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January 20, 2006

Mr. Allan P. Burdick
DMG-Maximus, Inc.
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

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

RE: Draft Staff Analysis and Hearing Date
Fire Safety Inspections of Care Facilities (01-TC-16)
City of San José, Claimant
Statutes 1989, chapter 993
Health and Safety Code sections 1531.2, 1569.149, 1596.809, 13144.5, and 13235

Dear Mr. Burdick:

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments
Any party or interested person may file written comments on the draft staff analysis by Tuesday, **February 14, 2006**. 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. (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, subdivision (c)(1), of the Commission's regulations.

Hearing
This test claim is set for hearing on **Wednesday, March 29, 2006** at 10:00 a.m. We will notify you of the location of the hearing when a hearing room has been confirmed. The final staff analysis will be issued on or about March 16, 2006. 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, subdivision (c)(2), of the Commission's regulations.

Please contact Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis

ITEM ____

TEST CLAIM
DRAFT STAFF ANALYSIS

Health and Safety Code Sections 1531.2, 1569.149, 1596.809, 13144.5, and 13235
Statutes 1989, Chapter 993

Fire Safety Inspections of Care Facilities
(01-TC-16)

City of San Jose, Claimant

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS.

STAFF ANALYSIS

Claimant

City of San Jose

Chronology

06/03/02	City of San Jose filed test claim with the Commission
08/19/02	The Department of Finance submitted comments on test claim with the Commission
09/17/02	City of San Jose filed reply to Department of Finance comments
12/12/05	Commission staff requested information from the State Fire Marshal
01/03/06	State Fire Marshal responded to staff's request
01/20/06	Commission staff issued draft staff analysis

Background

This test claim addresses amendments to the Health and Safety Code regarding fire inspections of specified community care facilities required by the State Fire Marshal. If the test claim is approved, the reimbursement period would begin July 1, 2000 pursuant to Government Code section 17557.

The purpose of the test claim legislation (Stats. 1989, ch. 993) is to ensure that community care facilities, residential care facilities for the elderly, and child day care facilities, during the process of being licensed by the State Department of Social Services, receive in a timely fashion the correct fire clearance information from the local fire enforcing agency or State Fire Marshal. The test claim legislation sets forth the Legislature's intent as follows:

> It is in the best interest of the California public that private citizens be encouraged to develop and operate community care facilities, residential care facilities for the elderly, and child day care facilities throughout the state in order to meet the critical demand for quality, specialized care homes.
>
> Complex and unclear fire safety codes have frustrated the attempts of persons seeking to establish community care facilities, residential care facilities for the elderly, and child day care facilities, and have resulted in significant loss of money and resources to individuals who have received incorrect information regarding fire safety requirements from state or local officials, or no guidance at all.
>
> Interpretation of state and local fire safety regulations varies between the more than 1,200 fire jurisdictions, and in some cases varies within the same jurisdiction, causing confusion and, in numerous instances, project cancellation.
>
> Therefore, it is the intention of the Legislature that a prospective applicant for community care facility, residential care facility for the elderly, or child

day care facility licensure shall be clearly informed in advance of making design modifications to a structure to meet specific fire safety requirements.

The Legislature further intends that it is incumbent on state and local agencies to assist persons in the interpretation of fire safety regulations for community care facilities, residential care facilities for the elderly, and child day care facilities, and that greater efforts must be made to clarify and streamline the fire safety clearance process.[1]

The State Fire Marshal establishes statewide fire safety standards[2] which are generally enforced at the local level by fire enforcing agencies established in cities and counties.[3] Although local fire enforcing agencies are tasked with fire-related enforcement and inspections, such as the fire clearances required for the community care facilities, the State Fire Marshal carries out these duties when there is no local fire enforcing agency or may carry them out when asked to do so by the local fire official or local governing body.[4] The statutory and regulatory scheme in existence prior to the test claim legislation required fire clearances for various community care facilities licensed by the Department of Social Services.[5]

Test Claim Legislation

The test claim legislation affected Health and Safety Code sections 1531.2, 1569.149, 1596.809, 13144.5, and 13235. These sections require the following activities:

- Under sections 1531.2, 1569.149 and 1596.809, the Department of Social Services is required to notify prospective applicants for a community care facility, residential care facility for the elderly, or child day care facility license that a fire clearance approval from the local fire enforcing agency or the State Fire Marshal is a prerequisite to licensure.
- Under section 13144.5, the State Fire Marshal is required to include, as part of its voluntary regular training sessions devoted to the interpretation and application of the laws and rules relating to fire and panic safety, interpretation of the regulations pertaining to community care facilities, residential care facilities for the elderly, and child day care facilities.
- Under section 13235, subdivision (a), the local fire enforcing agency or State Fire Marshal is required to conduct a preinspection of a community care facility, residential care facility for the elderly, or child day care facility upon receipt of a request from a prospective licensee of such a facility, prior to the final fire clearance approval. The preinspection shall include:
  - consultation and interpretation of fire safety regulations

[1] Senate Bill 1098, Statutes of 1989, chapter 993, Section 1.

[2] Health and Safety Code sections 13100 et seq.

[3] Health and Safety Code sections 13800 et seq.

[4] Health and Safety Code section 13146, subdivisions (c) and (d).

[5] California Code of Regulations, title 22, sections 80020, 87220, and 101171.

- notification to the prospective licensee in writing of the specific fire safety regulations which shall be enforced in order to obtain fire clearance approval

- Under section 13235 subdivision (b), the final fire clearance inspection shall be completed within 30 days of receipt of the request for final inspection.

Health and Safety Code section 13235, subdivision (a) specifically allows the following fees to be charged for the preinspection of a facility: 1) not more than $50 for a facility serving 25 or fewer persons; and 2) not more than $100 for a facility serving more than 25 persons.

Claimant's Position

The claimant contends that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The City of San Jose, according to its test claim, is seeking reimbursement for the following activities to the extent that the allowed preinspection fees of $50 and $100 do not cover the activities:

- Training of fire inspector to conduct inspection
- Travel of fire inspector to site
- Fire inspector conducting inspection and consultation regarding interpretation and application of fire safety regulations
- Fire inspector providing information regarding what is needed to be done in order to obtain fire clearance

Department of Finance Position

Department of Finance submitted comments on the test claim contending that "the test claim legislation applies to the State Fire Marshal as well as local fire agencies, and is therefore not unique to local government" and that, accordingly, the test claim should be denied.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[6] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[7] "Its

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

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

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[8] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[9] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[10]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[11] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[12] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[13]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[14]

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.[15] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as

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

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

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

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

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

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

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

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

an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[16]

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a "new program" or "higher level of service" on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution?

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

Mandatory or Discretionary Activities?

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies. If the statutory language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered. In such a case, compliance with the test claim statute is within the discretion of the local agency.

Under the test claim legislation, the local fire enforcing agency or State Fire Marshal, whichever has primary jurisdiction, is required to: 1) conduct a preinspection of the facility prior to the final fire clearance approval; 2) provide consultation, interpretation and written notice to the facility applicant regarding applicable fire safety regulations;[17] and 3) complete the final fire clearance inspection within 30 days of a request to do so.[18] However, Health and Safety Code section 13146, subdivision (d) gives the State Fire Marshal authority to enforce building standards and regulations on behalf of the local fire enforcing agency upon request of the chief fire official or local governing body. According to information provided by the State Fire Marshal: "Under HSC Section 13146(d), the local enforcing agency could request the [State Fire Marshal] to assume jurisdiction for these community care facilities provided that we have the resources to fulfill the request."[19]

Because the local fire enforcing agency or local governing body could ask the State Fire Marshal to assume the enforcement duties pursuant to Section 13146, subdivision (d), the issue is raised as to whether those duties could be considered a discretionary activity by the local agency. Based on the following analysis, the enforcement duties cannot be considered discretionary.

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[16] *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.

[17] Health and Safety Code section 13235, subdivision (a).

[18] Health and Safety Code section 13235, subdivision (b).

[19] Letter from Ruben Grijalva, State Fire Marshal, to Paula Higashi, Executive Director, Commission on State Mandates, December 27, 2005.

Providing fire protection services by enforcing building standards is legally compelled by the statutory scheme under which the test claim legislation was enacted. The Health and Safety Code requires the State Fire Marshal or the chief of any city or county fire department or district providing fire services to enforce building standards and other regulations that have been adopted by the State Fire Marshal.[20] In addition, local fire enforcing agencies are required to enforce fire-related building standards for buildings used for human habitation.[21]

The Health and Safety Code, in section 13146, further delineates the authorities and requirements for enforcing State Fire Marshal building standards and other regulations. Under subdivision (b), the local fire enforcing agency "*shall enforce* within its jurisdiction the building standards and other regulations of the State Fire Marshal …" Under subdivision (c), the State Fire Marshal "shall have authority to enforce the building standards and other regulations … in areas outside of corporate cities and districts providing fire protection services."

The statutory scheme also specifies that enforcement of fire regulations and fire-related building standards "shall, so far as practicable, be carried out at the local level by persons who are regular full-time members of a regularly organized fire department of a city, county, or district providing fire protection services …"[22] Furthermore, as noted above, section 13146, subdivision (d) gives the State Fire Marshal the authority to assume the fire enforcing duties where a local fire enforcing agency exists, but only upon the *request* of the chief fire official or the governing body. The State Fire Marshal has stated that jurisdiction over those duties could be assumed if the State Fire Marshal has "resources to fulfill the request."

Thus while the fire enforcement duties might be considered discretionary for the State Fire Marshal where a local fire enforcing agency is established, the duties could not be considered discretionary for that local fire enforcing agency, since providing the services is legally compelled by the statutory scheme and would be required of the local agency if the State Fire Marshal could not provide the services. It follows that the specific requirements in the test claim legislation — i.e., the preinspection, the consultation, interpretation and written notice of fire safety regulations, and the 30-day requirement for completion of the final inspection — are not discretionary for the local fire enforcing agency.

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[20] Health and Safety Code section 13145: "The State Fire Marshal, the chief of any city or county fire department or district providing fire protection services, and their authorized representatives, shall enforce in their respective areas building standards relating to fire and panic safety adopted by the State Fire Marshal and published in the State Building Standards Code and other regulations that have been formally adopted by the State Fire Marshal for the prevention of fire or for the protection of life and property against fire or panic."

[21] Health and Safety Code section 17962: "The chief of any city or any county fire department or district providing fire protection services, and their authorized representatives, shall enforce in their respective areas all those provisions of this part, the building standards published in the State Building Standards Code relating to fire and panic safety, and those rules and regulations promulgated pursuant to the provisions of this part pertaining to fire prevention, fire protection, the control of the spread of fire, and safety from fire or panic."

[22] Health and Safety Code section 13146.5.

Does the Test Claim Legislation Constitute a "Program?

The test claim legislation must also constitute a "program" in order to be subject to article XIII B, section 6 of the California Constitution. The Department of Finance argues that the test claim legislation is not a program subject to reimbursement under article XIII B, section 6, because the test claim legislation is not unique to local government since the same requirements are imposed on the state, through the State Fire Marshal. Commission staff disagrees with this position for the reasons cited below.

The relevant tests regarding whether this test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 are set forth in case law. The California Supreme Court, in the case of *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, defined the word "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[23] (Emphasis added.) Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.

The *County of Los Angeles* case also found that the term "program" as it is used in article XIII B, section 6, "was [intended] 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." (Emphasis added.)[24] In this case, the court found that no reimbursement was required for the increase in workers' compensation and unemployment insurance benefits applied to all employees of private and public businesses.[25]

Here, on the other hand, the requirements imposed by the test claim statute are carried out by state and local fire officials. Although both state and local officials perform the requirements imposed by the test claim legislation in conducting a prelicensure inspection for specified care facilities, these requirements do not apply "generally to all residents and entities in the state," as did the requirements for workers' compensation and unemployment insurance benefits in the *County of Los Angeles* case.

In addition, the Court of Appeal, Third Appellate District, in *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App3d 521, has recognized that fire protection is a peculiarly governmental function, and that, along with police protection, fire protection is one of the "most essential and basic functions of local government."[26] In this respect, the prelicensure fire inspections provide basic fire protection services for the public.

Staff therefore disagrees with the Department of Finance's assertion that the fire inspection activities are not subject to reimbursement. Accordingly, staff finds that the test claim

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

[24] *County of Los Angeles, supra,* 43 Cal.3d 46, 56-57.

[25] *County of Los Angeles, supra,* 43 Cal.3d 46, 57-58.

[26] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537 *(Carmel Valley).*

legislation carries out the governmental function of providing a service to the public and therefore constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

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

To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[27]

The claimant is requesting reimbursement for the entire fire clearance process, including:

1) training of the fire inspector to conduct the inspection(s);

2) the inspector's time to provide preinspection(s) of the site, including travel, researching related codes and consultation with the prospective licensee regarding interpretation and application of fire safety regulations; and

3) the inspector's time to provide the final fire clearance inspection(s) of the site.

Pre-existing Fire Clearance Process

Prior to the test claim legislation, the Health and Safety Code required each of the three types of care facilities subject to the test claim to be licensed,[28] and the California Code of Regulations also required fire clearances for the facilities:

- California Code of Regulations, title 22, section 80020 – regarding community care facilities: "[a]ll facilities shall secure and maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal."
- California Code of Regulations, title 22, section 87220 – regarding residential care facilities for the elderly: "[a]ll facilities shall maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal."
- California Code of Regulations, title 22, section 101171 – regarding child day care facilities: "[a]ll child care centers shall secure and maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal."

The Enrolled Bill Report submitted by the State Fire Marshal[29] provided a summary of the procedures in existence at the time the test claim legislation was enacted. The Report stated that upon application to the State Department of Social Services for a license, the Department would send a request for a fire safety inspection to the appropriate fire authority, either the

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

[28] Health and Safety Code sections 1508, subdivision (a), 1569.10 and 1596.80.

[29] State Fire Marshal Enrolled Bill Report, Senate Bill 1098, September 18, 1989.

local fire enforcing agency or the State Fire Marshal. Upon receipt of the request, the local fire agency or State Fire Marshal would then conduct an inspection of the facility and issue the fire clearance approval. It is apparent from the statements of the State Fire Marshal that at least one inspection of the facility was already required in order to issue the fire clearance.

New Requirements under Test Claim Legislation

The test claim legislation requires the local fire enforcing agency to "conduct a *preinspection* of the facility prior to the final fire clearance approval." (Emphasis added.)[30] The fire enforcing agency is also required, at the time of the preinspection, to "provide consultation and interpretation of fire safety regulations,"[31] "notify the prospective licensee of the facility in writing of the specific fire safety regulations which shall be enforced in order to obtain fire clearance approval,"[32] and "complete the final fire clearance inspection … within 30 days of receipt of the request for final inspection, or as of the date the prospective facility requests the final prelicensure inspection …, whichever is later."[33]

Since the fire clearance approval requirement, which also required an inspection of the facility, was in effect prior to passage of the test claim legislation, the finding of a new program or higher level of service must be limited to activities relating to the *preinspection*. Any inspection activities related to the pre-existing final fire clearance approval requirements would not be considered a new program or higher level of service.

Therefore, staff agrees that *with regard to the preinspection only*, the following activities fall within the meaning of "new program" or "higher level of service" under article XIII B, section 6:

1. the preinspection;
2. the consultation and interpretation of applicable fire safety regulations; and
3. written notice to the prospective licensee of the specific fire safety regulations which shall be enforced in order to obtain the final fire clearance approval.

The new requirement to complete the final fire clearance inspection for a facility within 30 days of receipt of the request does not mandate a new activity, since the final fire clearance inspection and approval requirement was already in existence. Instead it merely adds a timeline under which the activity must be completed. Therefore, staff finds that the 30-day requirement does not fall within the meaning of "new program" or "higher level of service" under article XIII B, section 6.

The test claim legislation also addressed training related to interpretation of the regulations for the subject care facilities. Health and Safety Code section 13144.5 was amended to read:

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[30] Health and Safety Code section 13235, subdivision (a).

[31] Ibid.

[32] Ibid.

[33] Health and Safety Code section 13235, subdivision (b).

> The State Fire Marshal shall prepare and conduct *voluntary* regular training sessions devoted to the interpretation and application of the laws and rules and regulations in Title 19 and Title 24 of the California Code of Regulations relating to fire and panic safety. The training sessions shall include, but need not be limited to, interpretation of the regulations pertaining to community care facilities licensed pursuant to Section 1508, to residential care facilities for the elderly licensed pursuant to Section 1569.10, and to child day care facilities licensed pursuant to Section 1596.80, in order to coordinate a consistent interpretation and application of the regulations among local fire enforcement agencies. (Emphasis added.)

The pre-existing statute required the State Fire Marshal to prepare and conduct *voluntary* training related to fire and panic safety regulations. The new text in the test claim legislation simply added a requirement that the State Fire Marshal's training curriculum include interpretation of regulations relating to the subject facilities. Although the State Fire Marshal is required to provide such training, attendance is "voluntary" on the part of any local fire enforcing agency staff and no new mandate is established for the local fire enforcing agency as a result of the test claim legislation.[34] Therefore, staff finds that the training activities do not constitute a local mandate under article XIII B, section 6.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution?

In order for the mandated activities to impose a reimbursable, state-mandated program under article XIII B, section 6, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant to Government Code section17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.

The test claim states:

> The fee authorization contained in the test claim legislation has not been increased in the 12 years since the passage of the subject legislation. At the present time an average of 3 hours is needed to complete the total fire clearance process for each facility. Some facilities, depending on the number of visits necessary to obtain the fire clearance, require up to 4 hours. Other facilities may only require 2 hours. Included in this process are travel time to the facility, time spent at the facility, telephone time, research of related codes, and data entry. Personnel turnover, which necessitates the training of new fire inspectors, is also part of the equation. The San Jose Fire Department Bureau of Fire prevention is mandated by the City to be 100% cost recovery. The hourly rate at which our department charges in

[34] If this test claim is approved, the Commission can consider claimant's request for reimbursement for training at the Parameters and Guidelines stage to determine whether training is a reasonable method of complying with the mandate pursuant to California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

order to achieve full cost recovery is $110. The present $50 fee allowance for a preinspection does not quite cover the cost of one-half hour.

Thus, there is evidence in the record, signed under penalty of perjury, that there are increased costs as a result of the test claim legislation.

Government Code section 17556 lists several exceptions which preclude the Commission from finding costs mandated by the state. Because some fee authority exists for this program, section 17556, subdivision (d) — which requires the commission to deny the claim where a local agency has "the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service" — must be analyzed to determine whether it is applicable.

Government Code section 66014 allows local entities to charge fees to recover costs for local zoning and permitting activities, including building inspections, which "may not exceed the estimated reasonable cost of providing the service for which the fee is charged ..."[35] Health and Safety Code section 13146, subdivision (e) similarly addresses fee recovery for fire-related enforcement and inspections to "the reasonable cost of providing the service for which the fee is charged, pursuant to Section 66014 of the Government Code."

The test claim legislation, however, states that fees charged for the preinspection cannot exceed: 1) $50 for a facility with a capacity to serve 25 or fewer persons; and 2) $100 for a facility with a capacity to serve 26 or more persons.[36] A further potential limitation on fees that can be charged is located in the Community Care Facilities Act (Health and Safety Code sections 1500 et seq.), applicable to all three types of facilities. Section 1566.2 states that "... [n]either the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to residential facilities which serve six or fewer persons."

The question then is whether the local fee authority found in Government Code section 66014 is sufficient to recover preinspection costs in light of the two potentially fee-limiting provisions. The applicable rule of statutory construction states that when a general provision of law cannot be reconciled with a more specific provision, the general provision is controlled by the special provision and the special provision is treated as an exception.[37] Here, the two fee-limiting provisions found in the test claim legislation and the Community Care Facilities Act would be considered exceptions to the more general local fee authority. Accordingly, fee recovery for the preinspection activity is limited to: 1) $0 for facilities which serve six or fewer persons; 2) $50 for facilities with a capacity to serve seven to 25 persons; and 3) $100 for facilities with a capacity to serve 26 or more persons.

Therefore, the local agency does not have the authority to levy service charges, fees, or assessments sufficient to pay for the preinspections, and Government Code section 17556, subdivision (d) does not apply to deny the claim. However, if the Commission approves this test claim, Health and Safety Code section 13235, subdivision (a) will be identified as

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[35] Government Code section 66014, subdivision (a).

[36] Health and Safety Code section 13235, subdivision (a).

[37] *People v. Superior Court* (2002) 28 Cal. 4th 798; *Garcia v. McCutchen* (1997) 16 Cal. 4th 469.

offsetting revenue in the Parameters and Guidelines, which must be deducted from the total costs claimed.

Conclusion

Staff finds that the test claim legislation does impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends that the Commission adopt this analysis and find the following activities, with respect to *preinspections only*, to be reimbursable:

1. the preinspection;
2. the consultation and interpretation of applicable fire safety regulations; and
3. written notice to the prospective licensee of the specific fire safety regulations which shall be enforced in order to obtain the final fire clearance approval.

ployment, residence or initial presence in the facility that cares for children.

(1) The licensee shall submit the Child Abuse Central Index checks (LIC 198A [3/99]), directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 80019(d).

(A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(f).

(2) The Department shall check the CACI pursuant to Penal Code Section 11170(b)(3), and shall investigate any reports from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.

(3) The Department shall investigate any subsequent reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not revoke a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1521, 1522, 1522.04, 1531 and 14564, Health and Safety Code.

