year costs or premiums, or (b) an insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

OMB Circular A-87 also allows as a reimbursable cost for retiree health benefits, actual amounts paid by a county in a current fiscal year to an insurer, benefit provider, or trustee to cover any existing unfunded liability attributable to the retiree health benefit costs earned in prior years by county employees providing sheriff court security services in criminal and delinquency matters,

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[126] Exhibit --, LAO Review of proposed 2014 initiative on the Pension Reform Act, December 19, 2013.

[127] Exhibit --, County of Los Angeles, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2012, pages 79-82.

[128] Exhibit --, County of Los Angeles, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2013, page 86.

[129] *Ibid*.

if that liability is amortized over a period of years. In this respect, 2 CFR Part 225, Appendix B(f)(4) states that "when a governmental unit converts to an acceptable actuarial cost method and funds PRHB [post-retirement health benefit] costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency." The Commission finds that the amounts actually contributed by a county each fiscal year after the enactment of the 2009 test claim statute to reduce an existing unfunded liability of health benefit costs earned by county employees providing court security services in criminal and delinquency matters are also costs that represent the new program or higher level of service for the sheriff court security program and require the county to expend tax revenues in that fiscal year.

Accordingly, the Commission finds that Government Code section 69927(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

Current health benefit premiums paid to retirees or their beneficiaries after retirement on a pay-as-you-go basis have not been transferred by the state and do not constitute a new program or higher level of service for counties.

D. The 2009 amendment to Government Code section 69926(b) imposes costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

Even though the transfer of costs in the circumstances described above is new and increases the level of service provided by counties, the Judicial Council argues that there is no state law requiring the county to pay retiree health benefits to sheriff deputies since the benefit is subject to local collective bargaining agreements. Thus, it argues that any transfer of costs is triggered by a discretionary decision of the county and is not mandated by the state.

In order for the retiree health benefit costs to be eligible for reimbursement, the costs incurred must be mandated by the state. Whether a statute imposes a "mandate" has been the subject of litigation, and the issue turns on four leading cases. In *City of Merced*, the court held that a statute amending the eminent domain law to require compensation for business goodwill is not a reimbursable cost since the city was not required by state law to obtain property by eminent domain.[130] The program permitting the use of the eminent domain power was voluntary. The court stated the following:

> [W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.[131]

In *Kern High School Dist*., the California Supreme Court held that statutes requiring school site councils and advisory committees for certain grant-funded educational programs to provide a notice and agenda of their meetings was not mandated by the state.[132] The Supreme Court determined that school districts had the option of participating in the funded programs and, thus, they were not legally compelled to incur the notice and agenda costs. The court affirmed the holding in *City of Merced*, finding that "the core point . . . is that activities undertaken at the option or discretion of a local government entity (that is, action undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate …."[133]

The school districts in *Kern* also argued that the legal compulsion standard is too narrow and that they should be reimbursed because school districts have "had no true option or choice but to participate in these [underlying education-related] programs. This absence of a reasonable alternative to participation is a de facto mandate."[134] The Supreme Court summarized its response as follows:

> Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion – for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program – claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of the various funded programs "too good to refuse" – even though, as a condition of participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate.[135]

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[130] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

[131] *Id.* at page 783.

[132] *Kern High School Dist., supra*, 30 Cal.4th 727, 745.

[133] *Id*. at page 742.

[134] *Id*. at page 748.

[135] *Id.* at page 731.

The school districts in *Kern* finally argued that the notice and agenda requirements were imposed for the first time many years *after* school districts decided to participate in the education programs and, thus, they were not free to stop their participation in the programs mid-stream. The court rejected the argument, finding that "a school district's *continued* participation in the programs would be no less voluntary. …[S]chool districts have been, and remain, legally free to decline to continue to participate in the eight programs here at issue."[136]

In *San Diego Unified School Dist.*, the key issue was whether the state requirements for expulsion hearings - which were not compelled by state criteria for expulsion, but in a sense discretionary – were mandated by the state.[137] The court's holding did not reach the mandate issue, since the court determined the costs were mandated by federal due process requirements. The court, however, discussed the reach of the *City of Merced* rationale, and rejected extending it whenever some element of discretion in incurring the cost existed; e.g., when costs for a fire protection program are higher because of the decision how many firefighters to hire into a fire department. The court stated the following:

> Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] the court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.[138]

More recently, the court in *Department of Finance v. Commission on State Mandates* held that school districts and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties are not

[136] *Id.* at page 754, fn. 22.