HISTORY

1. New section filed 5–18–2000 as an emergency; operative 5–18–2000 (Register 2000, No. 20). Pursuant to Section 73 of Senate Bill 933, Chapter 311, Statutes of 1998 a Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2000, No. 38).
3. Certificate of Compliance as to 5–18–2000 order, including further amendment of subsection (a)(1), transmitted to OAL 11–14–2000 and filed 12–19–2000 (Register 2000, No. 51).
4. Amendment of subsection (b)(1) and NOTE filed 7–14–2003 as an emergency; operative 7–16–2003 (Register 2003, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–13–2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b)(1) and NOTE refiled 11–12–2003 as an emergency; operative 11–12–2003 (Register 2003, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–11–2004 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (b)(1) and NOTE refiled 3–11–2004 as an emergency; operative 3–11–2004 (Register 2004, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–9–2004 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 3–11–2004 order, including further amendment of subsections (b) and (b)(1), transmitted to OAL 7–9–2004 and filed 8–20–2004 (Register 2004, No. 34).

§ 80020. Fire Clearance.

(a) All facilities shall secure and maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal.

(1) The request for fire clearance shall be made through and maintained by the licensing agency.

(b) The applicant shall notify the licensing agency if the facility plans to admit any of the following categories of clients so that an appropriate fire clearance, approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal, can be obtained prior to the acceptance of such clients:

(1) Persons 65 years of age and over.

(2) Persons who are nonambulatory, as defined in section 80001(n)(1).

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1520, 1528 and 1531, Health and Safety Code.

HISTORY

1. Amendment of subsections (a) and (b) filed 12–30–87 as an emergency; operative 1–1–88 (Register 88, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–2–88.
2. Certificate of Compliance transmitted to OAL 4–28–88 and filed 5–31–88 (Register 88, No. 30).
3. Change without regulatory effect of subsection (b)(2) pursuant to section 100(b)(3), title 1, California Code of Regulations filed 6–8–90; operative 7–8–90 (Register 90, No. 33).
4. Change without regulatory effect amending lettering and correcting cross–references filed 5–18–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 28).

§ 80021. Water Supply Clearance.

(a) All community care facilities where water for human consumption is from a private source shall meet the following requirements:

(1) As a condition of initial licensure, the applicant shall provide evidence of an onsite inspection of the source of the water and a bacteriological analysis which establishes the safety of the water, conducted by the local health department, the State Department of Health Services or a licensed commercial laboratory.

(2) Subsequent to initial licensure, the licensee shall provide evidence of a bacteriological analysis of the private water supply as frequently as is necessary to ensure the safety of the clients, but no less frequently than specified in the following table:

Licensed Capacity	*Analysis Required*	*Periodic Subsequent Analysis*
6 or fewer	Initial licensing	Not required unless evidence supports the need for such analysis to protect clients.
7 through 15	Initial licensing	Annually
16 through 24	Initial licensing	Semiannually
25 or more	Initial licensing	Quarterly

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1520, 1528 and 1531, Health and Safety Code.

§ 80022. Plan of Operation.

(a) Each licensee shall have and maintain on file a current, written, definitive plan of operation.

(b) The plan and related materials shall contain the following:

(1) Statement of purposes, and program methods and goals.

(2) Statement of admission policies and procedures regarding acceptance of clients.

(3) A copy of the admission agreement.

(4) Administrative organization, if applicable.

(5) Staffing plan, qualifications and duties, if applicable.

(6) Plan for inservice education of staff if required by regulations governing the specific facility category.

(7) A sketch of the building(s) to be occupied, including a floor plan which describes the capacities of the buildings for the uses intended, room dimensions, and a designation of the rooms to be used for nonambulatory clients, if any.

(8) A sketch of the grounds showing buildings, driveways, fences, storage areas, pools, gardens, recreation areas and other space used by the clients.

(A) The sketch shall include the dimensions of all areas which will be used by the clients.

(9) Sample menus and a schedule for one calendar week indicating the time of day that meals and snacks are to be served.

(10) Transportation arrangements for clients who do not have independent arrangements.

(11) Rate setting policy including, but not limited to, policy on refunds.

(12) A statement whether or not the licensee will handle the clients' money, personal property, and/or valuables. If money, personal property, and/or valuables will be handled, the method for safeguarding shall ensure compliance with Sections 80025 and 80026.

(13) Consultant and community resources to be utilized by the facility as part of its program.

(14) A statement of the facility's policy concerning family visits and other communications with the client pursuant to Health and Safety Code Section 1512.

(c) If the licensee of an ARF, group home (GH), small family home (SFH), foster family home (FFH) or certified family home (CFH) certified by a foster family agency (FFA) plans to use delayed egress devices

vided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

(r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:

(1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 9/03).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid identification card issued by the Department of Motor Vehicles, or

(C) Valid photo identification issued by another state of the United States Government if the individual is not a California resident.

(3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

(s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:

(1) The basis on which the Department granted the exemption;

(2) The nature and frequency of client contact in the new position;

(3) The category of facility where the individual wishes to transfer;

(4) The type of clients in the facility where the individual wishes to transfer;

(5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or

(6) Whether the exemption meets current exemption laws or regulations.

(t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

(u) At the Department's discretion, an exemption may be rescinded if it is determined that:

(1) The exemption was granted in error, or

(2) The exemption does not meet current exemption laws or regulations, or

(3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

(v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:

(1) Violations of licensing laws or regulations;

(2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;

(3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or

(4) The individual is convicted of a subsequent crime.

(w) If the Department rescinds an exemption the Department shall:

(1) Notify the licensee and the affected individual in writing; and

(2) Initiate an administrative action.

(x) If the Department learns that an individual with a criminal record clearance or exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate an administrative action to protect the health and safety of clients.

NOTE: Authority Cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.17, Health and Safety Code; and Section 42001, Vehicle Code.

HISTORY

1. New section filed 5–18–2000 as an emergency; operative 5–18–2000 (Register 2000, No. 20). Pursuant to Section 73 of Senate Bill 933, Chapter 311, Statutes of 1998 a Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2000, No. 38).
3. Certificate of Compliance as to 5–18–2000 order transmitted to OAL 11–14–2000 and filed 12–19–2000 (Register 2000, No. 51).
4. Amendment filed 7–14–2003 as an emergency; operative 7–16–2003 (Register 2003, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–13–2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment refiled 11–12–2003 as an emergency; operative 11–12–2003 (Register 2003, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–11–2004 or emergency language will be repealed by operation of law on the following day.
6. Amendment refiled 3–11–2004 as an emergency; operative 3–11–2004 (Register 2004, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–9–2004 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 3–11–2004 order, including further amendment of section, transmitted to OAL 7–9–2004 and filed 8–20–2004 (Register 2004, No. 34).

§ 87220. Fire Clearance.

(a) All facilities shall maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal. Prior to accepting any of the following types of persons, the applicant or licensee shall notify the licensing agency and obtain an appropriate fire clearance, approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal, through the licensing agency:

(1) Persons over 65 years of age.

(2) Nonambulatory persons.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.2, 1569.30 and 1569.312, Health and Safety Code.

HISTORY

1. Change without regulatory effect renumbering Section 87406 to Section 87220 filed 11–17–88 (Register 88, No. 49). For prior history, see Registers 88, No. 34 and 88, No. 30.

§ 87222. Plan of Operation.

(a) Each facility shall have and maintain a current, written definitive plan of operation. The plan and related materials shall be on file in the facility and shall be submitted to the licensing agency with the license application. Any significant changes in the plan of operation which would affect the services to residents shall be submitted to the licensing agency for approval. The plan and related materials shall contain the following:

(1) Statement of purposes and program goals.

(2) A copy of the Admission Agreement, containing basic and optional services.

(3) Statement of admission policies and procedures regarding acceptance of persons for services.

(4) Administrative organization.

(5) Staffing plan, qualifications and duties.

(6) Plan for training staff, as required by Section 87565(c).

(7) Sketches, showing dimensions, of the following:

(A) Building(s) to be occupied, including a floor plan that describes the capacities of the buildings for the uses intended and a designation of the rooms to be used for nonambulatory residents.

(B) The grounds showing buildings, driveways, fences, storage areas, pools, gardens, recreation area and other space used by the residents.

(8) Transportation arrangements for persons served who do not have independent arrangements.

(9) A statement whether or not the applicant will handle residents' money and/or valuables. If money and/or valuables will be handled, the method for safeguarding pursuant to Sections 87225, 87226 and 87227.

(10) A statement of the facility's policy concerning family visits and other communication with clients, as specified in Health and Safety Code Section 1569.313.

plete a Child Abuse Central Index check (LIC 198A [3/99]) prior to employment or initial presence in the child care facility.

(1) The licensee shall submit the Child Abuse Central Index checks (LIC 198A [Rev. 3/99]) directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 101170(d).

(A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A [3/99]) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(f).

(2) The Department shall check the Child Abuse Central Index (CACI) pursuant to Penal Code Section 11170(b)(3). The Department shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.

(3) The Department shall investigate any subsequent reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not revoke a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b) and 1596.871, Health and Safety Code.

HISTORY

1. New section filed 5–18–2000 as an emergency; operative 5–18–2000 (Register 2000, No. 20). Pursuant to Section 73 of Senate Bill 933, Chapter 311, Statutes of 1998 a Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2000, No. 38).
3. Certificate of Compliance as to 5–18–2000 order, including further amendment of subsection (a)(1), transmitted to OAL 11–14–2000 and filed 12–19–2000 (Register 2000, No. 51).
4. Amendment of subsection (b)(1) filed 7–14–2003 as an emergency; operative 7–16–2003 (Register 2003, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–13–2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b)(1) refiled 11–12–2003 as an emergency; operative 11–12–2003 (Register 2003, No. 46). A Certificate of Compliance must be transmitted to OAL by 3–11–2004 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsection (b)(1) refiled 3–11–2004 as an emergency; operative 3–11–2004 (Register 2004, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–9–2004 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 3–11–2004 order transmitted to OAL 7–9–2004 and filed 8–20–2004 (Register 2004, No. 34).

§ 101171. Fire Clearance.

(a) All child care centers shall secure and maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal.

(1) The request for fire clearance shall be made through and maintained by the Department.

(b) The applicant shall notify the Department if the child care center plans to enroll children who are nonambulatory as defined in Section 101152n.(1), so that an appropriate fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal can be obtained prior to the acceptance of such children.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.809, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

HISTORY

1. Change without regulatory effect (Register 86, No. 29).
2. Amendment filed 12–30–87 as an emergency; operative 1–1–88 (Register 88, No. 2). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–2–88.
3. Certificate of Compliance transmitted to OAL 4–28–88 and filed 5–31–88 (Register 88, No. 30).
4. Change without regulatory effect amending lettering and correcting cross-references filed 5–28–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 28).
5. Amendment of section and NOTE filed 9–14–98; operative 11–1–98 (Register 98, No. 38).
6. Editorial correction of subsection (b) and NOTE (Register 2002, No. 39).

§ 101172. Water Supply Clearance.

(a) All child care centers where water for human consumption is from a private source shall meet the following requirements:

(1) As a condition of initial licensure, the applicant shall provide evidence of an onsite inspection of the source of the water and a bacteriological analysis that establishes the safety of the water. The inspection and the bacteriological analysis shall be conducted by the local health department, the California Department of Health Services or a licensed commercial laboratory.

(2) Subsequent to initial licensure, the licensee shall provide evidence of a bacteriological analysis of the private water supply as frequently as is necessary to ensure the safety of the children, but no less frequently than specified in the following table:

LICENSED CAPACITY	ANALYSIS REQUIRED	PERIODIC SUBSEQUENT ANALYSIS
6 or fewer	Initial licensing	Not required unless evidence supports the need for such analysis to protect children.
7 through 15	Initial licensing	Annually
16 through 24	Initial licensing	Semiannually
25 or more	Initial licensing	Quarterly

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.81, 1596.95 and 1597.05, Health and Safety Code.

HISTORY

1. Change without regulatory effect (Register 86, No. 29).
2. Amendment filed 9–14–98; operative 11–1–98 (Register 98, No. 38).

§ 101173. Plan of Operation.

(a) Each licensee shall have and keep on file a current written, definitive plan of operation. A copy of the plan shall be submitted to the Department with the license application.

(b) The plan and related materials shall contain the following:

(1) Statement of purposes, and program methods and goals.

(2) Statement of admission policies and procedures.

(3) A copy of the admission agreement.

(4) Administrative organization, if applicable.

(5) Staffing plan, qualifications and duties, if applicable.

(6) Plan for in-service education of staff if required by regulations governing the specific child care center category.

(7) A sketch of the building(s) to be occupied, including a floor plan that describes the capacities of the buildings and the uses intended, the room dimensions, and the rooms to be used for nonambulatory children; and a sketch of the grounds that shows buildings, driveways, fences, storage areas, pools, gardens, recreation areas and other space used by the children. All sketches shall show dimensions.

(8) Sample menus and a schedule for one calendar week indicating the time of day that meals and snacks are to be served.

(9) Transportation arrangements provided by the applicant/licensee for children who do not have independent arrangements.

(10) Rate-setting policy including, but not limited to, a policy on refunds.

(11) Consultant and community resources to be utilized by the child care center as part of its program.

(c) Any proposed changes in the plan of operation that affect services to children shall be subject to departmental approval prior to implementation and shall be reported as specified in Section 101212.

(d) The child care center shall operate in accordance with the terms specified in the plan of operation.

DEPARTMENT OF FORESTRY AND FIRE PROTECTION
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December 27, 2005

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Director Higashi,

This is in response to your letter dated December 12, 2005 requesting information regarding the State Fire Marshal's (SFM) implementation of Health and Safety Code (HSC) sections 13144.5 and 13235.

HSC Section 13144.5 indicates that the SFM shall prepare and conduct voluntary regular training sessions devoted to the interpretation and application of the laws and rules and regulations in Title 19 and Title 24 of the California Code of Regulations relating to fire and panic safety. We are providing the Statutes and Regulations class to local and state governments throughout California on a quarterly basis. A portion of this class covers the interpretation of the regulations pertaining to community care facilities licensed pursuant to Section 1508, residential care facilities for the elderly licensed pursuant to Section 1569.10, and to child day care facilities licensed pursuant to Section 1596.80. Enclosed are copies of materials that related to the issue.

Under HSC Section 13146(d), the local enforcing agency could request the SFM to assume jurisdiction for these community care facilities provided that we have the resources to fulfill the request. In some cases, these types of facilities are on state property, we are the enforcing authority in these instances. Thus, there would be no difference in our procedures when we assume the jurisdiction from the local fire enforcing agency.

Should you require further assistance, please do not hesitate to contact Hugh Council, Chief of Operations, at (916) 445-8200.

RUBEN GRIJALVA
State Fire Marshal

Attachment

cc: Hugh Council, Chief of Operations

13144.5. The State Fire Marshal shall prepare and conduct voluntary regular training sessions devoted to the interpretation and application of the laws and rules and regulations in Title 19 and Title 24 of the California Code of Regulations relating to fire and panic safety. The training sessions shall include, but need not be limited to, interpretation of the regulations pertaining to community care facilities licensed pursuant to Section 1508, to residential care facilities for the elderly licensed pursuant to Section 1569.10, and to child day care facilities licensed pursuant to Section 1596.80, in order to coordinate a consistent interpretation and application of the regulations among local fire enforcement agencies.

13235. (a) Upon receipt of a request from a prospective licensee of a community care facility, as defined in Section 1502, of a residential care facility for the elderly, as defined in Section 1569.2, or of a child day care facility, as defined in Section 1596.750, the local fire enforcing agency, as defined in Section 13244, or State Fire Marshal, whichever has primary jurisdiction, shall conduct a preinspection of the facility prior to the final fire clearance approval. At the time of the preinspection, the primary fire enforcing agency shall provide consultation and interpretation of fire safety regulations, and shall notify the prospective licensee of the facility in writing of the specific fire safety regulations which shall be enforced in order to obtain fire clearance approval. A fee of not more than fifty dollars ($50) may be charged for the preinspection of a facility with a capacity to serve 25 or fewer persons. A fee of not more than one hundred dollars ($100) may be charged for a preinspection of a facility with a capacity to serve 26 or more persons.

(b) The primary fire enforcing agency shall complete the final fire clearance inspection for a community care facility, residential care facility for the elderly, or child day care facility within 30 days of receipt of the request for the final inspection, or as of the date the prospective facility requests the final prelicensure inspection by the State Department of Social Services, whichever is later.

1569.10. No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a residential facility for the elderly in this state without a current valid license or current valid special permit therefor, as provided in this chapter.

1596.80. No person, firm, partnership, association, or corporation shall operate, establish, manage, conduct, or maintain a child day care facility in this state without a current valid license therefor as provided in this act.

13146. The responsibility for enforcement of building standards adopted by the State Fire Marshal and published in the California Building Standards Code relating to fire and panic safety and other regulations of the State Fire Marshal shall be as follows:

(a) The city, county, or city and county with jurisdiction in the area affected by the standard or regulation shall delegate the enforcement of the building standards relating to fire and panic safety and other regulations of the State Fire Marshal as they relate to R-3 dwellings, as described in Section 1201 of Part 2 of the California Building Standards Code, to either of the following:

(1) The chief of the fire authority of the city, county, or city and county, or his or her authorized representative.

(2) The chief building official of the city, county, or city and county, or his or her authorized representative.

(b) The chief of any city or county fire department or of any fire protection district, and their authorized representatives, shall enforce within its jurisdiction the building standards and other regulations of the State Fire Marshal, except those described in subdivision (a) or (d).

(c) The State Fire Marshal shall have authority to enforce the building standards and other regulations of the State Fire Marshal in areas outside of corporate cities and districts providing fire protection services.

(d) The State Fire Marshal shall have authority to enforce the building standards and other regulations of the State Fire Marshal in corporate cities and districts providing fire protection services upon request of the chief fire official or the governing body.

(e) Any fee charged pursuant to the enforcement authority of this section shall not exceed the estimated reasonable cost of providing the service for which the fee is charged, pursuant to Section 66014 of the Government Code.

GROUP R-2 OCCUPANCIES

Occupancy	Construction	Smoke Barrier	Rated corridors	Sprinkler System	Fire Alarm	Smoke Alarms	# of Exits	Delayed Egress	Bed-ridden	Exit Signs	Tactile Exit Signs	Emergency Lights	Fire Extinguishers	Ramps
R2.1 7+non-ambs	Rated *Table 5-B*	If > than 6,000 sq. feet *310.2.3*	Yes *1004.3 .4.3*	Yes *904.2 10*	Manual & Auto. System *310.10.1 See Exc. #1-3 and CFC 1008.2.9.1.1.1*	No *See 310.10.1 for special conditions*	Two *1007.6 .3.1.1*	Yes *Must meet all req. of 1003.3.1.10*	Not Allowed *See 310.1.1 special provisions*	Yes *1003.2.8.2*	Yes *1003.2.8.6.1*	Yes *1003.2.9.2*	Yes *CFC 1002.1*	Yes *1007.6.3.4*
R2.1.1 6 or less non-amb (May have one permanent bed-ridden client)	Non-rated *Table 5-B & See special considerations of 310.2.2*	If >than 6,000 sq. feet *310.2.3*	No *1007.6. 3.3.1* *See 415A.4 415A.4.1 415A.5 415A.6 for doors to bed- ridden rooms*	No *See 904 .2.10 Exc. #1*	Manual Pull Station *310.10.2*	Yes *310.9.1.1* *See 415A.7 for Bed-ridden*	Two *1007.6 .3.1.1* *For bed-ridden see 415A.3*	Yes *Must meet all req. of 1093.3.1.10*	One Allowed. *415A.2 and exception.* *Also see 310.1.1 special provisions*	Yes *1087.6.3.2.2*	No	No	Yes. *CFC 1002.1*	Yes *1007.6.3.4.*
R2.2 7+ambs	Non-Rated *See special considerations in 310.2.2*	If > than 6,000 sq. feet *310.2.3*	Yes *1004.3 .4.3*	Yes *See 904 .2.10 Exc. #3*	Manual System *310.10.3*	Yes *310.10.3*	Two *1007.6 .3.1.1*	Yes *Must meet all req. of 1003.3.1.10*	Not Allowed *See 310.1.1 special provisions*	Yes *1003.2.8.2*	Yes *1003.2.8.6.1*	Yes *1003.2 .9.2*	Yes *CFC 1002.1*	No Unless housing non-ambs *1007.6.3.4*
R2.2.1 6 or less ambs. (May have one permanent bed-ridden client).	Non-rated *Table 5-B*	If > than 6,000 sq. feet *310.2.3*	No *1007.6. 3.3.1* *See 415A.4 415A.4.1 415A.5 415A.6 for doors to bed- ridden rooms*	No *See 904 .2.10 Exc. #1*	Manual Pull stat. *310.10.2*	Yes *310.9.1.1* *See 415A.7 for Bed-ridden*	Two *1007.6 .3.1.1* *For bed-ridden see 415A.3*	Yes *Must meet all req. of 1003.3.1.10*	One Allowed *415A.2 and exception.* *Also see 310.1.1 special provisions.*	Yes *1007.6.3.2.2*		No	Yes *CFC 1002.1*	No Unless housing non-ambs *1007.6.3.4*
R2.3 Hospice 7 or more bed-ridden	Rated if > 1 story *See 310.2.2 For except.*	If > than 6,000 sq. feet *310.2.3*	Yes *1004.3 .4.3*	Yes *904.2 .10.1*	Manual & Auto System *CBC 310.10.1 and CFC 1008.2.9.1.1.1 special conditions and except.*	No *See special conditions of 310.10.1 exception*	Two *1007.6 3.1.1*	Yes *Must meet all req. of 1003.3.1.10*	Yes *310.1*	Yes. *1003.2.8.2*	Yes *1003.2.8.6.1*	Yes *1003.2.9.2*	Yes *CFC 1002.1*	Yes *1007.6.3.4*
R2.3.1 Hospice 6 or less bed-ridden	Rated if >1 story *See 310.2.2 For except.*	If > 6,000 sq. feet *310.2.3* *310.2.3*	No *1007.6 .3.3.1*	Yes *904.2 .10.1*	Manual Pull Station *310.10.2*	Yes *310.9.1.1*	Two *1007.6 .3.1.1*	Yes *Must meet all req. of 1003.3.1.10*	Yes *310.1*	Yes. *1007.6.3.2.2.*	No	No	Yes *CFC 1002.1*	Yes *1007.6.3.4*