[137] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 888-890.

[138] *Id.* at pages 887-888.

mandated by the state to comply with the requirements of the Peace Officer Procedural Bill of Rights Act (POBRA).[139] The court stated that "[t]he result of the cases discussed above is that, if a local government participates 'voluntarily,' i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement."[140] The court further held that the Legislature's recognition of the need for local governmental entities to employ peace officers when necessary to carry out their basic functions did not persuasively support a claim of practical compulsion. The "necessity" that is required is facing "certain and severe penalties such as double taxation or other draconian consequences," based on concrete evidence in the record.[141] "Instinct is insufficient to support a legal conclusion" of a state-mandated program.[142] The court stated the following:

> Similarly, we do not see the bearing on a necessity or practical compulsion of the districts to hire peace officers, of any or all the various rights to public safety and duties of peace officers to which the Commission points. If affording those rights or complying with those duties as a practical matter could be accomplished only by exercising the authority given to hire peace officers, the Commission's argument would be forceful. However, it is not manifest on the face of the statutes cited nor is there any showing in the record that hiring its own peace officers, rather than relying upon the county or city in which it is embedded, is the only way as a practical matter to comply.[143]

The court further explained that:

> …the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the *only reasonable means* to carry out their core mandatory functions.[144]

In this case, there is no dispute that counties are legally compelled to participate in the sheriff court security services program for criminal and delinquency matters pursuant to Government Code section 69922. However, the Judicial Council is correct that the state does not require counties to provide retiree health care benefits to employees. Counties are authorized by Government Code sections 53200 et seq., to provide those benefits and a county, like other local agencies, is required by the Meyers-Milias-Brown Act (MMBA) to negotiate those benefits with employee groups through the collective bargaining process. (Gov. Code, §§ 3500-3510.) The

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[139] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1357.

[140] *Id*. at pages 1365-1366.

[141] *Id.* at page 1366.

[142] *Id.* at page 1369, concurring opinion by Presiding Justice Scotland.

[143] *Id*. at page 1367.

[144] *Id.* at page 1368, emphasis added.

purpose of the MMBA is to "promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.[145] The MMBA requires public agencies to negotiate exclusively with the collective bargaining units. Once a memorandum of understanding (MOU) has been negotiated, it is reviewed and approved by the governing body of the public entity and the membership of the bargaining unit.[146] Generally, when an MOU has expired, the parties may negotiate changes to its provisions.[147] An MOU is binding on both parties for its duration and the public employer may not later deny the employee the means to enforce the agreement.[148] Both the state and federal Constitutions provide that a law impairing the obligation of contracts may not be passed by the public entity.[149] Thus, the contract clause of the state and federal Constitutions limits the power of public entities to unilaterally modify their own contracts with employees during the terms of the MOU.[150]

1) *The test claim statute does not result in costs mandated by the state for new employees, hired after the effective and operative date of the test claim statute (July 28, 2009), to perform sheriff court security services in criminal and delinquency matters.*

The Commission finds that the state, with the enactment of the 2009 test claim statute, has not mandated counties to incur costs for retiree health benefits for *new employees* performing sheriff court security services in criminal and delinquency matters that are *hired after* the effective and operative date of the test claim statute (July 28, 2009). After that date, counties are on notice that retiree health benefits will no longer be covered by the trial court funding program and can properly plan and budget for new employees providing those services. Counties continue to have the authority to provide retiree health benefits to new employees pursuant to Government Code section 53200 et seq., but are not required by state law to do so. Moreover, there is no evidence in the record that a county is practically compelled to provide retiree health benefits to new employees hired after July 28, 2009, to perform the required program. Such a showing requires concrete evidence in the record showing that a county has no alternative, but is forced to hire new employees to provide sheriff court security services in criminal and delinquency matters in order to comply with their contracts with the court, and forced to offer retiree health

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[145] Government Code section 3500.

[146] Government Code section 3505.

[147] Government Code section 3505.1.

[148] *San Bernardino Public Employees Assn. v. City of Fontana* (1998) 67 Cal.App.4th 1215, 1220; *Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1182.

[149] California Constitution, article 1, section 9; U.S. Constitution, article I, section 10.

[150] *San Bernardino Public Employees Assn, supra*, 67 Cal.App.4th at page 1222.

benefits as part of the compensation package to obtain qualified employees. Without concrete evidence in the record, the Commission cannot make such a finding based on instinct alone.[151]

2) *The test claim statute imposes costs mandated by the state for the payment of retiree health benefits to employees hired before July 28, 2009, to provide sheriff court security services in criminal and delinquency matters, who have a vested right to such benefits.*

The same finding cannot be made, however, with respect to employees existing when the 2009 test claim statute became operative and effective, if those employees had a vested right to retiree health benefits. Vested rights, once acquired, extend beyond the expiration of an MOU and a county has no discretion to unilaterally change or impair vested rights of existing employees. Such an action is barred by the contracts clause of the United States and California Constitutions.[152] Vested obligations in public employment that are protected by the contract clause include the right to the payment of salary which has been earned.[153] The courts have also found that "since a pension right is 'an integral portion of contemplated compensation' [citation omitted] it cannot be destroyed, once it has vested, without impairing a contractual obligation."[154] These findings have also been applied to retiree health benefits.[155] Thus, once retiree health benefits are vested, the right cannot be destroyed without impairing the contract in violation of the Constitution.[156]

The determination of whether an employee has a vested right to retiree health benefits depends on the interpretation of the public employment contract. Contracts between counties and their employees are interpreted by the same rules as private contracts, unless otherwise provided in the law.[157] Contractual rights that extend beyond the term of an MOU and, thus, become vested, occur when the statutory language "clearly … evince a legislative intent to create private rights of a contractual nature enforceable against the [government body.]"[158] Where the legislation

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[151] *Department of Finance, supra*, 170 Cal.App.4th 1355, 1369, concurring opinion by Presiding Justice Scotland.

[152] *International Brotherhood v. City of Redding* (2013) 210 Cal.App.4th 1114, 1119, citing *Litton Fin. Printing Div. v. NLRB* (1991) 501 U.S. 190, 207; *San Bernardino Public Employees Assn, supra*, 67 Cal.App.4th at page 1222.

[153] *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 853.

[154] *Ibid.*

[155] *Thorning v. Hollister School Dist*. (1993) 11 Cal.App.4th 1598, 1609, finding that retired board members had a vested right in post-retirement health benefits provided by the school district as an element of their compensation during the term of public office.

[156] *Ibid*; *Betts v. Board of Administration of the Public Employees' Retirement System* (1978) 21 Cal.3d 859, 863.

[157] *Retired Employees, supra*, (2011) 52 Cal.4th 1171, 1177-1178.

[158] *Id.* at page 1187.

itself is the ratification or approval of a contract, the intent to make a contract is "clearly shown."[159]

For example, in *International Brotherhood v. City of Redding*, the city agreed to participate in paying employees' health insurance premiums and, since 1979, the MOUs contained a provision that "the City will pay fifty percent (50%) of the group medical insurance program premium for each retiree and dependents, if any, presently enrolled *and for each retiree in the future* who goes directly from active status to retirement and continues the group medical insurance without a break in coverage. …" (Emphasis added.) The MOU further stated that it would remain in full force and effect, unless modified by mutual agreement. Thirty years later, in 2010, the city and the labor union started negotiating for a new collective bargaining agreement, and failed to reach an agreement after the city proposed to reduce the retiree health benefits. The city then unilaterally reduced the retiree health benefit to provide a subsidy of only 2 percent per year of service, up to a maximum of 50 percent.[160] The court reversed the ruling on the demurrer, holding that the express language in the original MOU promising to pay retiree health benefits "for each retiree in the future," constituted a vested benefit to those employees subject to that MOU, which could not be impaired by the city.[161]

An employee may acquire a vested right to retiree health benefits upon acceptance of employment based on the system then in effect. If retiree health benefits are later conferred during the term of employment, the benefits become vested at that time.[162] The right to retiree health benefits may also be subject to subsequent conditions and contingencies that require the employee to work for the employer for a specified number of years before the employee is eligible to receive retiree health benefits.[163] In such cases, the employee has a vested right to those benefits upon employment or when later conferred during the term of employment, which cannot later be impaired by the employer. But the obligation to actually provide those benefits is subject to the condition that the employee work the required years of service.[164] For example,

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[159] *Ibid.*

[160] *Id.* at page 1117.

[161] *Id*. at page 1122.

[162] *Betts v. Board of Administration*, *supra*, 21 Cal.3d 859, 866, where the Supreme Court determined that "[a]n employee's contractual pension expectations are measured by benefits which are in effect not only when employment commences, but which are thereafter conferred during the employee's subsequent tenure." See also, *Thorning v. Hollister School Dist.* (1992) 11 Cal.App.4th 1598, 1606, extending the *Betts* finding to retiree health benefits.