TABLE 5-B—BASIC ALLOWABLE BUILDING HEIGHTS AND BASIC ALLOWABLE FLOOR AREA FOR BUILDINGS ONE STORY IN HEIGHT[1]

		TYPES OF CONSTRUCTION								
		I	II			III		IV	V	
		F.R.	F.R.	One-hour	N	One-hour	N	H.T.	One-hour	N
		Maximum Height (feet)								
		UL	160 (48 768 mm)	65 (19 812 mm)	65 (19 764 mm)	65 (19 812 mm)	65 (19 764 mm)	65 (19 812 mm)	50 (15 240 mm)	40 (12 192 mm)
Use Group	Height/Area	Maximum Height (stories) and Maximum Area (sq. ft.) (× 0.0929 for m²)								
A-1	H	UL	4	Not Permitted						
	A	UL	29,900							
A-2, 2.1[2]	H	UL	4	2	NP	2	NP	2	2	NP
	A	UL	29,900	13,500	NP	13,500	NP	13,500	10,500	NP
A-3, 4[2]	H	UL	12	2	1	2	1	2	2	1
	A	UL	29,900	13,500	9,100	13,500	9,100	13,500	10,500	6,000
B, F-1, M, S-1, S-3, S-5	H	UL	12	4	2	4	2	4	3	2
	A	UL	39,900	18,000	12,000	18,000	12,000	18,000	14,000	8,000
E-1, 2, 3[4]	H	UL	4	2	1	2	1	2	2	1
	A	UL	45,200	20,200	13,500	20,200	13,500	20,200	15,700	9,100
F-2, S-2	H	UL	12	4	2	4	2	4	3	2
	A	UL	59,900	27,000	18,000	27,000	18,000	27,000	21,000	12,000
H-1[5]	H	1	1	1	1	Not Permitted				
	A	15,000	12,400	5,600	3,700					
H-2[5]	H	UL	2	1	1	1	1	1	1	1
	A	15,000	12,400	5,600	3,700	5,600	3,700	5,600	4,400	2,500
H-3, 4, 5[5]	H	UL	5	2	1	2	1	2	2	1
	A	UL	24,800	11,200	7,500	11,200	7,500	11,200	8,800	5,100
H-6, 7	H	3	3	3	2	3	2	3	3	1
	A	UL	39,900	18,000	12,000	18,000	12,000	18,000	14,000	8,000
H-8	*H*	*10*	*3*	*3*	*2*	*3*	*2*	*3*	*3*	*1*
	A	*UL*	*39,900*	*18,000*	*12,000*	*18,000*	*12,000*	*18,000*	*14,000*	*8,000*
I-1.1, 1.2[6,10]	H	UL	3	1	NP	1	NP	1	1	NP
	A	UL	15,100	6,800	NP	6,800	NP	6,800	5,200	NP
I-2	H	UL	3	2	NP	2	NP	2	2	NP
	A	UL	15,100	6,800	NP	6,800	NP	6,800	5,200	NP
I-3	H	UL	2	Not Permitted[7]						
	A	UL	15,100							
R-1	H	UL	12	4	2[9]	4	2[9]	4	3	2[9]
	A	UL	29,900	13,500	9,100[9]	13,500	9,100[9]	13,500	10,500	6,000[9]
R-2.1	*H*	*UL*	*12*	*2*	*NP*	*2*	*NP*	*NP*	*2*	*NP*
	A	*UL*	*29,900*	*13,500*	*NP*	*13,500*	*NP*	*NP*	*10,500*	*NP*
R-2.1.1, 2.2, 2.2.1	*H*	*UL*	*12*	*4*	*2[9]*	*4*	*2[9]*	*4*	*3*	*2[9]*
	A	*UL*	*29,900*	*13,500*	*9,100[8]*	*13,500*	*9,100[8]*	*13,500*	*10,500*	*6,000[8]*
R-3	H	UL	3	3	3	3	3	3	3	3
	A	Unlimited								
S-4[3]	H	See Table 3-H								
	A									
U[8]	H	See Chapter 3								
	A									

A—Building area in square feet.
H—Building height in number of stories.
H.T.—Heavy timber.
NP—Not permitted.
N—No requirements for fire resistance.
F.R.—Fire resistive.
UL—Unlimited.

[1]For multistory buildings, see Section 504.2.
[2]For limitations and exceptions, see Section 303.2.
[3]For open parking garages, see Section 311.9.
[4]See Section 305.2.3.
[5]See Section 307.
[6]See Section 308.2.1 for exception to the allowable area and number of stories in hospitals, nursing homes and health-care centers.
[7]See Section 308.2.2.2.
[8]For agricultural buildings, see also Appendix Chapter 3.
[9]For limitations and exceptions, see Section 310.2.
[10]For Type II F.R., the maximum height of Group I, Division 1.1 Occupancies is limited to 75 feet (22 860 mm). For Type II, One-hour construction, the maximum height of Group I, Division 1.1 Occupancies is limited to 45 feet (13 716 mm).

dential-care Facilities for the Elderly (RCFE). Every Residential-care Facility for the Elderly (RCFE) admitting or retaining a bedridden resident shall, within 48 hours of the resident's admission or retention in the facility, notify the local fire authority with jurisdiction of the estimated length of time the resident will retain his or her bedridden status in the facility.

310.1.2 [For SFM] In Group R, Division 2 Occupancies classified as Residential Facilities (RF), bedridden clients shall not be located above the first story.

310.1.3 [For SFM] Restraint shall not be practiced in Group R, Division 2 Occupancies.

EXCEPTION: Group R, Division 2 Occupancies which meet all the construction requirements for a Group I, Division 3 Occupancy.

310.1.4 [For SFM] Pursuant to Health and Safety Code Section 13143, facilities licensed by the Department of Social Services which provide nonmedical board, room and care for six or fewer ambulatory children or children two years of age or younger, and which do not have any nonambulatory clients shall not be subject to regulations pertaining to Group R, Division 2 Occupancies. With respect to these exempted facilities, no city, county, or public district shall adopt or enforce any requirement for the prevention of fire or for the protection of life and property against fire and panic unless the requirement would be applicable to a structure regardless of the special occupancy. Nothing shall restrict the application of state or local housing standards to such facilities if the standards are applicable to residential occupancies and are not based on the use of the structure as a facility for ambulatory children. For the purpose of this exception, "ambulatory children" does not include relatives of the licensee or the licensee's spouse.

310.1.5 [For SFM] Pursuant to Health and Safety Code Section 13133, regulations of the state fire marshal pertaining to Group R, Division 2 Occupancies classified as Residential Facilities (RF) and Residential-care Facilities for the Elderly (RCFE) shall apply uniformly throughout the state and no city, county, city and county, including a charter city or charter county, or fire protection district shall adopt or enforce any ordinance or local rule or regulation relating to fire and panic safety which is inconsistent with these regulations. A city, county, city and county, including a charter city or charter county may pursuant to Health and Safety Code Section 13143.5, or a fire protection district may pursuant to Health and Safety Code Section 13869.7, adopt standards more stringent than those adopted by the state fire marshal that are reasonably necessary to accommodate local climate, geological, or topographical conditions relating to roof coverings for Residential-care Facilities for the Elderly.

310.1.6 [For SFM] Existing Residential Facilities and Residential-care Facilities for the Elderly which were originally classified as Group I Occupancies under pre-1991 codes may be reinspected as a Group I Occupancy under the appropriate previous code provided there is no change in the use which would place the facility in a different division or occupancy group. (See Section 3403.1.)

310.2 Construction, Height and Allowable Area.

310.2.1 General. Buildings or parts of buildings classed in Group R because of the use or character of the occupancy shall be limited to the types of construction set forth in Table 5-B and shall not exceed, in area or height, the limits specified in Sections 504, 505 and 506.

EXCEPTION [For HCD 1]: Limited-density owner-built rural dwellings may be of any type of construction which will provide for a sound structural condition. Structural hazards which result in an unsound condition and which may constitute a substandard building are delineated by Section 17920.3 of the Health and Safety Code.

310.2.2 Special provisions. Walls and floors separating dwelling units in the same building, or guest rooms in Group R, Division 1 hotel occupancies, shall not be of less than one-hour fire-resistive construction.

EXCEPTION [For SFM]: In Divisions 2.1.1, 2.2.1 and 2.3.1 Occupancies, walls and floors may be nonrated construction provided:

1. Construction has protection equivalent to $^1/_2$-inch (12.7 mm), nonrated gypsum wallboard and,

2. Dwelling units are not equipped with open flame, gas or electrical element cooking appliances other than a microwave cooking appliance.

Group R, Division 1 Occupancies more than two stories in height or having more than 3,000 square feet (279 m^2) of floor area above the first story, *[for SFM] and in Division 2.1.1 Occupancies where clients are housed above the first floor and there is more than 3,000 square feet (279 m^2) of floor area above the first floor,* shall not be of less than one-hour fire-resistive construction throughout, except as provided in Section 601.5.2.2.

[For SFM] Division 2.2 Occupancies where nonambulatory clients are housed above the first floor and there is more than 3,000 square feet (279 m^2) of floor area above the first floor or housing more than 16 clients above the first floor shall be constructed of not less than one-hour fire-resistive construction throughout except as provided in Section 601.5.2.2.

[For SFM] Divisions 2.3 and 2.3.1 Occupancies where clients are housed above the first floor, shall not be of less than one-hour fire-resistive construction throughout except as provided in Section 601.5.2.2.

EXCEPTION: Interior nonload-bearing partitions within individual dwelling units in apartment houses and guest rooms or suites in hotels where such dwelling units, guest rooms or suites are separated from each other and from corridors by not less than one-hour fire-resistive construction may be constructed of:

1. Noncombustible materials or fire-retardant wood in buildings of any type of construction; or

2. Combustible framing with noncombustible materials applied to the framing in buildings of Type III or Type V construction.

Storage or laundry rooms that are within Group R, Division 1 Occupancies that are used in common by tenants shall be separated from the rest of the building by not less than one-hour fire-resistive occupancy separation.

EXCEPTION [For HCD 1]: Interior nonload-bearing partitions within individual dwelling units in apartment houses and guest rooms or suites in hotels where such dwelling units, guest rooms or suites are separated from each other and from corridors by not less than one-hour fire-resistive construction, may be constructed of:

1. Noncombustible materials or fire-retardant wood in buildings of any type of construction; or

2. Combustible framing with noncombustible materials applied to the framing in buildings of Type III or Type V construction.

Openings to such corridors shall be equipped with doors conforming to Section 1004.3.4.3.2, Uniform Building Code, most recent edition, regardless of the occupancy load served.

For Group R, Division 1 Occupancies with a Group S, Division 3 parking garage in the basement or first story, see Section 311.2.2.

For attic space partitions and draft stops, see Section 708.

310.2.3 [For SFM] Smoke barriers required. Group R, Division 2 Occupancies shall be provided with smoke barriers, constructed in accordance with Section 308.2.2.1, as follows:

1. Group R, Division 2.1 Occupancies having individual floor areas over 6,000 square feet (557 m^2) per floor.

2. Group R, Division 2.1.1 Occupancies having individual floor areas over 6,000 square feet (557 m^2) per floor.

3. Group R, Division 2.2 Occupancies having individual floor areas over 6,000 square feet (557 m^2) per floor.

4. Group R, Division 2.2.1 Occupancies having individual floor areas over 6,000 square feet (557 m^2) per floor.

5. Group R, Division 2.3 Occupancies having individual floor areas over 6,000 square feet (557 m^2) per floor.

6. Group R, Division 2.3.1 Occupancies having individual floor areas over 6,000 square feet (557 m^2) per floor.

EXCEPTIONS: 1. Buildings of Group R, Divisions 2.1, 2.1.1 and 2.2 Occupancies with direct exiting from each dwelling unit and nonambulatory clients are located only on the first floor.

2. Division 2 Occupancies are not required to comply with the provisions of Section 410 as they pertain to occupant load factors for determining the areas of a smoke compartment.

When smoke barriers are required, the area within a smoke compartment shall not exceed 22,500 square feet (2090 m^2) nor shall its width or length exceed 150 feet (45 720 mm). Such smoke barriers shall divide the floor as equally as possible.

310.3 Location on Property. For fire-resistive protection of exterior walls and openings, as determined by location on property, see Section 503 and Chapter 6.

310.4 Access and Means of Egress Facilities and Emergency Escapes. Means of egress shall be provided as specified in Chapter 10. (See also Section 1007.6.2 for exit markings.)

Access to, and egress from, buildings required to be accessible shall be provided as specified in Chapter 11.

Basements in dwelling units and every sleeping room below the fourth story shall have at least one operable window or door approved for emergency escape or rescue that shall open directly into a public street, public alley, yard or exit court. The emergency door or window shall be operable from the inside to provide a full, clear opening without the use of separate tools.

EXCEPTIONS: 1. The window or door may open into an atrium complying with Section 402 provided the window or door opens onto an exit-access balcony and the dwelling unit or guest room has an exit or exit-access doorway that does not open into the atrium.

2. [For SFM] For those Group R, Division 1 hotel occupancies provided with a monitored automatic sprinkler system in accordance with Section 904.2.9, designed in accordance with NFPA 13, operable windows may be permanently restricted to a maximum 4-inch (102 mm) open position.

Escape or rescue windows shall have a minimum net clear openable area of 5.7 square feet (0.53 m^2). The minimum net clear openable height dimension shall be 24 inches (610 mm). The minimum net clear openable width dimension shall be 20 inches (508 mm). When windows are provided as a means of escape or rescue, they shall have a finished sill height not more than 44 inches (1118 mm) above the floor.

Escape and rescue windows with a finished sill height below the adjacent ground elevation shall have a window well. Window wells at escape or rescue windows shall comply with the following:

1. The clear horizontal dimensions shall allow the window to be fully opened and provide a minimum accessible net clear opening of 9 square feet (0.84 m^2), with a minimum dimension of 36 inches (914 mm).

2. Window wells with a vertical depth of more than 44 inches (1118 mm) shall be equipped with an approved permanently affixed ladder or stairs that are accessible with the window in the fully open position. The ladder or stairs shall not encroach into the required dimensions of the window well by more than 6 inches (152 mm).

Bars, grilles, grates or similar devices may be installed on emergency escape or rescue windows, doors or window wells, *[for SFM] or any required exit door,* provided:

1. The devices are equipped with approved release mechanisms that are openable from the inside without the use of a key or special knowledge or effort; and

2. The building is equipped with smoke detectors installed in accordance with Section 310.9.

[For SFM] Such bars, grilles, grates or similar devices shall be equipped with an approved release device for use by the fire department only, on the exterior side for the purpose of fire department emergency access, when required by the authority having jurisdiction.

3. Where security bars (burglar bars) are installed on emergency egress and rescue windows or doors, on or after July 1, 2000, such devices shall comply with the standards of the California Building Code (CBC), Part 12, Chapter 12-3 and other applicable provisions of Part 2.

310.5 Light, Ventilation and Sanitation. Light and ventilation shall be as specified in Chapter 12. The number of plumbing fixtures shall not be less than specified in Section 2902.6.

310.5.1 [For HCD 1] Window screening. In labor camps, all openable windows in rooms used for living, dining, cooking or sleeping purposes, and toilet and bath buildings, shall be provided and maintained with insect screening.

310.5.2 [For HCD 1] Door screening. Door openings of rooms used for dining, cooking, toilet and bathing facilities in labor camps shall be provided and maintained with insect screening or with solid doors equipped with self-closing devices in lieu thereof, when approved by the enforcement agency.

310.6 Room Dimensions.

310.6.1 Ceiling heights. Habitable space shall have a ceiling height of not less than 7 feet 6 inches (2286 mm) except as otherwise permitted in this section. Kitchens, halls, bathrooms and toilet compartments may have a ceiling height of not less than 7 feet (2134 mm) measured to the lowest projection from the ceiling. Where exposed beam ceiling members are spaced at less than 48 inches (1219 mm) on center, ceiling height shall be measured to the bottom of these members. Where exposed beam ceiling members are spaced at 48 inches (1219 mm) or more on center, ceiling height shall be measured to the bottom of the deck supported by these members, provided that the bottom of the members is not less than 7 feet (2134 mm) above the floor.

If any room in a building has a sloping ceiling, the prescribed ceiling height for the room is required in only one half the area thereof. No portion of the room measuring less than 5 feet (1524 mm) from the finished floor to the finished ceiling shall be included in any computation of the minimum area thereof.

If any room has a furred ceiling, the prescribed ceiling height is required in two thirds the area thereof, but in no case shall the height of the furred ceiling be less than 7 feet (2134 mm).

310.6.2 Floor area. Dwelling units and congregate residences shall have at least one room that shall have not less than 120 square feet (11.2 m^2) of floor area. Other habitable rooms except kitchens shall have an area of not less than 70 square feet (6.5 m^2). Efficiency dwelling units shall comply with the requirements of Section 310.7.

310.6.3 Width. Habitable rooms other than a kitchen shall not be less than 7 feet (2134 mm) in any dimension.

EXCEPTION [For HCD 1]: For limited-density owner-built rural dwellings, there shall be no requirements for room dimensions, pro-

Hallways may have walls of any height. Partitions, rails, counters and similar space dividers not over 6 feet (1829 mm) in height above the floor shall not be construed to form a hallway.

1004.3.3.4 Openings. There is no restriction as to the amount and type of openings permitted in hallways, unless protection of openings is required by some other provision of this code.

1004.3.3.5 Elevator lobbies. Elevators opening into hallways need not be provided with elevator lobbies unless smoke- and draft-control assemblies are required for the protection of elevator door openings by some other provision of this code.

1004.3.4 Corridors.

1004.3.4.1 General. Corridors serving as a portion of an exit access in the means of egress system shall comply with the requirements of Section 1004.3.4.

For restrictions on the use of corridors to convey air, see Chapter 6 of the Mechanical Code.

1004.3.4.2 Width. The width of corridors shall be determined as specified in Section 1003.2.3, but such width shall not be less than 44 inches (1118 mm), except as specified herein. Corridors serving an occupant load of less than 50 shall not be less than 36 inches (914 mm) in width.

The required width of corridors shall be unobstructed.

EXCEPTION: Doors, when fully opened, and handrails shall not reduce the required width by more than 7 inches (178 mm). Doors in any position shall not reduce the required width by more than one half. Other nonstructural projections such as trim and similar decorative features may project into the required width $1\frac{1}{2}$ inches (38 mm) from each side.

C CAC C **1004.3.4.3 Construction.** Corridors *of Groups C; I and R, Division 2 Occupancies having an occupant load of seven or more in Group E* shall be fully enclosed by walls, a floor, a ceiling and permitted protected openings. The walls and ceilings of corridors shall be constructed of fire-resistive materials as specified in Section 1004.3.4.3.1.

EXCEPTIONS: 1. One-story buildings housing Group F, Division 2 and Group S, Division 2 Occupancies.

2. Corridors more than 30 feet (9144 mm) in width where occupancies served by such corridors have at least one exit independent from the corridor. (See Chapter 4 for covered malls.)

3. In Group I, Division 3 Occupancies such as jails, prisons, reformatories and similar buildings with open-barred cells forming corridor walls, the corridors and cell doors need not be fire-resistive.

4. Corridor walls and ceilings need not be of fire-resistive construction within office spaces having an occupant load of 100 or less when the entire story in which the space is located is equipped with an automatic sprinkler system throughout and an automatic smoke-detection system installed within the corridor. The actuation of any detector shall activate alarms audible in all areas served by the corridor.

5. Corridor walls and ceilings need not be of fire-resistive construction within office spaces having an occupant load of 100 or less when the building in which the space is located is equipped with an automatic sprinkler system throughout.

6. In Group B office buildings of Type I, Type II-FR and Type II-one-hour construction, corridor walls and ceilings need not be of fire-resistive construction within office spaces of a single tenant when the entire story in which the space is located is equipped with an approved automatic sprinkler system and an automatic smoke-detection system is installed within the corridor. The actuation of any detector shall activate alarms audible in all areas served by the corridor.

7. *[For SFM] Group E Occupancies, when each room used for instruction has at least one exit door directly to the exterior at ground level, and when rooms used for assembly purposes have at least one half of the required "access to exits" that exit directly to the exterior at ground level.*

Corridor floors are not required to be of fire-resistive construction unless specified by some other provision of this code.

Corridors in buildings of Type I or II construction shall be of noncombustible construction, except where combustible materials are permitted in applicable building elements by other provisions of this code. Corridors in buildings of Type III, IV or V construction may be of combustible or noncombustible construction.

1004.3.4.3.1 Fire-resistive materials. Corridor walls shall be constructed of materials approved for one-hour fire-resistive construction on each side. Corridor walls shall extend vertically to a floor-ceiling or roof-ceiling constructed in accordance with one of the following:

1. The corridor-side fire-resistive membrane of the corridor wall shall terminate at the corridor ceiling membrane constructed of materials approved for a one-hour fire-resistive floor-ceiling or roof-ceiling assembly to include suspended ceilings, dropped ceilings and lay-in roof-ceiling panels, which are a portion of a fire-resistive assembly.

The room-side fire-resistive membrane of the corridor wall shall terminate at the underside of a floor or roof constructed of materials approved for a one-hour fire-resistive floor-ceiling or roof-ceiling assembly.

EXCEPTION: Where the corridor ceiling is an element of not less than a one-hour fire-resistive floor-ceiling or roof-ceiling assembly at the entire story, both sides of corridor walls may terminate at the ceiling membrane.

2. The corridor ceiling may be constructed of materials approved for a fire-resistive wall assembly. When this method is utilized, the corridor-side fire-resistive membrane of the corridor wall shall terminate at the lower ceiling membrane and the room-side fire-resistive membrane of the corridor wall shall terminate at the upper ceiling membrane.

Corridor ceilings of noncombustible construction may be suspended below the fire-resistive ceiling membrane.

For wall and ceiling finish requirements, see Table 8-B.

1004.3.4.3.2 Openings. Openings in corridors shall be protected in accordance with the requirements of this section.

EXCEPTIONS: 1. Corridors that are excepted from fire-resistive requirements by Section 1004.3.4.3.

2. Corridors on the exterior walls of buildings may have unprotected openings to the exterior when permitted by Table 5-A.

3. Corridors in multitheater complexes may have unprotected openings where each motion picture auditorium has at least one half of its required exit or exit-access doorways opening directly to the exterior or into an exit passageway.

1004.3.4.3.2.1 Doors. All exit-access doorways and doorways from unoccupied areas to a corridor shall be protected by tightfitting smoke- and draft-control assemblies having a fire-protection rating of not less than 20 minutes when tested in accordance with UBC Standard 7-2, Part II. Such doors shall not have louvers, mail slots or similar openings. The door and frame shall bear an approved label or other identification showing the rating thereof, followed by the letter "S," the name of the manufacturer and the identification of the service conducting the inspection of materials and workmanship at the factory during fabrication and assembly. Doors shall be maintained self-closing or shall be automatic closing by actuation of a smoke detector in accordance with Section 713.2. Smoke- and draft-control door assemblies shall be provided with a gasket installed so as to provide a seal where the door meets the stop on both sides and across the top.

EXCEPTION: View ports may be installed if they require a hole not larger than 1 inch (25 mm) in diameter through the door, have at least a $\frac{1}{4}$-inch-thick (6.4 mm) glass disc and the holder is of metal that will not melt out when subject to temperatures of 1,700°F (927°C).

1007.6.3.2.4 A means of exit shall not pass through more than one intervening room.

1007.6.3.3 Corridors/hallways.

1007.6.3.3.1 The minimum clear width of a corridor shall be as follows:

Division 2.1. Sixty inches (1524 mm) on floors housing nonambulatory clients.

EXCEPTION: Existing buildings reclassified to a Group R, Division 2.1 Occupancy, built prior to January 1, 1994, with existing corridors having a width of not less than 44 inches (1118 mm).

Forty-four inches (1118 mm) on floors housing only ambulatory clients.

Division 2.1.1. Thirty-six inches (914 mm) on floors housing clients.

Division 2.2. Forty-four inches (1118 mm) on floors housing clients.

EXCEPTIONS: 1. Corridors serving an occupant load of 10 or less shall not be less than 36 inches (914 mm) in width.

2. Corridors serving ambulatory persons only and having an occupant load of 49 or less shall not be less than 36 inches (914 mm) in width.

Division 2.2.1. Thirty-six inches (914 mm) on floors housing clients.

Division 2.3. Sixty inches (1524 mm) on floors housing clients.

Division 2.3.1 Thirty-six inches (914 mm) on floors housing clients.

In Group R, Division 2.1 and Group R, Division 2.2.1 buildings provided with fire sprinklers throughout and which are required to have rated corridors, door closers need not be installed on doors to client sleeping rooms.

In Group R, Division 2.3 and Group R, Division 2.3.1 buildings, doors to client rooms shall be a self-closing, positive-latching $1\frac{3}{8}$ inch hollow wood door. Such doors shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top. Doors shall be maintained self-closing or shall be automatic closing by actuation of a smoke detector in accordance with Section 713.

1007.6.3.3.2 In Divisions 2.1 and 2.1.1 Occupancies having smoke barriers, cross-corridor doors in corridors 6 feet (1829 mm) or less in width shall have, as a minimum, a door 36 inches (914 mm) in width.

Door closers are not required on doors to client sleeping rooms in rated corridors when the building is provided with automatic sprinklers throughout.

1007.6.3.3.3 In Divisions 2.1.1 and 2.2.1 Occupancies, hallways may be interrupted by intervening rooms.

1007.6.3.4 Changes in level. Changes in level up to $\frac{1}{4}$ inch (6 mm) may be vertical and without edge treatment. Changes in level between $\frac{1}{4}$ inch (6 mm) and $\frac{1}{2}$ inch (12.7 mm) shall be beveled with a slope no greater than 1 unit vertical in 2 units horizontal (50% slope). Changes in level greater than $\frac{1}{2}$ inch (12.7 mm) shall be accomplished by means of a ramp.

1007.6.3.5 Stairways. In Group I, Divisions 1.1 and 2.1, and Group R, Division 3 Occupancies that are reclassified as a Group R, Division 2.1.1 or 2.2.1 Occupancy, stairs may continue to use existing stairways (except for winding and spiral stairways which are not permitted as a required means of egress) provided the stairs have a maximum rise of 8 inches (203 mm) with a minimum run of 9 inches (229 mm). The minimum stairway width may be 30 inches (762 mm).

1007.6.3.6 Floor separation. Group I, Divisions 1.1 and 2.1, and Group R, Division 3 Occupancies that are reclassified as Group R, Division 2.1.1 or 2.2.1 Occupancies shall be provided with a nonrated floor separation which will prevent smoke migration between floors. Such nonrated floor separations shall have equivalent construction of $\frac{1}{2}$-inch (12.7 mm) gypsum wallboard on one side of the wall studs and shall be positive latching, smoke gasketed, and shall be automatic closing by smoke detection.

EXCEPTIONS: 1. Occupancies with at least one exterior exit from floors occupied by clients.

2. Occupancies provided with automatic fire sprinkler systems complying with Chapter 9.

1007.6.3.7 [For SFM] Fences and gates. Grounds of Residential Care for the Elderly facilities serving Alzheimer clients may be fenced and gates therein equipped with locks, provided safe dispersal areas are located not less than 50 feet (15 240 mm) from the buildings. Dispersal areas shall be sized to provide an area of not less than 3 square feet (0.279 m^2) per occupant. Gates shall not be installed across corridors or passageways leading to such dispersal areas unless they comply with exit requirements. See Section 1008 for exits from dispersal areas.

1007.6.3.8 [For SFM] Basement exits. One exit accessible to every room below grade shall lead directly to the exterior at grade level from the basement level.

1007.7 Special Hazards.

1007.7.1 Rooms containing fuel-fired equipment. All rooms containing a boiler, furnace, incinerator or other fuel-fired equipment shall be provided with access to two exits or exit-access doors when both of the following conditions exist:

1. The area of the room exceeds 500 square feet (46.45 m^2), and

2. The largest piece of fuel-fired equipment exceeds 400,000 Btu per hour (117 228 W) input capacity.

EXCEPTIONS: 1. In Group I, Division 3 Occupancies.

2. If access to two exits or exit-access doors are required, one such access may be by a fixed ladder.

1007.7.2 Refrigeration machinery rooms.

1007.7.2.1 Access to exits. Machinery rooms larger than 1,000 square feet (92.9 m^2) shall have access to not less than two exits as required in Section 1007.7.1.

1007.7.2.2 Travel distance. Travel distance shall be determined as specified in Section 1004.2.5, but all portions of machinery rooms shall be within 150 feet (45 720 mm) of an exit or exit-access doorway. Travel distance may be increased in accordance with Section 1004.2.5.

1007.7.2.3 Doors. Doors shall swing in the direction of exit travel, regardless of the occupant load served. Doors shall be tight-fitting and self-closing.

1007.7.3 Refrigerated rooms or spaces.

1007.7.3.1 Access to exits. Rooms or spaces having a floor area of 1,000 square feet (92.9 m^2) or more, containing a refrigerant evaporator and maintained at a temperature below 68°F (20°C), shall have access to not less than two exits or exit-access doors.

1007.7.3.2 Travel distance. Travel distance shall be determined as specified in Section 1004.2.5, but all portions of the refrigerated room or space shall be within 150 feet (45 720 mm) of an exit or exit-access door where such rooms are not protected by an approved automatic sprinkler system. Travel distance may be in-

414A.4.5.5.3 Fan running shall be provided by sensing devices for each fan for operation in both the supply and exhaust directions.

414A.4.5.5.4 Trouble status signals shall be annunciated in the local control room. A summarized trouble signal shall be annunciated at OCC and EMP.

414A.4.5.6 Ventilation systems and ancillary areas. Ancillary area ventilation systems shall be arranged so that air is not exhausted into station public occupancy areas.

414A.5 Fire Alarm and Communication Systems.

414A.5.1 General. Every station shall be provided with a state fire marshal-approved and listed fire alarm system. The alarm and communication systems shall be proprietary, designed and installed so that damage to any one speaker will not render any paging zone of the system inoperative.

EXCEPTION: Open stations.

The voice alarm and public address system may be a combined system. When approved by the fire department, a communications system may be combined with the voice alarm system and the public address system. Such combined systems shall meet the requirements of the California Electric Code.

414A.5.1.1 System components. Each station fire alarm system shall consist of:

1. Fire alarm control panel at a location as permitted by the authority having jurisdiction.

2. An alarm annunciator(s). The annunciator(s) shall be located at a point acceptable to the authority having jurisdiction. The annunciator(s) shall indicate the type of device and general location of alarm. All alarm, supervisory and trouble signals shall be transmitted to the local annunciator(s) and the OCC.

3. Manual pull stations shall be provided throughout passenger platforms and stations.

EXCEPTION: Voice alarm reporting devices (emergency telephones) may be used in lieu of manual pull stations as permitted by the authority having jurisdiction.

Such devices shall provide two-way communication between the OCC and each device. Such devices shall be located as required for manual fire alarm pull boxes, and shall be distinctly identified by signs, coloring, or other means acceptable to the authority having jurisdiction.

4. Automatic smoke detectors in all ancillary spaces.

EXCEPTIONS: 1. Ancillary spaces protected by an approved fixed automatic extinguishing system; or

2. Ancillary spaces protected by quick-response sprinklers.

5. Automatic control of exiting components.

414A.5.1.2 Combined voice alarm/public address system. Each station shall be provided with a one-way paging system(s) capable of transmitting voice, tape or electronically generated messages to all areas of the station. The system(s) shall be configured such that the messages can be initiated from either the EMP or the OCC.

414A.5.2 Emergency telephones. A dedicated emergency phone system shall be provided in all underground stations to facilitate direct communications for emergency response between remote locations and the EMP.

414A.5.2.1 The remote phones shall be located at ends of station platforms, each hose outlet connection and station valve rooms.

414A.5.2.2 Provisions shall be made in the design of this system for extensions of the system to the next passenger station or guideway portal.

SECTION 415A [FOR SFM] — RESIDENTIALLY-BASED, LICENSED FACILITIES IN A NON-SPRINKLERED GROUP R, DIVISION 2.1.1 AND 2.2.1 OCCUPANCY HOUSING A BEDRIDDEN CLIENT

415A.1 Scope. In addition to other provisions of this code, the provisions of this section shall apply to residentially-based, licensed facilities classified as Group R, Division 2.1.1 and 2.2.1 Occupancies as defined in Section 310.

415A.1.1 Purpose. The purpose of this chapter is to provide a minimum level of fire and life safety protection for a bedridden client, as defined in Section 203, housed in a non-sprinklered, Group R, Division 2.1.1 or 2.2.1 Occupancy.

415A.2 Location. In Group R, Divisions 2.1.1 and 2.2.1 Occupancies housing a bedridden client, the client sleeping room shall not be located above or below the first story.

EXCEPTION: Clients who become bedridden as a result of a temporary illness as defined in Health and Safety Code Sections 1566.45, 1568.0832, and 1569.72. A temporary illness is an illness, which persists for 14 days or less. A bedridden client may be retained in excess of the 14 days upon approval by the Department of Social Services and may continue to be housed on any story in a Group R, Division 2 Occupancy classified as a licensed residential facility.

Every licensee admitting or retaining a bedridden resident shall, within 48 hours of the resident's admission or retention in the facility, notify the local fire authority with jurisdiction of the estimated length of time the resident will retain his or her bedridden status in the facility.

415A.3 Exits Required. In Group R, Divisions 2.1.1 and 2.2.1 Occupancies housing a bedridden client, a direct exit to the exterior of the residence shall be provided from the client sleeping room.

415A.4 Doors and Door Hardware. Doors to a bedridden client's sleeping room shall be of a self-closing, positive latching $1\frac{3}{8}$ inch solid wood door. Such doors shall be provided with a gasket so installed as to provide a seal where the door meets the jam on both sides and across the top. Doors shall be maintained self-closing or shall be automatic closing by actuation of a smoke alarm in accordance with Section 713.

415A.4.1 Locks on interior doors. Group R, Division 2.1.1 and 2.2.1 Occupancies shall not have a night latch, dead bolt, security chain or any similar locking device installed on any interior door leading from a bedridden client's sleeping room to any interior area such as a corridor, hallway and or general use areas of the residence in accordance with Chapter 10.

415A.5 Exterior Exit Door. The exterior exit door to a bedridden client's sleeping room shall be operable from both the interior and exterior of the residence.

415A.6 Width and Height. Every required exit doorway shall be of a size as to permit the installation of a door not less than 3 feet (914 mm) in width and not less than 6 feet 8 inches (2032 mm) in height. When installed in exit doorways, exit doors shall be capable of opening at least 90 degrees and shall be so mounted that the clear width of the exit way is not less than 32 inches (813 mm).

415A.7 Smoke Alarms. In all facilities housing a bedridden client, smoke alarms shall receive their primary power from the building wiring when such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms shall be electrically interconnected so as to cause all smoke alarms to sound a distinctive alarm signal upon actuation of any single smoke alarm. Such alarm signal shall be audible through-

904.2.4.2 Basements. An automatic sprinkler system shall be installed in basements classified as Group E, Division 1 Occupancies.

904.2.4.3 Stairs. An automatic sprinkler system shall be installed in enclosed usable space below or over a stairway in Group E, Division 1 Occupancies. See Section 1005.3.3.6.

CAC *904.2.4.4 [For SFM] Special provisions. School buildings or portions of buildings for which review and approval is required under Subdivision (a) of Section 39140 of the Education Code shall, on the effective date of this regulation, comply with State Appendixes III-AA and III-BB of the California Fire Code.*

904.2.5 Group F Occupancies.

904.2.5.1 Woodworking occupancies. An automatic fire sprinkler system shall be installed in Group F woodworking occupancies over 2,500 square feet (232.3 m^2) in area that use equipment, machinery or appliances that generate finely divided combustible waste or that use finely divided combustible materials.

904.2.6 Group H Occupancies.

904.2.6.1 General. An automatic fire-extinguishing system shall be installed in Group H, Divisions 1, 2, 3 and 7 Occupancies.

904.2.6.2 Group H, Division 4 Occupancies. An automatic fire-extinguishing system shall be installed in Group H, Division 4 Occupancies having a floor area of more than 3,000 square feet (279 m^2).

904.2.6.3 Group H, Division 6 Occupancies. An automatic fire-extinguishing system shall be installed throughout buildings containing Group H, Division 6 Occupancies. The design of the sprinkler system shall not be less than that required under UBC Standard 9-1 for the occupancy hazard classifications as follows:

LOCATION	OCCUPANCY HAZARD CLASSIFICATION
Fabrication areas	Ordinary Hazard Group 2
Service corridors	Ordinary Hazard Group 2
Storage rooms without dispensing	Ordinary Hazard Group 2
Storage rooms with dispensing	Extra Hazard Group 2
Corridors	Ordinary Hazard Group 2[1]

[1]When the design area of the sprinkler system consists of a corridor protected by one row of sprinklers, the maximum number of sprinklers that needs to be calculated is 13.

CAC *904.2.6.4 [For SFM] Group H, Division 8 Occupancies. An automatic sprinkler system shall be installed throughout buildings housing Group H, Division 8 Occupancies. Sprinkler system design for research laboratories and similar areas of a Division 8 Occupancy shall not be less than that required for Ordinary Hazard Group 3 with a design area of not less than 3,000 square feet (279 m^2).*

In mixed occupancies, portions of floors or buildings not classified as Group H, Division 8 Occupancies shall be provided with sprinkler protection designed of not less than that required for Ordinary Hazard Group 1 with a design area of not less than 3,000 square feet (279 m^2).

CAC **904.2.7 Group I Occupancies.** An automatic sprinkler system shall be installed in Group I Occupancies *[for SFM] unless otherwise exempted in Chapter 3 of this code.* In Group I, Division 1.1 and Group I, Division 2 Occupancies, approved quick-response or residential sprinklers shall be installed throughout patient sleeping areas.

EXCEPTION: In jails, prisons and reformatories, the piping system may be dry, provided a manually operated valve is installed at a continuously monitored location. Opening of the valve will cause the piping system to be charged. Sprinkler heads in such systems shall be equipped with fusible elements or the system shall be designed as required for deluge systems in UBC Standard 9-1.

904.2.8 Group M Occupancies. An automatic sprinkler system shall be installed in rooms classed as Group M Occupancies where the floor area exceeds 12,000 square feet (1115 m^2) on any floor or 24,000 square feet (2230 m^2) on all floors or in Group M Occupancies more than three stories in height. The area of mezzanines shall be included in determining the areas where sprinklers are required.

904.2.9 Group R, Division 1 Occupancies. An automatic sprinkler system shall be installed throughout every apartment house three or more stories in height or containing *5* or more dwelling units, every congregate residence three or more stories in height or having an occupant load of *11* or more, and every hotel three or more stories in height or containing *6* or more guest rooms. Residential or quick-response standard sprinklers shall be used in the dwelling units and guest room portions of the building. CA CAC

[For SFM] The requirements of this subsection shall not mandate the retroactive installation of an automatic sprinkler system to an existing R1 Occupancy.

904.2.10 [For SFM] Group R, Division 2 Occupancies. An automatic sprinkler system shall be installed in Group R, Division 2 Occupancies.

EXCEPTIONS: 1. Group R, Divisions 2.1.1 and 2.2.1 Occupancies not housing bedridden clients and not exceeding two stories in height or not housing bedridden clients and not housing nonambulatory clients above the first story.

2. When Group R, Divisions 2.1.1 and 2.2.1 Occupancies are required to have an automatic sprinkler system, an NFPA 13R or 13D system may be used within the scope of those standards. Section 2-6 of NFPA 13R or 13D shall not apply unless approved by the authority having jurisdiction.

3. Pursuant to Health and Safety Code Section 13113, Division 2.2 Occupancies housing ambulatory children only, none of whom are mentally ill or mentally retarded, and the buildings or portions thereof in which such children are housed are not more than two stories in height, and buildings or portions thereof housing such children have an automatic fire alarm system activated by approved smoke detectors.

4. Pursuant to Health and Safety Code Section 13143.6, Division 2 Occupancies which house ambulatory persons only, none of whom is a child (under the age of 18 years), or who is elderly (65 years of age or over).

904.2.10.1 [For SFM] Group R, Divisions 2.3 and 2.3.1 Occupancies. An automatic sprinkler system shall be installed in Group R, Divisions 2.3 and 2.3.1 occupancies. Residential or quick-response standard sprinklers shall be used in sleeping rooms. An automatic sprinkler system meeting the requirements of NFPA 13 shall be installed in all Group R, Division 2.3 Occupancies.

A NFPA 13R or 13D system may be used in Group R-2.3.1 occupancies.

904.2.11 [For SL] Public Libraries. Public libraries funded from the California Library Construction and Renovation Act of 1988.

904.2.11.1 [For SL] Fire extinguishment. Fire-extinguishing systems meeting the standards in Section 904.1.2 and approved by the local fire authority shall be installed in:

New facilities, including additions.

Existing facilities to which a project adds the lesser of 5,000 square feet (465 m^2) or 10 percent of the size of the existing facility, if the existing facility does not already have a fire-extinguishing system meeting Section 904.1.2 standards.

904.2.11.2 [For SL] Signaling System. Fire-extinguishing systems installed in accordance with the preceding subsection shall CA

er systems and standpipes shall be designed and installed as ecified in Chapter 9.

310.10 Fire Alarm Systems. Group R, Division 1 Occupancies shall be provided with a manual and automatic fire alarm system in apartment houses three or more stories in height or containing 16 or more dwelling units, in hotels three or more stories in height or containing 20 or more guest rooms and in congregate residences three or more stories in height or having an occupant load of 20 or more *[for SFM] in accordance with Chapter 35 and the California Fire Code.* A fire alarm and communication system shall be provided in Group R, Division 1 Occupancies located in a high-rise building.

EXCEPTIONS: 1. A manual fire alarm system need not be provided in buildings not over two stories in height when all individual dwelling units and contiguous attic and crawl spaces are separated from each other and public or common areas by at least one-hour fire-resistive occupancy separations and each individual dwelling unit or guest room has an exit directly to a public way, exit court or yard.

2. A separate fire alarm system need not be provided in buildings that are protected throughout by an approved supervised fire sprinkler system having a local alarm to notify all occupants.

2a. [For SFM] A separate *manual and automatic* fire alarm system need not be provided in buildings that are protected throughout by an approved supervised fire sprinkler system having a local alarm *system for the notification of all occupants. Occupant notification shall result from actuation of any flow of water or the operation of any manual station.*

The alarm signal shall be a distinctive sound that is not used for any other purpose other than the fire alarm. Alarm-signaling devices shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by 15 decibels minimum, or exceeds any maximum sound level with a duration of 30 seconds inimum by 5 decibels minimum, whichever is louder. Sound vels for alarm signals shall be 120 decibels maximum.

For the purposes of this section, area separation walls shall not define separate buildings.

310.10.1 [For SFM] Group R, Divisions 2.1 or 2.3 Occupancies. Buildings containing Group R, Division 2.1 Occupancy shall be provided with an approved manual and automatic fire alarm system in accordance with Chapters 3, 9 and 35 and the California Fire Code.