[163] *United Firefighters of Los Angeles City v. City of Los Angeles* (1989) 210 Cal.App.3d 1095, 1103; LAO Review of proposed 2014 initiative, December 19, 2013.

[164] In this respect, the courts have held that "public employment is not held by contract but by statute and that, insofar as the duration of such employment is concerned, no employee has a vested contractual right to continue in employment beyond the time or contrary to the terms and conditions fixed by law." In other words, there are no vested contractual rights to continue working for any specified period of time. Thus, the fact that a pension right is vested, for example, will not prevent its loss upon the occurrence of a condition subsequent, such as lawful

in 1982, the County of Los Angeles adopted an ordinance that provided for a health insurance program for retired employees and their dependents. In 1994, the County amended the agreements to continue to support the retiree health insurance benefits program regardless of the status of active member insurance. The benefits earned by the employees of the County of Los Angeles are dependent on the number of completed years of retirement service credited to the retiree upon retirement. The benefits earned range from 40 percent of the benchmark plan cost with ten completed years of service to 100 percent of the benchmark plan cost with 25 or more completed years of service.[165]

Retiree health benefits may also be vested without an express contract. In 2011, the California Supreme Court, in *Retired Employees Association of Orange County, Inc. v. County of Orange*, determined that even if a future benefit is not expressly provided in the MOU, the right may still be vested and continue beyond the term of the MOU if a contract can be *implied* from a county ordinance or resolution.[166] The court issued its decision following a request by the United States Court of Appeals for the Ninth Circuit, asking the following question: "Whether, as a matter of California law, a California county and its employees can form an implied contract that confers vested rights to health benefits on retired county employees." The facts in the underlying federal case involved a 1966 offer by the County of Orange for group medical insurance to its retired employees. In 1985, the county began to combine active and retired employees into a single unified pool for purposes of calculating health insurance premiums. The single unified pool had the effect of subsidizing health insurance for retirees, in that it lowered retiree premiums below their actual cost, while raising active employee premiums above their actual cost. For budgetary reasons in 2007, the county passed a resolution splitting the pool of active and retired employees, increasing the health insurance premiums for retirees. The employee association sought an injunction prohibiting the county from splitting the pool of active and retired employees, arguing that the county's actions (i.e., its longstanding and consistent practice of pooling active and retired employees, along with the county's representations to employees regarding a unified pool) created an implied contractual right to a continuation of the single unified pool for employees who retired before a certain date and that the action constituted an impairment of contract in violation of the state and federal Constitutions.[167] The California Supreme Court answered the federal court's question by holding that a county may be bound by the terms of an implied contract as long as there is no legislative prohibition against such arrangements.[168] The

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termination of employment before completion of the period of service designated in the pension plan. Unlike tenure of civil service employment, pension rights are deferred compensation earned immediately upon performance of services for a public employer and cannot be destroyed without impairing a contractual obligation. *Miller v. State of California* (1977) 18 Cal.3d 808, 814-817.)

[165] Exhibit --, County of Los Angeles Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2012, page 79.

[166] *Retired Employees, supra*, 52 Cal.4th 1171.

[167] *Id.* at page 1177.

[168] *Id.* at page 1176.

court further affirmed that "[i]n California law, a legislative intent to grant contractual rights can be implied from a statute if it contains an unambiguous element of exchange of consideration by a private party for consideration offered by the state."[169] A clear showing that legislation was intended to create the asserted contractual obligation is required to ensure that neither the governing body nor the public will be blindsided by unexpected obligations.[170] "[A]s with any contractual obligation that would bind one party for a period extending far beyond the term of the contract of employment, implied rights to vested benefits should not be inferred without a clear basis in the contract or convincing extrinsic evidence."[171] The court concluded that a vested right to health benefits for retired county employees can be implied under certain circumstances from a county ordinance or resolution.[172]

In 2012, the First District Court of Appeal in *Requa v. Regents of the University of California*, applied the court's ruling in *Retired Employees Assn.* and found that former state university employees adequately pled that the university formed an implied contract to provide lifetime medical benefits.[173] The court based its conclusion on the allegations that the university authorized the benefits in 1961, the uninterrupted provision of those benefits for more than 50 years, and the university's publications assuring employees they would receive health benefits in retirement as long as they met certain eligibility requirements.[174]

Thus, a county's discretion to later change vested retiree health benefits acquired by existing employees is different than the situation in *Kern High School Dist*., where school districts had the discretion to avoid the costs of new state requirements by simply ending their participation in the underlying voluntary grant programs.[175] Here, vested retiree health benefit rights, whether created by express or implied contracts, could not have been unilaterally impaired or destroyed by a county when the test claim statute was enacted, without violating the United States and California Constitutions.[176] Thus, under these circumstances, once the test claim statute was

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[169] *Id*. at page 1186.