EXCEPTION: Buildings housing nonambulatory clients on the first story only, and which are protected throughout by the following:

1. An approved and supervised automatic sprinkler system, as specified in Chapter 9, which upon activation will initiate the fire alarm system to notify all occupants.

2. A manual fire alarm system in accordance with Chapters 9 and 35.

3. Smoke alarms required by Section 310.9.1.

310.10.2 [For SFM] Group R, Divisions 2.1.1, 2.2.1 and 2.3.1 Occupancies. In addition to smoke detectors required by Section 310.9, Group R, Divisions 2.1.1, 2.2.1 and 2.3.1 Occupancies shall be provided with at least one manual pull station at a location approved by the authority having jurisdiction. Such pull station shall actuate a distinctive fire alarm signal which shall be audible throughout the facility. These devices need not be interconnected to any other fire alarm device, electrically supervised or provided with emergency power.

310.10.3 [For SFM] Group R, Division 2.2 Occupancies. In addition to smoke alarms required by Section 310.9, buildings containing Group R, Division 2.2 Occupancies shall be provided with a manual fire alarm system in accordance with Chapter 35 nd the California Fire Code.

NOTE: See Health and Safety Code, Sections 13113.7 and 13113.8 for other fire alarm requirements.

310.11 Heating. Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F (21°C) at a point 3 feet (914 mm) above the floor in all habitable rooms.

EXCEPTION [For HCD 1]: For limited-density owner-built rural dwellings, a heating facility or appliance shall be installed in each dwelling subject to the provisions of Subchapter 1, Chapter 1, Title 25, California Code of Regulations; however, there shall be no specified requirement for heating capacity or temperature maintenance. The use of solid-fuel or solar-heating devices shall be deemed as complying with the requirements of this section. If nonrenewable fuel is used in these dwellings, rooms so heated shall meet current installation standards.

310.12 Special Hazards. Chimneys and heating apparatus shall conform to the requirements of Chapter 31 and the Mechanical Code.

The storage, use and handling of flammable and combustible liquids in *[for SFM]* Divisions 1 *and* 2 Occupancies shall be in accordance with the Fire Code.

In Division 1 Occupancies, doors leading into rooms in which Class I flammable liquids are stored or used shall be protected by a fire assembly having a one-hour fire-protection rating. Such fire assembly shall be self-closing and shall be posted with a sign on each side of the door in 1-inch (25.4 mm) block letters stating: FIRE DOOR—KEEP CLOSED.

[For SFM] Every unenclosed gas-fired water heater or furnace which is within the area used for child care in a large family day-care home shall be protected in such a way as to prevent children from making contact with those appliances.

EXCEPTION: This does not apply to kitchen stoves or ovens.

310.13 Access to Buildings and Facilities.

310.13.1 [For DSA/AC] General accessibility requirements can be found in Chapters 10, 11A, 11B, 11C and 30.

310.14 [For HCD 1, SFM] Existing Group R, Division 1 Occupancies. In accordance with Health and Safety Code Section 13143.2, the provisions of Sections 310.14.3 through 310.14.11 shall only apply to multistory structures existing on January 1, 1975, let for human habitation, including, and limited to, apartments, houses, hotels and motels in which rooms used for sleeping are let above the ground floor.

EXCEPTION [For HCD 1]: Any portion of an existing residential structure may be altered, repaired or rehabilitated, regardless of the value of the work or the duration of the construction period, without the entire structure being made to comply with the requirements of this chapter for new construction.

NOTES [For HCD 1]: 1. See Sections 17958.8 and 17958.9 of the Health and Safety Code for regulations governing the alteration and repair of existing and relocated buildings.

2. See Section 17920.3 of the Health and Safety Code for conditions that constitute a substandard building.

310.14.1 [For HCD 1] Limited-density owner-built rural dwellings. The provisions regulating the erection and construction of dwellings and appurtenant structures shall not apply to existing structures as to which construction is commenced or approved prior to the effective date of these regulations. Requirements relating to use, maintenance and occupancy shall apply to all dwellings and appurtenant structures approved for construction or constructed before or after the effective date of this chapter.

310.14.2 [For SFM] Number of exits. Every apartment and every other sleeping room shall have access to not less than two exits—when the occupant load is 10 or more (exits need not be directly from the apartment or sleeping room). A fire escape as specified herein may be used as one required exit.

Subject to approval of the authority having jurisdiction, a ladder device as specified herein may be used in lieu of a fire es-

vided there is adequate light and ventilation and adequate means of egress.

310.7 *[For HCD 1]* **Efficiency Dwelling Units.** An efficiency dwelling unit shall conform to the requirements of the code except as herein provided *or as provided in Health and Safety Code Section 17958.1:*

1. The unit shall have a living room of not less than 220 square feet (20.4 m^2) of superficial floor area. An additional 100 square feet (9.3 m^2) of superficial floor area shall be provided for each occupant of such unit in excess of two.

2. The unit shall be provided with a separate closet.

3. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches (762 mm) in front. Light and ventilation conforming to this code shall be provided.

4. The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.

NOTE: Subject to other provisions of law, the applicable subsection of the Health and Safety Code is repealed here for clarity and reads as follows:

Section 17958.1. Subject to Sections 17922, 17958 and 17958.5, a city or county may, by ordinance, permit efficiency units for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities, as specified by the ordinance. In all other respects, these efficiency units shall conform to minimum standards for those occupancies otherwise made applicable pursuant to this part.

"Efficiency unit," as used in this section, has the same meaning specified in the Uniform Building Code *of the International Conference of Building Officials, as incorporated by reference in Chapter 2-12 of Part 2 of Title 24 of the California Code of Regulations.*

310.8 Shaft and Exit Enclosures. Exits shall be enclosed as specified in Chapter 10.

Elevator shafts, vent shafts, dumbwaiter shafts, clothes chutes and other vertical openings shall be enclosed and the enclosure shall be as specified in Section 711.

In nonsprinklered Group R, Division 1 Occupancies, corridors serving an occupant load of 10 or more shall be separated from corridors and other areas on adjacent floors by not less than approved fixed wired glass set in steel frames or by 20-minute smoke- and draft-control assemblies, which are automatic closing by smoke detection.

310.9 Smoke *Alarms* and Sprinkler Systems.

310.9.1 Smoke *Alarms*.

310.9.1.1 General. Dwelling units, congregate residences and hotel or lodging house guest rooms *[for SFM] and residential care facilities classified as Group R, Divisions 2.1.1, 2.2.1, 2.3.1 and Group R, Division 6 Occupancies* that are used for sleeping purposes shall be provided with *smoke alarms or multiple-station smoke alarms. Smoke alarms* shall be installed in accordance with *this code and* the approved manufacturer's instructions.

EXCEPTION: A fire alarm system with smoke detectors located in accordance with Sections 310.9.1.4 and 310.9.1.5 may be installed in lieu of smoke alarms. Upon actuation of the detector, only those notification appliances in the dwelling unit or guest room shall activate.

310.9.1.2 Additions, alterations or repairs to Group R Occupancies. When the valuation of an addition, alteration or repair to a Group R Occupancy exceeds $1,000 and a permit is required, or when one or more sleeping rooms are added or created in existing Group R Occupancies, smoke *alarms* shall be installed in accordance with Sections 310.9.1.3, 310.9.1.4 and 310.9.1.5 of this section.

EXCEPTION: Repairs to the exterior surfaces of a Group R Occupancy are exempt from the requirements of this section.

310.9.1.3 Power source. In new construction, required smoke *alarms* shall receive their primary power from the building wiring when such wiring is served from a commercial source and shall be equipped with a battery backup. The *smoke alarm* shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Smoke *alarms* may be solely battery operated when installed in existing buildings, or in buildings without commercial power, or in buildings which undergo alterations, repairs or additions regulated by Section 310.9.1.2.

310.9.1.4 Location within dwelling units. In dwelling units, a *smoke alarm* shall be installed in each sleeping room and at a point centrally located in the corridor or area giving access to each separate sleeping area. When the dwelling unit has more than one story and in dwellings with basements, a *smoke alarm* shall be installed on each story and in the basement. In dwelling units where a story or basement is split into two or more levels, the smoke *alarm* shall be installed on the upper level, except that when the lower level contains a sleeping area, a *smoke alarm* shall be installed on each level. When sleeping rooms are on an upper level, the *smoke alarms* shall be placed at the ceiling of the upper level in close proximity to the stairway. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by 24 inches (610 mm) or more, smoke *alarms* shall be installed in the hallway and in the adjacent room. *Smoke alarms* shall sound an alarm audible in all sleeping areas of the dwelling unit in which they are located.

310.9.1.5 Location in efficiency dwelling units, congregate residences and hotels. In efficiency dwelling units, hotel suites and in hotel *[for SFM] motel or lodging house* and congregate residence *and residential care and group care facility* sleeping rooms, *smoke alarms* shall be located on the ceiling or wall of the main room or each sleeping room. When sleeping rooms within an efficiency dwelling unit or hotel suite are on an upper level, the *smoke alarms* shall be placed at the ceiling of the upper level in close proximity to the stairway. When actuated, the *smoke alarms* shall sound an alarm audible within the sleeping area of the dwelling unit or congregate residence, hotel suite, or sleeping room in which it is located.

310.9.1.6. Single- and multiple-station smoke alarms and smoke detectors installed within dwelling units, congregate residences and hotel rooms shall not be connected to the building fire alarm system.

EXCEPTION: Connection of such devices for annunciation only.

Buildings containing Roup R, Division 2.1 Occupancies shall be provided with an approved manual and automatic fire alarm system in accordance with Chapters 3, 9 and 35 and the California Fire Code.

EXCEPTION: Buildings housing nonambulatory clients on the first story only, and which are protected throughout by the following:

1. An approved and supervised automatic sprinkler system, as specified in Chapter 9, which upon activation will initiate the fire alarm system to notify all occupants.

2. A manual fire alarm system in accordance with Chapters 9 and 35.

3. Smoke alarms required by Section 310.9.1.

310.9.2 Sprinkler and standpipe systems. When required by Section 904.2.1 or other provisions of this code, automatic sprin-

[For SFM] In Group I, Division 1.1 Occupancies, any change in elevation of the floor in a hallway, corridor, exit passageway or exterior exit balcony serving nonambulatory persons shall be by means of a ramp.

EXCEPTIONS: 1. In Group R, Division 3 Occupancies and within individual dwelling units of Group R, Division 1 Occupancies.

2. Along aisles adjoining seating areas.

1003.2.7 Elevators or escalators. Elevators or escalators shall not be used as a required means of egress component.

1003.2.8 Means of egress identification.

1003.2.8.1 *[For DSA/AC & SFM] Visual exit signs.* For the purposes of Section *1003.2.8.1*, the term "exit sign" shall mean those required signs that *visually* indicate the path of exit travel within the means of egress system.

1003.2.8.2 Where required. The path of exit travel to and within exits in a building shall be identified by exit signs conforming to the requirements of Section 1003.2.8. Exit signs shall be readily visible from any direction of approach. Exit signs shall be located as necessary to clearly indicate the direction of egress travel. No point shall be more than 100 feet (30 480 mm) from the nearest visible sign.

EXCEPTIONS: 1. Main exterior exit doors that obviously and clearly are identifiable as exit doors need not have exit signs when approved by the building official.

2. Rooms or areas that require only one exit or exit access.

3. In Group R, Division 3 Occupancies and within individual units of Group R, Division 1 Occupancies.

4. Exits or exit access from rooms or areas with an occupant load of less than 50 where located within a Group I, Division 1.1, 1.2 or 2 Occupancy or a Group E, Division 3 day-care occupancy.

1003.2.8.3 Graphics. The color and design of lettering, arrows and other symbols on exit signs shall be in high contrast with their background. Exit signs shall have the word "EXIT" on the sign in block capital letters not less than 6 inches (152 mm) in height with a stroke of not less than $^3/_4$ inch (19 mm). The word "EXIT" shall have letters having a width of not less than 2 inches (51 mm) except for the letter "I" and a minimum spacing between letters of not less than $^3/_8$ inch (9.5 mm). Signs with lettering larger than the minimum dimensions established herein shall have the letter width, stroke and spacing in proportion to their height.

1003.2.8.4 Illumination. Exit signs shall be internally or externally illuminated. When the face of an exit sign is illuminated from an external source, it shall have an intensity of not less than 5 footcandles (54 lx) from either of two electric lamps. Internally illuminated signs shall provide equivalent luminance and be listed for the purpose.

EXCEPTIONS: 1. Approved self-luminous signs that provide evenly illuminated letters that have a minimum luminance of 0.06 foot lambert (0.21 cd/m^2).

2. *[For SFM] Approved internally illuminated exit signs which use light-emitting diodes or electroluminescent lamps are not required to have two electric lamps.*

1003.2.8.5 Power source. All exit signs shall be illuminated at all times. To ensure continued illumination for a duration of not less than $1^1/_2$ hours in case of primary power loss, the exit signs shall also be connected to an emergency electrical system provided from storage batteries, unit equipment or an on-site generator set, and the system shall be installed in accordance with the Electrical Code. For high-rise buildings, see Section 403.

EXCEPTIONS: 1. Approved self-luminous signs that provide continuous illumination independent of an external power source.

2. *[For SFM] The power supply for internally illuminated exit signs and exit path marking, which do not contain electric lamps, shall normally be provided by the premises' wiring system. In the event of its failure, power shall be automatically provided from storage batteries or an on-site generator set and the system shall be installed in accordance with the California Electrical Code.*

1003.2.8.6 [For DSA/AC & SFM] Tactile exit signage. For the purposes of Section 1003.2.8.6, the term "tactile exit signs" shall mean those required signs that comply with Section 1117B.5.1-B.

1003.2.8.6.1 [For DSA/AC & SFM] Where required. Tactile exit signs shall be required at the following locations:

1. Each grade-level exterior exit door shall be identified by a tactile exit with the word, "EXIT."

2. Each exit door that leads directly to a grade-level exterior exit by means of a stairway or ramp shall be identified by a tactile exit sign with the following words as appropriate:

A. "EXIT STAIR DOWN"

B. "EXIT RAMP DOWN"

C. "EXIT STAIR UP"

D. "EXIT RAMP UP".

3. Each exit door that leads directly to a grade-level exterior exit by means of an exit enclosure or an exit passageway shall be identified by a tactile exit sign with the words, "EXIT ROUTE."

4. Each exit access door from an interior room or area to a corridor or hallway that is required to have a visual exit sign, shall be identified by a tactile exit sign with the words, "EXIT ROUTE."

5. Each exit door through a horizontal exit shall be identified by a sign with the words, "TO EXIT."

1003.2.9 Means of egress illumination.

1003.2.9.1 General. Any time a building *[for SFM] or portion of a building* is occupied, the means of egress *serving the occupied portion* shall be illuminated at an intensity of not less than 1 footcandle (10.76 lx) at the floor level.

EXCEPTIONS: 1. In Group R, Divisions *2.1.1, 2.2.1, 2.3.1, 6.1.1, 6.2.1 and* 3 Occupancies and within individual units of Group R, Division 1 Occupancies.

2. In auditoriums, theaters, concert or opera halls, and similar assembly uses, the illumination at the floor level may be reduced during performances to not less than 0.2 footcandle (2.15 lx), provided that the required illumination be automatically restored upon activation of a premise's fire alarm system when such system is provided.

3. *[For SFM] Sleeping rooms in Group I Occupancies, and sleeping rooms in Group R, Divisions 2.1, 2.2, 2.3, 6.1 and 6.2 Occupancies.*

1003.2.9.2 Power supply. The power supply for means of egress illumination shall normally be provided by the premise's electrical supply. In the event of its failure, illumination shall be automatically provided from an emergency system for Group I, Divisions 1.1 and 1.2, *[For SFM] Occupancies in rooms or areas requiring two or more exits or exit access doorways, or a combination thereof and Group R, Divisions 2.1 and 2.2* Occupancies and for all other occupancies where the means of egress system serves an occupant load of 100 or more. Such emergency systems shall be installed in accordance with the Electrical Code.

For high-rise buildings, see Section 403.

1003.2.10 Building accessibility. In addition to the requirements of this chapter, means of egress, which provide access to, or egress from, buildings for persons with disabilities, shall also comply with the requirements of Chapter 11.

EXCEPTIONS: 1. [For HCD 1/AC, DSA/AC] For housing accessibility, see Chapter 11A.

2. [For DSA/AC] For accessibility to public accommodations, commercial buildings and publicly funded housing, see Chapter 11B.

1003.3 Means of egress components. Doors, gates, stairways and ramps that are incorporated into the design of any portion of the means of egress system shall comply with the requirements of

EXCEPTIONS: 1. Exit access for patient sleeping rooms, where an ante room is required, may pass through an intervening ante room.

2. Exit access for patient sleeping or treatment rooms within suites may pass through suite areas complying with Section 1007.5.9.

1007.5.11 [For SFM] Swing of patient room doors. Entrance doors to patients' bedrooms from corridors of Group I, Divisions 1.1 and 1.2 Occupancies shall not swing into the required width of corridors.

1007.5.12 [For SFM] Fences and gates. Grounds may be fenced and gates therein equipped with locks, provided safe dispersal areas are located not less than 50 feet (15 240 mm) from the buildings. Dispersal areas shall be sized to provide an area of not less than 3 square feet (0.279 m^2) per ambulatory occupant and 20 square feet (1.86 m^2) per nonambulatory occupant. Each safe dispersal area shall have a minimum of two exits. The aggregate clear width of exits from a safe dispersal area shall be determined on the basis of not less than one exit unit of 22 inches (559 mm) for each 500 persons to be accommodated, and no exit shall be less than 44 inches (1118 mm) in width. Gates shall not be installed across corridors or passageways leading to such dispersal areas unless they comply with exit requirements. Except in Group I, Division 3 Occupancies classified as detention facilities, keys to gate locks shall be provided in accordance with the Fire Code.

1007.5.13 Floor-level exit signs. Where exit signs are required by Section 1003.2.8.2, additional approved low-level exit signs which are internally or externally illuminated, photoluminescent or self-luminous, shall be provided in all interior corridors of Group I Occupancies.

EXCEPTIONS: 1. Group I Occupancies which are provided with smoke barriers constructed in accordance with Section 308.2.2.

2. Group I, Division 3 Occupancies.

The bottom of the sign shall not be less than 6 inches (152 mm) or more than 8 inches (203 mm) above the floor level and shall indicate the path of exit travel. For exit and exit-access doors, the sign shall be on the door or adjacent to the door with the closest edge of the sign or marker within 4 inches (102 mm) of the door frame.

NOTE: Pursuant to Health and Safety Code Section 13143, this California amendment applies to all newly constructed buildings or structures subject to this section for which a building permit is issued (or construction commenced, where no building permit is issued) on or after January 1, 1989.

1007.6 Group R Occupancies.

1007.6.1 Hallways. Hallways in Group R, Divisions 1 *and 6* Occupancies that serve an occupant load of 10 or more *and Group R, Division 2 Occupancies serving a client occupant load of 7 or more* shall comply with the requirements of Section 1004.3.4 for corridors.

1007.6.2 Floor-level exit signs. Where exit signs are required by Section 1003.2.8.2, additional approved low-level exit signs that are internally or externally illuminated, photoluminescent or self-luminous, shall be provided in all corridors serving guest rooms of hotels in Group R, Division 1 Occupancies.

The bottom of such sign shall not be less than 6 inches (152 mm) nor more than 8 inches (203 mm) above the floor level and shall indicate the path of exit travel. For exit and exit-access doors, the sign shall be on the door or adjacent to the door with the closest edge of the sign within 4 inches (102 mm) of the door frame.

The following California section replaces the corresponding model code section for applications specified by law for the Office of the State Fire Marshal.

1007.6.2.1 [For SFM] Floor-level exit signs. Where exit signs are required by Section 1003.2.8.2, additional approved low-level exit signs that are internally or externally illuminated, photoluminescent or self-luminous, shall be provided in all interior corridors serving Group R, Divison 1 Occupancies.

The bottom of such sign shall not be less than 6 inches (152 mm) nor more than 8 inches (203 mm) above the floor level and shall indicate the path of exit travel. For exit and exit-access doors, the sign shall be on the door or adjacent to the door with the closest edge of the sign with 4 inches (102 mm) of the door frame.

NOTE: Pursuant to Health and Safety Code Section 17920.8, this California amendment applies to all newly constructed buildings or structures subject to this section for which a building permit is issued (or construction commenced, where no building permit is issued) on or after January 1, 1989.

1007.6.2.1.1 Path Marking. When exit signs are required by Chapter 10, in addition to approved floor-level exit signs, approved path marking shall be installed at floor level or no higher than 8 inches (203 mm) above the floor level in all interior rated exit corridors of unsprinklered Group R, Division 1 Occupancies. Such marking shall be continuous except as interrupted by doorways, corridors or other such architectural features in order to provide a visible delineation along the path of travel.

NOTE: Pursuant to Health and Safety Code Section 13143, the California amendments of this section shall apply to all newly constructed buildings or structures subject to this section for which a building permit is issued (or construction commenced, where no building permit is issued) on or after January 1, 1989.

1007.6.3 [For SFM] Group R, Division 2 Occupancies.

1007.6.3.1 Number of exits.

1007.6.3.1.1 Division 2 Occupancies shall have exits as may be required by Section 1005.3.3. Buildings of Division 2 Occupancies shall have a minimum of two exits.

EXCEPTION: Divisions 2.1.1 and 2.2.1 Occupancies which are constructed of not less than Type V, One-hour construction and which are provided with an automatic sprinkler system complying with Chapter 9 may have exits as required by Section 1005.3.3.

1007.6.3.1.2 Two enclosed exit stairways which are remotely located from each other shall be provided in Division 2.1 Occupancies housing nonambulatory clients above the first floor. Except as required by Section 1005.3.3, enclosed stairways which serve nonrated corridors may be of nonrated construction.