[170] *Id.* at pages 1188-1189.

[171] *Id.* at page 1191.

[172] *Id.* at page 1194.

[173] *Requa v. Regents of the University of California* (2012) 213 Cal.App.4th 213.

[174] *Id*. at pages 227-228.

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

[176] A constitutional bar against the destruction of such vested contractual rights, however, does not absolutely prohibit their modification. Although there are no reported cases interpreting employer modifications to vested retiree health benefits, the courts have explained allowable modifications to pension benefits. With respect to active employees, the courts have held that any modification of vested pension rights must be reasonable, must bear a material relation to the theory and successful operation of a pension system, and, when resulting in disadvantage to employees, must be accompanied by comparable new advantages. (*Miller, supra,* 18 Cal.3d 808, 816.)

enacted to exclude and shift the costs of retiree health benefits from the state to the counties for existing sheriff employees providing security services for criminal and delinquency matters, a county that contracted for those benefits did not have the discretion to stop honoring those vested rights.

Accordingly, the Commission finds that the new program or higher level of service imposed by Government Code section 69927(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, results in costs mandated by the state (from July 28, 2009, to June 27, 2012) for the payment of retiree health benefits to employees *hired before July 28, 2009,* to provide sheriff court security services in criminal and delinquency matters, who have a vested right to such benefits. As described below, however, offsetting revenue in the form of realignment funds have been appropriated by the state to counties for fiscal year 2011-2012, which, if applied to pre-fund retiree health benefits of existing employees providing these services, reduces any costs incurred under this mandated program.

3) *Offsetting revenue intended to pay for sheriff court security costs, including those costs for retiree health benefits, has been provided by the state for fiscal year 2011-2012.*

In 2011, the Legislature enacted Assembly Bill 118 to implement the 2011 Public Safety Realignment Act. The bill created the account structure and allocations to fund realigned local costs in fiscal year 2011-12. Government Code section 30025 was added by the bill to create the Local Revenue Fund 2011, which includes the Trial Court Security Account. Funding transferred into the Local Revenue Fund shall be allocated exclusively for the services defined in section 30025(h). Section 30025(h)(1) defines "public safety services" to include "employing ... court security staff." Section 30025(f)(3) states that "the moneys in the Trial Court Security Account shall be used exclusively to fund trial court security provided by county sheriffs." The bill also added section 30027 to the Government Code to allocate funds to the Controller for the Trial Court Security Account. Section 30027(c)(1) states that "no more than four hundred ninety-six million four hundred twenty-nine thousand dollars ($496,429,000) in total shall be allocated to the Trial Court Security Account, and the total allocation shall be reduced by the Director of Finance, as appropriate, to reflect any reduction in trial court security costs."

Thus, funding allocated for trial court security costs provided by county sheriffs and used by the county to pre-fund the costs of retiree health benefits of existing employees, shall be identified in any reimbursement claim and deducted from any costs claimed under this mandated program.

Courts have also held that considerations external to the functioning of the pension system, such as increased taxpayer hostility to felons or jealousy of employees not covered by the system will not justify a change to a pension right. The justification must relate to considerations internal to the pension system, e.g., its preservation or protection or the advancement of the ability of the employer to meet its pension obligations. Changes made to effect economies and save the employer money do "bear some material relation to the theory of a pension system and its successful operation. (*Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 666.)

V. CONCLUSION

The Commission concludes that Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003, and only for existing employees *hired before July 28, 2009*, to provide sheriff court security services in criminal and delinquency matters, who have a vested right to such benefits:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

In addition, revenue received by a county eligible to claim reimbursement in fiscal year 2011-2012 for this program from the 2011 Public Safety Realignment Act (Gov. Code, §§ 30025, 30027) shall be identified and deducted as offsetting revenue from any claim for reimbursement.

All other statutes, rules, code sections, and allegations pled in this claim are denied.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On March 13, 2014, I served the:

Draft Staff Analysis and Proposed Statement of Decision,
Schedule for Comments, and Notice of Hearing

Sheriff Court-Security Services, 09-TC-02
Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5
Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13)
California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 13, 2014 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/13/14

Claim Number: 09-TC-02

Matter: Sheriff Court-Security Services

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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