1007.6.3.2 Exit arrangements.

1007.6.3.2.1 Exiting through adjoining dwelling units shall not be permitted.

1007.6.3.2.2 In Divisions 2.1.1, 2.2.1 and 2.3.1 Occupancies which are of nonrated construction, bedrooms used by nonambulatory clients shall have access to at least one of the required exits which shall conform to one of the following:

Exits through a corridor/hallway or area and into a bedroom (in the immediate area) which has an exit directly to the exterior. Bedroom doors used as exits shall have exit signs complying with Section 1003.2.8.

Through a corridor/hallway (serving the sleeping area which exits directly to the exterior).

Direct exit from the bedroom to the exterior.

Exit through an adjoining bedroom which exits to the exterior.

1007.6.3.2.3 A means of exit shall not pass through kitchens, storerooms, closets or spaces used for similar purposes.

EXCEPTION: Kitchens which do not form separate rooms by construction.

1007.6.3.2.4 A means of exit shall not pass through more than one intervening room.

1007.6.3.3 Corridors/hallways.

1007.6.3.3.1 The minimum clear width of a corridor shall be as follows:

Division 2.1. Sixty inches (1524 mm) on floors housing nonambulatory clients.

EXCEPTION: Existing buildings reclassified to a Group R, Division 2.1 Occupancy, built prior to January 1, 1994, with existing corridors having a width of not less than 44 inches (1118 mm).

Forty-four inches (1118 mm) on floors housing only ambulatory clients.

Division 2.1.1. Thirty-six inches (914 mm) on floors housing clients.

Division 2.2. Forty-four inches (1118 mm) on floors housing clients.

EXCEPTIONS: 1. Corridors serving an occupant load of 10 or less shall not be less than 36 inches (914 mm) in width.

2. Corridors serving ambulatory persons only and having an occupant load of 49 or less shall not be less than 36 inches (914 mm) in width.

Division 2.2.1. Thirty-six inches (914 mm) on floors housing clients.

Division 2.3. Sixty inches (1524 mm) on floors housing clients.

Division 2.3.1.1. Thirty-six inches (914 mm) on floors housing clients.

In Group R, Division 2.1 and Group R, Division 2.2.1 buildings provided with fire sprinklers throughout and which are required to have rated corridors, door closers need not be installed on doors to client sleeping rooms.

In Group R, Division 2.3 and Group R, Division 2.3.1 buildings, doors to client rooms shall be a self-closing, positive-latching $1\frac{3}{8}$ inch hollow wood door. Such doors shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top. Doors shall be maintained self-closing or shall be automatic closing by actuation of a smoke detector in accordance with Section 713.

1007.6.3.3.2 In Divisions 2.1 and 2.1.1 Occupancies having smoke barriers, cross-corridor doors in corridors 6 feet (1829 mm) or less in width shall have, as a minimum, a door 36 inches (914 mm) in width.

Door closers are not required on doors to client sleeping rooms in rated corridors when the building is provided with automatic sprinklers throughout.

1007.6.3.3.3 In Divisions 2.1.1 and 2.2.1 Occupancies, hallways may be interrupted by intervening rooms.

1007.6.3.4 Changes in level. Changes in level up to $\frac{1}{4}$ inch (6 mm) may be vertical and without edge treatment. Changes in level between $\frac{1}{4}$ inch (6 mm) and $\frac{1}{2}$ inch (12.7 mm) shall be beveled with a slope no greater than 1 unit vertical in 2 units horizontal (50% slope). Changes in level greater than $\frac{1}{2}$ inch (12.7 mm) shall be accomplished by means of a ramp.

1007.6.3.5 Stairways. In Group I, Divisions 1.1 and 2.1, and Group R, Division 3 Occupancies that are reclassified as a Group R, Division 2.1.1 or 2.2.1 Occupancy, stairs may continue to use existing stairways (except for winding and spiral stairways which are not permitted as a required means of egress) provided the stairs have a maximum rise of 8 inches (203 mm) with a minimum run of 9 inches (229 mm). The minimum stairway width may be 30 inches (762 mm).

1007.6.3.6 Floor separation. Group I, Divisions 1.1 and 2.1, and Group R, Division 3 Occupancies that are reclassified as Group R, Division 2.1.1 or 2.2.1 Occupancies shall be provided with a nonrated floor separation which will prevent smoke migration between floors. Such nonrated floor separations shall have equivalent construction of $\frac{1}{2}$-inch (12.7 mm) gypsum wallboard on one side of the wall studs and shall be positive latching, smoke gasketed, and shall be automatic closing by smoke detection.

EXCEPTIONS: 1. Occupancies with at least one exterior exit from floors occupied by clients.

2. Occupancies provided with automatic fire sprinkler systems complying with Chapter 9.

1007.6.3.7 [For SFM] Fences and gates. Grounds of Residential Care for the Elderly facilities serving Alzheimer clients may be fenced and gates therein equipped with locks, provided safe dispersal areas are located not less than 50 feet (15 240 mm) from the buildings. Dispersal areas shall be sized to provide an area of not less than 3 square feet (0.279 m^2) per occupant. Gates shall not be installed across corridors or passageways leading to such dispersal areas unless they comply with exit requirements. See Section 1008 for exits from dispersal areas.

1007.6.3.8 [For SFM] Basement exits. One exit accessible to every room below grade shall lead directly to the exterior at grade level from the basement level.

1007.7 Special Hazards.

1007.7.1 Rooms containing fuel-fired equipment. All rooms containing a boiler, furnace, incinerator or other fuel-fired equipment shall be provided with access to two exits or exit-access doors when both of the following conditions exist:

1. The area of the room exceeds 500 square feet (46.45 m^2), and

2. The largest piece of fuel-fired equipment exceeds 400,000 Btu per hour (117 228 W) input capacity.

EXCEPTIONS: 1. In Group R, Division 3 Occupancies.

2. If access to two exits or exit-access doors are required, one such access may be by a fixed ladder.

1007.7.2 Refrigeration machinery rooms.

1007.7.2.1 Access to exits. Machinery rooms larger than 1,000 square feet (92.9 m^2) shall have access to not less than two exits as required in Section 1007.7.1.

1007.7.2.2 Travel distance. Travel distance shall be determined as specified in Section 1004.2.5, but all portions of machinery rooms shall be within 150 feet (45 720 mm) of an exit or exit-access doorway. Travel distance may be increased in accordance with Section 1004.2.5.

1007.7.2.3 Doors. Doors shall swing in the direction of exit travel, regardless of the occupant load served. Doors shall be tight-fitting and self-closing.

1007.7.3 Refrigerated rooms or spaces.

1007.7.3.1 Access to exits. Rooms or spaces having a floor area of 1,000 square feet (92.9 m^2) or more, containing a refrigerant evaporator and maintained at a temperature below 68°F (20°C), shall have access to not less than two exits or exit-access doors.

1007.7.3.2 Travel distance. Travel distance shall be determined as specified in Section 1004.2.5, but all portions of the refrigerated room or space shall be within 150 feet (45 720 mm) of an exit or exit-access door where such rooms are not protected by an approved automatic sprinkler system. Travel distance may be in-

2. Doors serving building equipment rooms that are not normally occupied.

The following California sections replace the corresponding model code section for applications specified by law for the Department of Housing and Community Development and the Division of the State Architect/Access Compliance.

1003.3.1.6.1 [For DSA/AC] Thresholds.

NOTE: For accessibility requirements for thresholds in accessible housing, see Chapter 11A, Section 1120A.2.4, and for public buildings, public accommodations, commercial buildings and publicly funded housing, see Chapter 11B, Section 1133B.2.4.1.

1003.3.1.6.2 [For HCD 1 w/exceptions 1, 2 & 3] Level floor or landing. There shall be a level and clear area on each side of an exit door and 44 inches (1118 mm) where the door swings away from the level and clear area. The level area shall have a length of at least 60 inches (1524 mm) in the direction of door swing as measured at right angles to the plane of the door in its closed position.

EXCEPTIONS: 1. In Group R, Division 3 Occupancies and within individual units of Group R, Division 1 Occupancies, a door may open on the top step of a flight of stairs or an exterior landing, provided the door does not swing over the top step or exterior landing and the landing is not more than 7 1/2 inches (190 mm) below the floor level.

2. In Group R, Division 3 Occupancies, screen doors and storm doors may swing over stairs or steps.

3. In Group R, Division 3 Occupancies and private garages and sheds where a door opens over a landing, the landing shall have a length equal to the width of the door.

1003.3.1.7 Landings at doors. Regardless of the occupant load served, landings shall have a width not less than the width of the door or the width of the stairway served, whichever is greater. Doors in the fully open position shall not reduce a required dimension by more than 7 inches (178 mm). Where a landing serves an occupant load of 50 or more, doors in any position shall not reduce the landing dimension to less than one half its required width. Landings shall have a length measured in the direction of travel of not less than 44 inches (1118 mm).

EXCEPTION: In Group R, Division 3, and Group U Occupancies and within individual units of Group R, Division 1 Occupancies, such length need not exceed 36 inches (914 mm).

A landing that has no adjoining door shall comply with the requirements of Section 1003.3.3.5.

1003.3.1.8 Type of lock or latch. Regardless of the occupant load served, exit doors shall be openable from the inside without the use of a key or any special knowledge or effort.

EXCEPTIONS: 1. In Groups A, Division 3; B; F; M and S Occupancies and in all churches, key-locking hardware may be used on the main exit where the main exit consists of a single door or pair of doors where there is a readily visible, durable sign on or adjacent to the door stating, "THIS DOOR MUST REMAIN UNLOCKED DURING BUSINESS HOURS." *[For SFM] THIS DOOR TO REMAIN UNLOCKED WHENEVER THE BUILDING IS OCCUPIED.* The sign shall be in letters not less than 1 inch (25 mm) high on a contrasting background. When unlocked, the single door or both leaves of a pair of doors must be free to swing without operation of any latching device. The use of this exception may be revoked by the building official *[for HCD 1 & HCD 2] enforcing agency* for due cause.

2. Exit doors from individual dwelling units; *[for SFM] buildings or rooms;* Group R, Division 3 congregate residences; and guest rooms of Group R Occupancies having an occupant load of 10 or less may be provided with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or tool *[for SFM] or special knowledge or effort* and mounted at a height not to exceed 48 inches (1219 mm) above the finished floor.

3. [For SFM] Mental, penal or corrective institutions where supervisory personnel are continually on duty and effective provisions are made to remove occupants in case of fire or other emergency.

[For SFM] Bars, grilles, grates or similar devices placed over any required exit door shall be openable from the inside without the use of a key, tool, or any special knowledge or effort. Such bars, grilles, grates or similar devices shall be equipped with an approved release device for use by the fire department only on the exterior side for the purpose of fire department emergency access, when required by the authority having jurisdiction.

Manually operated edge- or surface-mounted flush bolts and surface bolts or any other type of device that may be used to close or restrain the door other than by operation of the locking device shall not be used. Where exit doors are used in pairs and approved automatic flush bolts are used, the door leaf having the automatic flush bolts shall have no doorknob or surface-mounted hardware. The unlatching of any leaf shall not require more than one operation.

EXCEPTIONS: 1. Group R, Division 3 Occupancies.

2. Where a pair of doors serving a room not normally occupied *is* needed for the movement of equipment, manually operated edge- or surface-mounted bolts may be used.

[For DSA/AC] NOTE: For accessibility requirements for type of lock or latch in public buildings, public accommodations, commercial buildings and publicly funded housing, see Chapter 11B, Section 1133B.2.1.

1003.3.1.9 Panic hardware. Panic hardware, where installed, shall comply with the requirements of UBC Standard 10-4. The activating member shall be mounted at a height of not less than 30 inches (762 mm) nor more than 44 inches (1118 mm) above the floor. The unlatching force shall not exceed 15 pounds (66.72 N) when applied in the direction of travel.

Where pivoted or balanced doors are used and panic hardware is required, panic hardware shall be of the push-pad type and the pad shall not extend across more than one half of the width of the door measured from the latch side.

[For SFM] Other types of hand-activated door-opening hardware shall be centered between 30 inches (762 mm) and 44 inches (1118 mm) above the floor.

1003.3.1.10 Special egress-control devices. When approved by the building official, exit doors in Group B; Group F; Group I, Division *[For SFM] 1 and 2;* Group M; Group R, Division 1 congregate residences serving as group care facilities *and [For SFM] Division 2 facilities licensed as a Residential Care for the Elderly (RCFE) housing clients with Alzheimer's disease and other forms of dementia; residential facilities licensed as an adult residential-care facility, group home, small family home, foster family home or a family home certified by a foster family agency and Group S Occupancies* may be equipped with approved listed special egress-control devices of the time-delay type, provided the building is protected throughout by an approved automatic sprinkler system and an approved automatic smoke-detection system *[For SFM] in accordance with the California Fire Code.* Such devices shall conform to all the following:

1. The egress-control device shall automatically deactivate upon activation of either the sprinkler system or the smoke-detection system.

2. The egress-control device shall automatically deactivate upon loss of electrical power to any one of the following:

2.1 The egress-control device itself.

2.2 The smoke-detection system.

2.3 Means of egress illumination as required by Section 1003.2.9.

3. The egress-control device shall be capable of being deactivated by a signal from a switch located in an approved location.

4. An irreversible process that will deactivate the egress-control device shall be initiated whenever a manual force of not more

Access to, and egress from, buildings required to be accessible shall be provided as specified in Chapter 11.

309.5 Light, Ventilation and Sanitation. In Group M Occupancies, light, ventilation and sanitation shall be as specified in Chapters 12 and 29.

309.6 Shaft and Exit Enclosures. Exits shall be enclosed as specified in Chapter 10.

Elevator shafts, vent shafts and other openings through floors shall be enclosed, and the enclosure shall be as specified in Section 711.

In buildings housing Group M Occupancies equipped with automatic sprinkler systems throughout, enclosures need not be provided for escalators where the top of the escalator opening at each story is provided with a draft curtain and automatic fire sprinklers are installed around the perimeter of the opening within 2 feet (610 mm) of the draft curtain. The draft curtain shall enclose the perimeter of the unenclosed opening and extend from the ceiling downward at least 12 inches (305 mm) on all sides. The spacing between sprinklers shall not exceed 6 feet (1829 mm).

309.7 Sprinkler and Standpipe Systems. When required by other provisions of this code, automatic sprinkler systems and standpipes shall be installed as specified in Chapter 9.

309.8 Special Hazards. For special hazards of Group M Occupancies, see Section 304.8.

Storage and use of flammable and combustible liquids shall be in accordance with the Fire Code.

Buildings erected or converted to house high-piled combustible stock or aerosols shall comply with the Fire Code.

SECTION 310 — REQUIREMENTS FOR GROUP R OCCUPANCIES

310.1 Group R Occupancies Defined. Group R Occupancies shall be:

Division 1. Hotels and apartment houses.

Congregate residences (each accommodating more than 10 persons).

Division 2. Not used.

[For SFM] Division 2.1. Residentially-based, licensed facilities accommodating more than six nonambulatory clients. This division may include ambulatory clients. Licensing categories that may use this classification include, but are not limited to: Adult Residential Facilities, Congregate Living Health Facilities, Residential Care Facilities for the Elderly, Group Homes and Residential Care Facilities for the Chronically Ill.

[For SFM] Division 2.1.1. Residentially-based, licensed facilities accommodating six or less nonambulatory clients. This division may include ambulatory clients. Licensing categories that may use this classification include, but are not limited to: Adult Residential Facilities, Congregate Living Health Facilities, Foster Family Homes, Intermediate Care Facilities for the Developmentally Disabled Habilitative, Intermediate Care Facilities for the Developmentally Disabled Nursing, nurseries for the full-time care of children under the age of six, but not including "infants" as defined in Section 210; Residential Care Facilities for the Elderly, Small Family Homes and Residential Care Facilities for the Chronically Ill.

[For SFM] Division 2.2. Residentially-based, licensed facilities accommodating more than six ambulatory clients. This division may include nonambulatory clients and shall not exceed six nonambulatory clients. Licensing categories that may use this classification include, but are limited to: Adult Residential Facilities, Residential Care Facilities for the Elderly, Group Homes, Community Treatment Facilities and Social Rehabilitation Facilities.

[For SFM] Division 2.2.1. Residentially-based, licensed facilities accommodating six or less ambulatory clients. This division may include a maximum of two nonambulatory clients. Licensing categories that may use this classification include, but are not limited to: Adult Residential Facilities, Intermediate Care Facilities for the Developmentally Disabled Habilitative, Intermediate Care Facilities for the Developmentally Disabled Nursing, Nursing Homes, Residential Care Facilities for the Elderly, Foster Family Homes, Group Homes, Small Family Homes, Community Treatment Facilities and Social Rehabilitation Facilities.

[For SFM] Division 2.3. Residentially-based, licensed facilities providing hospice care throughout accommodating more than six bedridden clients. Licensing categories that may use this classification are limited to: Congregate Living Health Facilities for the Terminally Ill and Residential Care Facilities for the Chronically Ill.

[For SFM] Division 2.3.1. Residentially-based facilities providing hospice care throughout accommodating six or less bedridden clients. Licensing categories that may use this classification are limited to: Congregate Living Health Facilities for the Terminally Ill and Residential Care Facilities for the Chronically Ill.

Division 3. *[For HCD, SFM]* Dwellings *and those dwellings used for large family day-care homes (as defined in Chapter 2, Section 205)* and lodging houses. *Licensing categories that may use this classification include, but are not limited to: Adult Day-care Facilities, Family Day-care Homes, Adult Day-support Center, Day-care Center for Mildly Ill Children, Infant Care Center and School-Age Child Day-care Center.*

Congregate residences (each accommodating 10 persons or less).

For occupancy separations, see Table 3-B.

A complete code for construction of detached one- and two-family dwellings is in Appendix Chapter 3, Division III, of this code. When adopted, as set forth in Section 101.3, it will take precedence over the other requirements set forth in this code.

Division 6 Occupancies shall be residential group care facilities, which provide care and/or supervisory services. Restraint shall not be practiced in these facilities.

Such residential group care facilities are limited to halfway houses such as community correctional centers, community correction reentry centers, community treatment programs, work furlough programs, and alcoholism or drug abuse recovery or treatment facilities.

Group R, Division 6.1; with more than six nonambulatory residents.

Group R, Division 6.2; with more than six ambulatory residents.

Group R, Division 6.1.1; with six or less nonambulatory residents.

Group R, Division 6.2.1; with six or less ambulatory residents.

310.1.1 [For SFM] Special Provisions for Group R, Division 2 Occupancies. Clients who become temporarily bedridden as defined in Health and Safety Code Section 1569.72, as enforced by the Department of Social Services, may continue to be housed on any story in Group R, Division 2 Occupancies classified as Resi-

dential-care Facilities for the Elderly (RCFE). Every Residential-care Facility for the Elderly (RCFE) admitting or retaining a bedridden resident shall, within 48 hours of the resident's admission or retention in the facility, notify the local fire authority with jurisdiction of the estimated length of time the resident will retain his or her bedridden status in the facility.

310.1.2 [For SFM] In Group R, Division 2 Occupancies classified as Residential Facilities (RF), bedridden clients shall not be located above the first story.

310.1.3 [For SFM] Restraint shall not be practiced in Group R, Division 2 Occupancies.

EXCEPTION: Group R, Division 2 Occupancies which meet all the construction requirements for a Group I, Division 3 Occupancy.

310.1.4 [For SFM] Pursuant to Health and Safety Code Section 13143, facilities licensed by the Department of Social Services which provide nonmedical board, room and care for six or fewer ambulatory children or children two years of age or younger, and which do not have any nonambulatory clients shall not be subject to regulations pertaining to Group R, Division 2 Occupancies. With respect to these exempted facilities, no city, county, or public district shall adopt or enforce any requirement for the prevention of fire or for the protection of life and property against fire and panic unless the requirement would be applicable to a structure regardless of the special occupancy. Nothing shall restrict the application of state or local housing standards to such facilities if the standards are applicable to residential occupancies and are not based on the use of the structure as a facility for ambulatory children. For the purpose of this exception, "ambulatory children" does not include relatives of the licensee or the licensee's spouse.

310.1.5 [For SFM] Pursuant to Health and Safety Code Section 13133, regulations of the state fire marshal pertaining to Group R, Division 2 Occupancies classified as Residential Facilities (RF) and Residential-care Facilities for the Elderly (RCFE) shall apply uniformly throughout the state and no city, county, city and county, including a charter city or charter county, or fire-protection district shall adopt or enforce any ordinance or local rule or regulation relating to fire and panic safety which is inconsistent with these regulations. A city, county, city and county, including a charter city or charter county may pursuant to Health and Safety Code Section 13143.5, or a fire protection district may pursuant to Health and Safety Code Section 13869.7, adopt standards more stringent than those adopted by the state fire marshal that are reasonably necessary to accommodate local climate, geological, or topographical conditions relating to roof coverings for Residential-care Facilities for the Elderly.

310.1.6 [For SFM] Existing Residential Facilities and Residential-care Facilities for the Elderly which were originally classified as Group I Occupancies under pre-1991 codes may be reinspected as a Group I Occupancy under the appropriate previous code provided there is no change in the use which would place the facility in a different division or occupancy group. (See Section 3403.1.)

310.2 Construction, Height and Allowable Area.

310.2.1 General. Buildings or parts of buildings classed in Group R because of the use or character of the occupancy shall be limited to the types of construction set forth in Table 5-B and shall not exceed, in area or height, the limits specified in Sections 504, 505 and 506.

EXCEPTION [For HCD 1]: Limited-density owner-built rural dwellings may be of any type of construction which will provide for a sound structural condition. Structural hazards which result in an unsound condition and which may constitute a substandard building are delineated by Section 17920.3 of the Health and Safety Code.

310.2.2 Special provisions. Walls and floors separating dwelling units in the same building, or guest rooms in Group R, Division 1 hotel occupancies, shall not be of less than one-hour fire-resistive construction.

EXCEPTION [For SFM]: In Divisions 2.1.1, 2.2.1 and 2.3.1 Occupancies, walls and floors may be nonrated construction provided:

1. Construction has protection equivalent to $^1/_2$-inch (12.7 mm), nonrated gypsum wallboard and,

2. Dwelling units are not equipped with open flame, gas or electrical element cooking appliances other than a microwave cooking appliance.

Group R, Division 1 Occupancies more than two stories in height or having more than 3,000 square feet (279 m^2) of floor area above the first story, *[for SFM] and in Division 2.1.1 Occupancies where clients are housed above the first floor and there is more than 3,000 square feet (279 m^2) of floor area above the first floor,* shall not be of less than one-hour fire-resistive construction throughout, except as provided in Section 601.5.2.2.

[For SFM] Division 2.2 Occupancies where nonambulatory clients are housed above the first floor and there is more than 3,000 square feet (279 m^2) of floor area above the first floor or housing more than 16 clients above the first floor shall be constructed of not less than one-hour fire-resistive construction throughout except as provided in Section 601.5.2.

[For SFM] Divisions 2.3 and 2.3.1 Occupancies where clients are housed above the first floor, shall not be of less than one-hour fire-resistive construction throughout except as provided in Section 601.5.2.2.

EXCEPTION: Interior nonload-bearing partitions within individual dwelling units in apartment houses and guest rooms or suites in hotels where such dwelling units, guest rooms or suites are separated from each other and from corridors by not less than one-hour fire-resistive construction may be constructed of:

1. Noncombustible materials or fire-retardant wood in buildings of any type of construction; or

2. Combustible framing with noncombustible materials applied to the framing in buildings of Type III or Type V construction.

Storage or laundry rooms that are within Group R, Division Occupancies that are used in common by tenants shall be separated from the rest of the building by not less than one-hour fire-resistive occupancy separation.

EXCEPTION [For HCD 1]: Interior nonload-bearing partitions within individual dwelling units in apartment houses and guest rooms or suites in hotels where such dwelling units, guest rooms or suites are separated from each other and from corridors by not less than one-hour fire-resistive construction, may be constructed of:

1. Noncombustible materials or fire-retardant wood in buildings of any type of construction; or

2. Combustible framing with noncombustible materials applied to the framing in buildings of Type III or Type V construction.

Openings to such corridors shall be equipped with doors conforming to Section 1004.3.4.3.2, Uniform Building Code, most recent edition, regardless of the occupancy load served.

For Group R, Division 1 Occupancies with a Group S, Division 3 parking garage in the basement or first story, see Section 311.2.2.

For attic space partitions and draft stops, see Section 708.

310.2.3 [For SFM] Smoke barriers required. Group R, Division 2 Occupancies shall be provided with smoke barriers, constructed in accordance with Section 308.2.2.1, as follows:

1. Group R, Division 2.1 Occupancies having individual floor areas over 6,000 square feet (557 m^2) per floor.

ENROLLED BILL REPORT

Analyst: Jim Lakefield
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Mgr. Tel: 442-1423

AGENCY: STATE AND CONSUMER SERVICES AGENCY	BILL NUMBER: SB 1098
DEPARTMENT, BOARD OR COMMISSION: State Fire Marshal	AUTHOR: Rosenthal

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SUMMARY

SB 1098 would amend the Health and Safety Code Section 13144.5 relating to fire safety in Community Care Facilities (CCF)* in the following ways:

(1) Requires the State Department of Social Services to notify a prospective operator of a CCF of the requirement of obtaining the fire clearance approval from the local fire enforcement agency or the State Fire Marshal (SFM), whichever has primary jurisdiction.

(2) Requires the State Department of Social Services to notify the CCF applicant of an optional pre-inspection of the facility and the pre-inspection fees.

(3) Requires the local fire enforcement agency or the SFM, whichever has primary jurisdiction, upon request of a prospective CCF licensee, to conduct a pre-inspection of the facility and to advise the applicant in writing as to the interpretation and application of Title 19/24 regulations as they pertain to their facility.

(4) Sets the pre-inspection fees at not more than $50.00 for a facility of 25 or fewer clients and not more than $100.00 for a facility of 26 or more clients.

(5) Requires the primary fire enforcement agency to complete the final fire clearance inspection within 30 days of request for final inspection.

(6) Requires the SFM to include "interpretation of regulations pertaining to CCF" in the voluntary regular training sessions already mandated by the Health and Safety Code.

* Community Care Facilities include Residential Care Facilities for the Elderly, child day-care facilities, and other residential community care facilities.

VOTE:	Assembly		Partisan R		Senate		Partisan R	D
Floor:	Aye 75	No 0	to		Floor: Aye 40	No 0	to	
Policy Committee:	Aye 5	No 0	to		Policy Committee: Aye 9	No 0	to	
Fiscal Committee:	Aye [illegible]	No 0	to		Fiscal Committee: Aye 28.8	No	to	

RECOMMENDATION
GOVERNOR: SIGN ____ VETO X DEFER TO OTHER AGENCY ____

DEPARTMENT DIRECTOR: [signature] DATE: AGENCY SECRETARY: [signature] DATE: 9/18/84

BACKGROUND

Existing law requires that CCF's be licensed by the State Department of Social Services, and that a fire clearance be obtained from the primary fire enforcement agency prior to receiving said license. At present, the State Department of Social Services sends a Fire Safety Inspection Request to the appropriate fire agency when a provider makes an application as a CCF. The fire agency, upon receipt of the request then conducts an inspection of the facility and issues the fire clearance. This procedure also applies to the State Fire Marshal when the facility is in its area of jurisdiction. This bill makes additional requirements that would change this procedure. The bill requires that the Department of Social Services notify a prospective CCF operator of the requirement of a fire clearance from the fire authority having jurisdiction. This is already done by the Department of Social Services through their licensing procedures and is therefore not necessary in statute.

SB 1098 requires the Department of Social Services to notify the CCF applicant of an optional pre-inspection of the facility and the pre-inspection fees. It would require the local fire enforcement agency or the SFM, whichever has primary jurisdiction, upon request of a prospective CCF licensee, to conduct a pre-inspection of the facility and to advise the applicant in writing as to the interpretation and application of Title 19/24 regulations as they pertain to their facility. The bill provides for the application of pre-inspection fees at not more than $50.00 for a facility of 25 or fewer clients and not more than $100.00 for a facility of 26 or more clients. This appears to be in direct conflict with existing sections of the Health and Safety Code. Section 1566.2 states "A residential facility, which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject." Additionally, Section 1597.45 (b) states "No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home." Finally Section 1597.46 (a)(3); regarding large family day care facilities, states "...The local government shall process any required permit as economically as possible, and fees charged for review shall not exceed the costs of the review and permit process."

The State Fire Marshal believes this pre-inspection requirement is unnecessary and would place undue workload burden on the State Fire Marshal and local fire authorities. The fees provided would not be sufficient to cover the additional costs of these pre-inspections and may even be prohibited by existing law. Additionally, there are many instances when the facility owner is not sure what type of clients they want until the last moment. This causes a problem with the determination of exactly what fire safety requirements are appropriate. Also there have been instances when the operator has changed their mind in the middle of the procedure. This situation could cause an "approved" pre-inspection to be negated during the final inspection. The system must be established in such a manner that facility operators are sure of the type and number of clients they are going to receive before any fire inspection takes place. It would also be difficult to plan personnel needs in advance due to the probability of unanticipated requests for pre-inspections. The State Fire Marshal believes the existing system of inspecting the facility and providing the prospective operator with correction requests prior to final licensure as similar to what the author is requiring, but more manageable for the responsible fire agency.

The bill requires the primary fire enforcement agency to complete the final fire clearance inspection within 30 days of request for final inspection. The State Fire Marshal tries to comply with this requirement as an in-house rule. However, workload constraints sometimes require additional time. The State Fire Marshal believes a limit of 45 days for a final fire clearance to be a more reasonable period of time. The State Fire Marshal is therefore opposed to this 30 day requirement.

Finally, the bill requires the SFM to include "interpretation of regulations pertaining to CCF' in the voluntary regular training sessions already mandated by the Health and Safety Code. This is already included administratively in the SFM's training program and is therefore not necessary in statute.

The State Fire Marshal recommends a VETO position. While the bill is an attempt to streamline the fire safety clearance process it does little to accomplish this task.

FISCAL IMPACT ON STATE BUDGET

SB 1098 would potentially increase the workload of the State Fire Marshal by adding approximately an additional 1140 CCF inspections to the number of inspections currently conducted by our field personnel. To handle this increase an additional 3 field deputies and 1 clerical staff person will be required at a cost to the General Fund of $244,000. It is estimated that a minimum of three additional deputies; one for each region (1,776 hours per year per deputy) will be required. Moreover one additional clerical staff person will be required (divided between the three regional offices).

Based upon current records it is anticipated that most of these Residential Care facilities will house 6 or less clients and as indicated earlier, in many cases, under existing law, are exempt from fees for inspections. However, even if the fees were applied they would only generate approximately $57,000; far short of the needed $244,000 to carry out the program as proposed.

SOCIO ECONOMIC IMPACT

SB 1098 will have an even greater fiscal impact on the local fire departments within California. Even if the pre-inspection fee was paid, most fire departments in California are small and have limited manpower and will be hard pressed to conduct the pre-inspection with existing personnel. It is anticipated that many will have to hire additional personnel.

The bill also does not address how the proposed fees will be collected, who will collect them and how they are distributed. If this is to be done by the authority having jurisdiction an additional burden will be placed on that agency to ensure fees are collected and/or received.

The bill will have an impact on those in the private sector who act as paid consultants to community care providers. Passage of this bill could cause a decrease in the need for some private consultants resulting in a decrease of employment opportunities for same.

INTERESTED PARTIES

Likely Proponents: Community Care Applicants and Providers

Likely Opponents: Fire Service Agencies
Private CCF Consultants

ARGUMENTS

Pro:

1. This bill may assist CCF providers and provide for more uniform application of current fire safety regulations by letting CCF providers know in advance, in writing, what specific modifications are required in order to receive a fire clearance from the fire enforcing agency. It would also provide for the timely final inspection (30 days max.) after request for fire clearance.

Con:

1. SB 1098 mandates the enforcing fire agency to take on the role of a development consultant.

2. The mandated inspection fee is in conflict with existing Statute relative to the collection of fees by local jurisdictions for the conduction of fire safety inspections.

3. SB 1098 would have a detrimental effect on local fire authorities in that they would have to hire additional personnel to carry out the mandates of the bill while the fees proposed would not cover the additional costs. These costs would be born by local taxpayers at the expense of other more beneficial local programs.

4. The mandated pre-inspection fee does not cover the cost of additional resources that will be required.

5. The 30 day final fire clearance inspection requirement may not always be possible to meet due to workload constraints.

6. There is no need to place into statute, training requirements for interpretations of regulations pertaining to CCF's when the State Fire Marshal is already doing this administratively.

RECOMMENDATION JUSTIFICATION

The State Fire Marshal recommends VETO. SB 1098's attempt to streamline the fire clearance procedures for CCF's does little to accomplish this intent.

Supreme Court of California
THE PEOPLE, Petitioner,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; RODRIGO ALBERTO JIMENEZ,
Real Party in Interest.
No. S099542.

Aug. 1, 2002.

SUMMARY

In a felony cocaine prosecution, the superior court granted defendant's petition for a writ of mandate, ordering a judge to rehear defendant's motion to suppress evidence. When the charge was initially filed, the judge granted defendant's motion to suppress evidence and dismissed the case for insufficient evidence. The prosecution refiled the charge and moved to disqualify the first judge under Code Civ. Proc., § 170.6. Defendant again moved to suppress evidence and petitioned that the first judge rehear the motion as required by Pen. Code, § 1538, subd. (p). (Superior Court of Los Angeles County, No. BA207717, Stephen E. O'Neil, Judge.) The Court of Appeal, Second Dist., Div. One, No. B148656, stated that defendant should have brought his challenge to the order disqualifying the judge to that court rather than to the superior court and, in ruling on the merits, granted the People's petition for a writ of mandate, concluding that a judge who has been peremptorily challenged under Code Civ. Proc., § 170.6, is not available to hear the new suppression motion.

The Supreme Court reversed the judgment of the Court of Appeal and remanded for further proceedings. The court preliminarily held that defendant properly challenged the order disqualifying the judge in the superior court. The judge was acting as a magistrate, and the superior court generally has jurisdiction to review matters involving a magistrate. Accordingly, the superior court is an appropriate court of appeal in a writ proceeding involving the disqualification of a magistrate. The court further held that the prosecution may not render a judge unavailable to rehear a suppression motion by challenging that judge under Code Civ. Proc., § 170.6. The legislative history of Pen. Code, § 1538.5, subd. (p), shows that the Legislature intended to prohibit prosecutors from forum shopping. To allow the prosecutor to make a judge unavailable to rehear the suppression motion simply by filing a peremptory challenge would permit this prohibited forum shopping and essentially nullify Pen. Code, § 1538.5, subd. (p). (Opinion by Chin, J., expressing the unanimous view of the court.) *799

HEADNOTES

Classified to California Digest of Official Reports

(1) Judges § 20--Disqualification--Peremptory Challenge--Review--Superior Court as Proper Forum. In a refiled felony prosecution in which the People peremptorily challenged, pursuant to Code Civ. Proc., § 170.6, the judge who had granted defendant's motion to suppress evidence and dismissed the charge on the first filing, defendant properly challenged the disqualification in the superior court, rather than in the Court of Appeal. Code Civ. Proc., § 170.3, subd. (d), provides that the disqualification of a judge may be reviewed only by a writ of mandate "from the appropriate court of appeal." The judge, although a superior court judge, was acting as a magistrate, and under Cal. Const., art. VI, § 10, the superior court generally has jurisdiction to review matters involving a magistrate. Accordingly, the superior court is an appropriate "court of appeal" in a writ proceeding involving the disqualification of a magistrate. Also, in enacting Code Civ. Proc., § 170.3, subd. (d), the Legislature sought to ensure that parties receive a speedy appellate determination, and litigating questions regarding the qualifications of a magistrate in the superior court furthers this goal. Further, although a statutory reference to a "court of appeal" normally means the intermediary Court of Appeal, Code Civ. Proc., § 170.3, subd. (d), qualifies the term with the word "appropriate." Finally, the fact that this county had unified its municipal and superior courts was not relevant, since current superior court judges do not always act in the role of preunification superior court judges.

(2a, 2b, 2c, 2d) Criminal Law § 353--Evidence--Motion to Suppress--Requirement That Same Judge Hear Subsequent Motion if Available--Disqualification of That Judge by

Prosecution:Searches and Seizures § 89-- Remedies--Motion to Suppress.

In a felony prosecution in which the People peremptorily challenged, pursuant to Code Civ. Proc., § 170.6, the judge who had granted defendant's motion to suppress evidence and dismissed the charge on the first filing, the superior court properly granted defendant's petition for a writ of mandate ordering that judge to rehear defendant's motion to suppress evidence. A judge who has been disqualified pursuant to Code Civ. Proc., § 170.6, may nevertheless hear a motion to suppress evidence under Pen. Code, § 1538.5, subd. (p) (if available, same judge must hear subsequent motion to suppress). Disqualification pursuant to Code Civ. Proc., § 170.6, does not make a judge unavailable to hear a subsequent motion. The legislative history of Pen. Code, § 1538.5, subd. (p), shows that the Legislature intended to prohibit prosecutors *800 from forum shopping. To allow the prosecutor to make a judge unavailable to rehear the suppression motion simply by filing a peremptory challenge would permit this prohibited forum shopping and essentially nullify Pen. Code, § 1538.5, subd. (p). The general provisions of Code Civ. Proc., § 170.6, were not intended to permit the forum shopping Pen. Code, § 1538.5, subd. (p), was specifically enacted to prevent. Instead, the right to disqualify a judge necessarily encompasses an implied exception for the relitigation of any subsequent motion to suppress evidence. This rule applies equally to judges and magistrates.

[See 4 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Illegally Obtained Evidence, § 369; West's Key Number Digest, Criminal Law 90(1), West's Key Number Digest, Judges 51(1).]

(3) Judges § 14--Disqualification--Bias or Prejudice--Peremptory Challenge.

Under Code Civ. Proc., § 170.6, any party or attorney to a civil or criminal action may make an oral or written motion to disqualify the assigned judge, supported by an affidavit that the judge is prejudiced against such party or attorney so that the affiant cannot have an impartial trial. There are strict limits on the timing and number of such motions, but if the motion is timely and in proper form, disqualification is automatic-the judge must recuse himself or herself without further proof and the case must be reassigned to another judge. The prejudice may be based on the party's subjective belief and need not be something that would support a challenge for cause under Code Civ. Proc., § 170.1. Accordingly, a challenge under Code Civ. Proc., § 170.6, is correctly called a peremptory challenge.

(4) Mandamus and Prohibition § 55--Jurisdiction--Court of Appeal:Courts § 28--Jurisdiction--Court of Appeal.

A Court of Appeal does not lack jurisdiction over a writ proceeding that should have been brought in the superior court, although normally it has discretion to deny a petition that was not filed first in a proper lower court.

(5) Statutes § 52--Construction--Conflicting Provisions--General and Specific Provisions.

A general statutory provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates. *801

COUNSEL

Steve Cooley, District Attorney, George M. Palmer, Head Deputy District Attorney, Brentford J. Ferreira and Brent Riggs, Deputy District Attorneys, for Petitioner.

No appearance for Respondent.

Michael P. Judge, Public Defender, Judith Greenberg, Mark Harvis and John Hamilton Scott, Deputy Public Defenders, for Real Party in Interest.

Steven J. Carroll, Public Defender (San Diego) and Matthew C. Braner, Deputy Public Defender, for San Diego Public Defenders Office as Amicus Curiae on behalf of Real Party in Interest.

CHIN, J.

The Legislature has provided that when a felony case is dismissed because a magistrate or court granted a motion to suppress evidence, making the evidence insufficient, the prosecution may refile the case and relitigate the suppression motion. (Pen. Code, § 1538.5, subd. (j).) However, the Legislature has also provided that the relitigated motion "shall be heard by the same judge who granted the motion at the first hearing if the judge is available." (Pen. Code, § 1538.5, subd. (p); see *Solt v. Superior Court* (1997) 55 Cal.App.4th 872 [64 Cal.Rptr.2d 319].) We granted review primarily to decide whether the

prosecution may peremptorily challenge that judge under Code of Civil Procedure section 170.6, thus making the judge unavailable to hear the relitigated suppression motion.

To allow the prosecution to peremptorily challenge the judge, or judge acting as a magistrate, who decided the first suppression motion would sanction the forum shopping the Legislature prohibited when it enacted Penal Code section 1538.5, subdivision (p). Accordingly, we conclude that, notwithstanding a peremptory challenge, that judge or magistrate, if otherwise available, remains available to hear the relitigated suppression motion. We also conclude that a party may file in the superior court a petition for writ of mandate contesting the validity of a peremptory challenge to a magistrate.

I. Procedural History

In April 2000, defendant was charged by felony complaint with possessing cocaine. At the preliminary hearing, he moved to suppress evidence *802 pursuant to Penal Code section 1538.5. Judge Michael E. Pastor, a superior court judge acting as a magistrate, granted the motion and then dismissed the case for insufficient evidence. The prosecution refiled the matter, charging the same offense based on the same facts. The case was originally assigned to Judge Marlene Kristovich. Defendant again moved to suppress the evidence and requested the motion be assigned to Judge Pastor. Judge Kristovich granted the request and assigned the motion to Judge Pastor to conduct the hearing as a magistrate. The prosecution challenged Judge Pastor under Code of Civil Procedure section 170.6. Judge Pastor accepted the challenge and returned the case to Judge Kristovich.

Thereafter, defendant filed a petition for writ of mandate in the superior court contesting Judge Pastor's disqualification. He argued that Penal Code section 1538.5, subdivision (p), gave him the right to have the same judge rehear the suppression motion. Judge Stephen E. O'Neil issued the writ and ordered Judge Pastor to hear the suppression motion. The People then filed the instant petition for writ of mandate in the Court of Appeal challenging this ruling. The Court of Appeal held that defendant should have filed the underlying writ petition in the Court of Appeal rather than superior court, but it also decided the merits of the question. It held that a judge who has been peremptorily challenged under Code of Civil Procedure section 170.6 is not available to hear the new suppression motion.

We granted defendant's petition to review (1) whether defendant properly filed the underlying writ petition in the superior court; and (2) whether Penal Code section 1538.5, subdivision (p), limits the People's ability to exercise a peremptory challenge under Code of Civil Procedure section 170.6.

II. Discussion

A. *A Party May File in the Superior Court a Petition for Writ of Mandate Contesting the Validity of a Challenge to a Magistrate.*

(1) As explained further below, a party to an action may generally challenge a judge peremptorily under Code of Civil Procedure section 170.6. Code of Civil Procedure section 170.3, subdivision (d), enacted in 1984, provides the exclusive means for seeking review of a ruling on a peremptory challenge to a judge. (*People v. Hull* (1991) 1 Cal.4th 266 [2 Cal.Rptr.2d 526, 820 P.2d 1036].) That subdivision provides: "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate *from the appropriate court of appeal* sought within 10 days of notice to the parties of the decision and only by the parties to the proceeding." (Code Civ. Proc., § 170.3, subd. (d), italics *803 added.) Here, defendant sought review in the superior court, not the Court of Appeal. The Court of Appeal held that only it could consider the challenge and, accordingly, the superior court lacked jurisdiction over the matter. We disagree. Judge Pastor, although a judge of the superior court, was acting as a magistrate in this matter. The superior court generally has jurisdiction to review matters involving a magistrate. Accordingly, the superior court is an "appropriate court of appeal" in a writ proceeding involving the disqualification of a magistrate.

Article VI, section 10, of the California Constitution grants superior courts and their judges original jurisdiction in mandamus proceedings concurrently with this court and the Courts of Appeal. A superior court may exercise this jurisdiction by issuing writs of mandamus "to any inferior tribunal, corporation, board, or person ...." (Code Civ. Proc., § 1085, subd. (a).) A magistrate is generally considered inferior to the superior court. (See *People v. Uhlemann* (1973) 9 Cal.3d 662, 666-669 [108 Cal.Rptr. 657, 511 P.2d 609].) The Legislature has generally provided for superior court review of the magistrate's rulings. (Pen. Code, § § 871.5 [superior court may review magistrate's dismissal of action], 995, subd. (a)(2) [superior court may review whether magistrate legally committed defendant].) We see no reason

why the Legislature would want to require the parties, in effect, to skip over the superior court in matters involving the disqualification of a magistrate when that court otherwise reviews that magistrate's rulings.

In enacting Code of Civil Procedure section 170.3, subdivision (d), the Legislature sought to ensure "that the parties, through a petition for a writ of mandate, receive ' "as speedy an appellate determination as possible. " ' " (*People v. Hull, supra*, 1 Cal.4th at p. 273.) Litigating questions regarding the qualifications of a magistrate in the superior court furthers this goal; requiring the parties to seek review in the Court of Appeal would hinder it. As defendant notes, requiring a party to litigate the validity of a challenge to a magistrate in the Court of Appeal could result in the parties litigating the validity of the magistrate's order simultaneously in both the superior court and the Court of Appeal. If a party unsuccessfully challenges the magistrate, who then either holds the defendant to answer the charge or dismisses the action, the validity of the challenge would have to be litigated in the Court of Appeal while the correctness of the magistrate's order would be litigated in the superior court. In attempting to ensure speedy appellate determination of judicial challenges, the Legislature can hardly have intended such a result.

In the past, courts have at least assumed the superior court was a proper forum to litigate the correctness of a challenge involving an inferior court. In *Solberg v. Superior Court* (1977) 19 Cal.3d 182, 188 *804[137 Cal.Rptr. 460, 561 P.2d 1148], for example, the People contested the refusal of a municipal court judge to accept a peremptory challenge by filing a petition for a writ of mandate in the superior court. No one questioned the propriety of that procedure, and we eventually reviewed the matter on the merits. Although *Solberg* was decided before the Legislature enacted Code of Civil Procedure section 170.3, subdivision (d), we see no indication the Legislature intended to modify this procedure.

We have no doubt that when the Legislature refers to the "court of appeal," often, perhaps generally, it means the intermediate Courts of Appeal. But here it added the qualifying term "appropriate." In this specific context, it is appropriate for the court that normally reviews the rulings of a challenged judge also to review issues involving the validity of that challenge. The Legislature has otherwise provided for superior court review of a magistrate's orders. (Pen. Code, § § 871.5, 995.) Accordingly, we conclude that the superior court, and not just the intermediate Courts of Appeal, is an appropriate court in which to contest the grant or denial of a motion to disqualify a magistrate.

The fact that Los Angeles County recently unified its municipal and superior courts does not affect this result. Proposition 220, enacted in 1998, permitted the voluntary unification of the municipal and the superior courts. As a result, a majority vote of both the superior court judges and the municipal court judges could abolish the municipal courts within a county and establish a unified superior court for that county. (*Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 763, fn. 2 [98 Cal.Rptr.2d 1, 3 P.3d 286]; *In re Ramirez* (2001) 89 Cal.App.4th 1312, 1315-1316 [108 Cal.Rptr.2d 229].) Los Angeles County unified its courts in January 2000, before the events of this case. (*In re Ramirez, supra*, at p. 1316, fn. 1.)

However, although all trial court judges in Los Angeles County are now superior court judges, they do not always act in the role of a preunification superior court judge. Not all procedures for local appeal that used to exist between, for example, the municipal court and the superior court have been abolished. Superior court judges may still, generally at least, review actions of other superior court judges who were acting in a role that the superior court would have reviewed before unification. (See generally *Snukal v. Flightways Manufacturing, Inc., supra*, 23 Cal.4th at p. 763, fn. 2; *In re Ramirez, supra*, 89 Cal.App.4th at pp. 1316-1318.) We need not here consider all statutory changes that resulted from unification or what exceptions may exist to this general principle, but we see no indication the Legislature intended to change the previous procedures whereby the superior court reviews a magistrate's actions. (Pen. Code, § § 871.5, 995.) Accordingly, we *805 conclude that the superior court remains an "appropriate court of appeal" for questions involving the disqualification of a magistrate under Code of Civil Procedure section 170.3, subdivision (d), even after court unification.

B. *The Prosecution May Not Render a Judge Unavailable to Rehear a Suppression Motion by Challenging That Judge Under Code of Civil Procedure Section 170.6.*

In *Schlick v. Superior Court* (1992) 4 Cal.4th 310 [14 Cal.Rptr.2d 406, 841 P.2d 926], this court interpreted Penal Code section 1538.5, subdivision (d), as precluding the prosecution from relitigating a suppression motion that the superior court had

granted in a felony matter. "Although the People were free to refile a case after the granting of a motion to suppress evidence, they could not relitigate the motion. Instead, they were bound by the initial court's ruling." (*Barnes v. Superior Court* (2002) 96 Cal.App.4th 631, 636 [117 Cal.Rptr. 2d 621] (*Barnes*), review granted May 15, 2002, S105771, opn. ordered pub. Aug. 1, 2002.) "In response to the *Schlick* case, in 1993 the Legislature amended Penal Code section 1538.5 by revising subdivision (j) and adding subdivision (p)." (*Ibid.*) Penal Code section 1538.5, subdivision (j), now provides that if a suppression motion is granted either at the preliminary hearing or in the superior court, resulting in dismissal of the action, the prosecution may refile the action, and the previous suppression ruling "shall not be binding in any subsequent proceeding, except as limited by subdivision (p)." [FN1] As relevant, subdivision (p) of Penal Code section 1538.5 provides: "Relitigation of the motion shall be heard by the same judge who granted the motion at the first hearing *if the judge is available*." (Italics added.)

FN1 The quoted language appears twice, once referring to an order at the preliminary hearing and once to an order in the superior court: "If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return of the property or suppression of the evidence at the preliminary hearing is granted, and if the defendant is not held to answer at the preliminary hearing, the people may file a new complaint or seek an indictment after the preliminary hearing, and the ruling at the prior hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p).... If the case has been dismissed pursuant to Section 1385, or if the people dismiss the case on their own motion after [a] special hearing [in the superior court], the people may file a new complaint or seek an indictment after the special hearing, and the ruling at the special hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p)...." (Pen. Code, § 1538.5, subd. (j).)

(2a) The question here is whether the prosecution may make the judge who heard the first suppression motion unavailable by challenging that judge under Code of Civil Procedure section 170.6. (3) "Code of Civil Procedure section 170.6 provides in substance that any party or attorney to a civil or criminal action may make an oral or written motion to disqualify the *806 assigned judge, supported by an affidavit that the judge is prejudiced against such party or attorney or the interest thereof so that the affiant cannot or believes he cannot have an impartial trial.... [T]here are strict limits on the timing and number of such motions; but if the motion is timely and in proper form, the judge must recuse himself without further proof and the case must be reassigned to another judge." (*Solberg v. Superior Court*, *supra*, 19 Cal.3d at p. 187.) Although a party exercising a challenge under this provision must file a sworn affidavit that the judge is prejudiced, disqualification is automatic on filing a timely motion in proper form. (*Ibid.*) Moreover, the "prejudice" may be whatever a party subjectively believes it to be and not necessarily something that would support a challenge for cause under Code of Civil Procedure section 170.1. Accordingly, a challenge under Code of Civil Procedure section 170.6 is often, and correctly, called a "peremptory challenge." (E.g., *People v. Hull*, *supra*, 1 Cal.4th at p. 268.) Indeed, Code of Civil Procedure section 170.6, subdivision (5), itself labels the necessary affidavit a "peremptory challenge."

(2b) The People peremptorily challenged Judge Pastor in this case. Except for a few, generally ministerial, actions, a disqualified judge generally has no power to act further in the matter. (Code Civ. Proc., § 170.4.) The People's argument, accordingly, is quite straightforward: because of the peremptory challenge, Judge Pastor lacks power to act further in the case and is, therefore, no longer available to rehear the suppression motion. [FN2] (4)(See fn. 3.) The same issue arose in *Barnes*, *supra*, 96 Cal.App.4th 631. [FN3] (2c) *Barnes* concluded "that a judge who has been disqualified pursuant to Code of Civil Procedure section 170.6 may nevertheless hear a suppression motion under the provisions of Penal Code section 1538.5, subdivision (p); disqualification pursuant to section 170.6 does not make a judge unavailable to hear a subsequent motion to suppress evidence." (*Barnes*, *supra*, at p. 642.) We agree.

FN2 Penal Code section 1538.5, subdivision (p), also places limits on the prosecution's ability to litigate a suppression motion more than twice. In an earlier case, the prosecution argued that the requirement that the same judge rehear the motion applied only when the motion had already been granted twice. The court rejected the argument. (*Soil v. Superior Court*, *supra*, 55 Cal.App.4th at pp. 877-880.) The People do not renew that argument here.

FN3 In *Barnes*, the defendant contested the grant of a peremptory challenge of a magistrate by filing a petition for writ of mandate in the Court of Appeal, not the superior court. (*Barnes, supra*, 96 Cal.App.4th at p. 636.) It appears no one questioned the propriety of starting in the Court of Appeal, which was understandable given the ambiguity in Code of Civil Procedure section 170.3, subdivision (d)'s reference to the "appropriate court of appeal." We note that the Court of Appeal does not lack *jurisdiction* over the writ proceeding (Cal. Const., art. VI, § 10), although normally it has discretion to deny a petition that was not filed first in a proper lower court. (*In re Ramirez, supra*, 89 Cal.App.4th at p. 1320; Cal. Rules of Court, rule 56(a)(1).)

The Los Angeles County District Attorney sponsored Senate Bill No. 933 (1993- 1994 Reg. Sess.), the bill that provided for the changes to *807Penal Code section 1538.5, subdivisions (j) and (p). "In support of the bill, the district attorney's office indicated that 'superior court calendars are crowded. Deputy district attorneys must juggle many cases each day....' [¶] ... Often, the [motion to suppress evidence] is dispositive of a case. If it is granted, the case must be dismissed. If it is denied, the defendant will plead guilty or in all likelihood be found guilty if brought to trial. The [Los Angeles District Attorney] believes that 'it is unfair to the prosecution ... for a criminal defendant whose culpability for a serious felony may be beyond question to 'beat the rap' simply because an overworked prosecutor at one pretrial hearing was unable to present the People's evidence in the most effective manner. The ability to refile and relitigate the suppression motion ... will largely overcome this without compr[om]ising any constitutional right of the defendant ....' ' (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 933 (1993-1994 Reg. Sess.) as amended May 20, 1993, pp. 2-3.)" (*Barnes, supra*, 96 Cal.App.4th at p. 638.)

When introduced, Senate Bill No. 933 contained no language describing which judge should hear relitigated suppression motions. (*Soil v. Superior Court, supra*, 55 Cal.App.4th at p. 878.) As a result, the California Attorneys for Criminal Justice (CACJ) opposed the original bill "because it would allow prosecutors to 'take another shot' with another judge after losing a suppression motion in superior court. CACJ believe[d] that the bill would encourage forum shopping ...." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 933 (1993-1994 Reg. Sess.) May 11, 1993.) The bill was then amended to provide: "It is the intent of the Legislature, in amending Section 1538.5 of the Penal Code, that this act shall not be construed or used by a party as a means to forum shop." (Sen. Bill No. 933 (1993-1994 Reg. Sess.) as amended May 20, 1993.) Later, the bill was again amended to include the language in Penal Code section 1538.5, subdivision (p), stating that the judge who granted the earlier motion should rehear the relitigated motion. (Sen. Bill No. 933 (1993-1994 Reg. Sess.) as amended Aug. 16, 1993; see *Soil v. Superior Court, supra*, at pp. 878-879.)

This legislative history "makes it clear the Legislature intended these amendments to prohibit prosecutors from forum shopping." (*Barnes, supra*, 96 Cal.App.4th at p. 638.) To allow the prosecutor to make a judge unavailable to rehear the suppression motion simply by filing a peremptory challenge under Code of Civil Procedure section 170.6 would permit this prohibited forum shopping and "essentially eviscerate[] the provisions of subdivision (p)" of Penal Code section 1538.5. (*Barnes, supra*, at p. 641.) This conclusion is " 'consistent with the statement of need advanced by the People in support of the bill. The Los Angeles County District Attorney, ... [had not asked] the Legislature to enact the 1993 amendments to *808 allow the district attorney a second chance at a motion to suppress evidence (before a different judge) just because the People disagreed with the ruling made in connection with the first motion. The district attorney told the Legislature the reason the amendment was needed was because trial deputies were overworked and might lose the first suppression motion simply because they did a poor job of presenting the evidence. Given this statement of need, it makes sense that the same judge who heard the first motion, and granted it, should hear the second motion. When the same judge hears the evidence [that] was previously omitted, or the argument that the previously unprepared prosecutor forgot to make, then the judge will once again make the correct ruling, which this time will be to deny the suppression motion.' (*Soil v. Superior Court, supra*, 55 Cal.App.4th at pp. 879-880, fn. omitted.) We emphasize that the rationale tendered by the Los Angeles District Attorney for the requested statutory change in no way relied on or supported the proposition that the same judge who heard the first motion is not the proper arbiter to hear a second motion." (*Id.* at p. 640.)

Indeed, "the Los Angeles County District Attorney told the Legislature ' ". courts are aware of the problems caused by forum shopping and have devised procedures to prevent it. Moreover, cases are usually assigned by court clerks or by random assignment so that there is no way a prosecutor could direct a case into a particular court." ' (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 933, as amended May 20, 1993, for hearing on July 13, 1993.) In other words, prosecutors would not, if given an opportunity to relitigate, attempt to direct a case *into* a particular court. Ironically, what the People now appear to want is the opportunity to direct a case *away* from a particular court. This can only be described as the very forum shopping the Legislature recognized as a problem and attempted to remedy by inserting a prohibition against the evil within [Penal Code] section 1538.5, subdivision (p)." (*Soil v. Superior Court, supra*, 55 Cal.App.4th at p. 880, quoted in *Barnes, supra*, 96 Cal.App.4th at p. 640.)

(5) This conclusion is also "bolstered by the well settled rule ' ". 'that a general [statutory] provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.' " ' (*Miller v. Superior Court* (1999) 21 Cal.4th 883, 895 [89 Cal.Rptr.2d 834, 986 P.2d 170].) (2d) Here, we cannot conclude that the more general Code of Civil Procedure section 170.6 was intended to permit the forum shopping Penal Code section 1538.5, subdivision (p), was specifically enacted to prevent. *809 We instead hold that the Code of Civil Procedure section 170.6 right to disqualify a judge necessarily encompasses an implied exception, pursuant to Penal Code section 1538.5, subdivision (p), for the relitigation of any subsequent motion to suppress evidence." (*Barnes, supra*, 96 Cal.App.4th at pp. 641-642.)

The People argue that Penal Code section 1538.5, subdivision (p), does not apply to a renewed motion before a *magistrate* because that subdivision mentions only a "judge" and not a magistrate. We disagree. Although Judge Pastor was acting as a magistrate in this case, a circumstance relevant to the proper method in which to litigate the validity of the challenge to him, the fact remains that he is a judge. "In Penal Code section 808, the Legislature designated '[t]he following persons a[s] magistrates: [¶] 1. The judges of the Supreme Court. [¶] 2. The judges of the courts of appeal. [¶] 3. The judges of the superior courts. [¶] 4. The judges of the municipal courts.' Nothing in either the history or text of the revised subdivisions of Penal Code section 1538.5 indicates magistrates and judges were intended to be considered differently. To the contrary, the language employed in the revised [Penal Code section 1538.5,] subdivision (j) indicates judges and magistrates are to be viewed identically. To the extent section 1538.5 makes any distinctions, it addresses only the nominal procedural differences which occur when a motion to suppress evidence is heard before a magistrate at a preliminary hearing rather than before a judge in the superior court. Even though such distinction is made by the statutes, as we have already noted, the rules to be applied are the same." (*Barnes, supra*, 96 Cal.App.4th at p. 642.) We agree and add that the reasons for the Legislature to prohibit forum shopping apply to magistrates just as forcefully as to other judges.

Accordingly, we conclude that the prosecution's peremptory challenge to Judge Pastor did not make him unavailable to rehear the suppression motion. [FN4]

FN4 Nothing we say affects a challenge for *cause* to any judge pursuant to Code of Civil Procedure section 170.1. Unlike peremptory challenges, challenges for cause require proof and a finding that one of the statutory grounds for disqualification actually exists. Therefore, a challenge for cause does not implicate the Legislature's intent to prohibit forum shopping.

III. Conclusion

We reverse the judgment of the Court of Appeal and remand the matter for further proceedings consistent with our opinion. *810

George, C. J., Kennard, J., Baxter, J., Werdegar, J., Brown, J., and Moreno, J., concurred.

Petitioner's petition for a rehearing was denied September 18, 2002. George, C. J., and Baxter, J., did not participate therein. *811

Cal. 2002.

THE PEOPLE, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; RODRIGO ALBERTO JIMENEZ, Real

Party in Interest.

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DANNY GARCIA, Plaintiff and Appellant,
v.
CHARLES McCUTCHEN et al., Defendants and Respondents.
No. S052920.

Supreme Court of California

Aug. 14, 1997.

SUMMARY

The trial court dismissed a personal injury action for the failure of plaintiff's counsel to comply with local "fast track" rules that implemented the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.). (Superior Court of Fresno County, No. 485411-3, Dwayne Keyes, Judge.) The Court of Appeal, Fifth Dist., No. F022172, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that Code Civ. Proc., § 575.2, subd. (b), which provides that it is the Legislature's intent that if a failure to comply with local rules is the responsibility of counsel and not of the party, the penalty shall be imposed on counsel and shall not adversely affect the party's cause of action or defense thereto, prohibits dismissal as a sanction where noncompliance with local court rules is the responsibility of counsel, not of the litigant. Although Gov. Code, § 68608, subd. (b), gives judges the power to impose sanctions, including dismissal, for noncompliance with fast track rules, that subdivision allows sanctions "authorized by law," and is therefore subject to the limits of Code Civ. Proc., § 575.2, subd. (b); it does not establish a separate sanctioning power. Also, the two statues can be harmonized, and there is no indication that the Legislature intended to repeal Code Civ. Proc., § 575.2, subd. (b), as it applies to fast track rules. Further, the act's policy of reducing delay in litigation overrides neither the express policy of Code Civ. Proc., § 575.2, subd. (b), nor the policy of allowing cases to be determined on the merits. Finally, courts have other methods for maintaining control over their calendars. (Opinion by Chin, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d, 1e) Courts § 9--Trial Court Delay Reduction Act--Sanctions for Noncompliance--Dismissal of Action--Where Noncompliance Is *470 Solely Responsibility of Counsel:Dismissal and Nonsuit § 22-- Involuntary Dismissal--Delay.
The trial court erred in dismissing a personal injury action for the failure of plaintiff's counsel to comply with local "fast track" rules that implemented the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.). Code Civ. Proc., § 575.2, subd. (b), which provides that it is the Legislature's intent that if a failure to comply with local rules is the responsibility of counsel and not of the party, the penalty shall be imposed on counsel and shall not adversely affect the party's cause of action or defense thereto, prohibits dismissal as a sanction where noncompliance with local court rules is the responsibility of counsel, not of the litigant. Although Gov. Code, § 68608, subd. (b), gives judges the power to impose sanctions, including dismissal, for noncompliance with fast track rules, that subdivision allows sanctions "authorized by law," and is therefore subject to the limits of Code Civ. Proc., § 575.2, subd. (b); it does not establish a separate sanctioning power. Also, the two statues can be harmonized, and there is no indication that the Legislature intended to repeal Code Civ. Proc., § 575.2, subd. (b), as it applies to fast track rules. Further, the act's policy of reducing delay in litigation overrides neither the express policy of Code Civ. Proc., § 575.2, subd. (b), nor the policy of allowing cases to be determined on the merits. Finally, courts have other methods for maintaining control over their calendars. (Disapproving to the extent they are inconsistent: *Intel Corp. v. USAIR, Inc.* (1991) 228 Cal.App.3d 1559 [279 Cal.Rptr 569]; *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481 [282 Cal.Rptr 530].)

[See 2 Witkin, Cal. Procedure (4th ed. 1996) Courts, § § 445-447; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) ¶ 12:90 et seq.]

(2) Statutes § 30--Construction--Language--Plain Meaning Rule.
In any case involving statutory interpretation, the court's first step is to scrutinize the actual words of the statute, giving them a plain and commonsense

meaning.

(3) Statutes § 38--Construction--Language--Construing Every Word.
When interpreting a statute, a court is required, if possible, to give effect and significance to every word and phrase of the statute. When two statutes touch upon a common subject, the court must construe them in reference to each other, so as to harmonize the two in such a way that no part of either becomes surplusage. The court must presume that the Legislature intended every word, phrase, and provision in a statute to have meaning and to perform a useful function. *471

(4) Statutes § 16--Repeal--By Implication.
All presumptions are against a repeal by implication. Absent an express declaration of legislative intent, a court will find an implied repeal only when there is no rational basis for harmonizing two potentially conflicting statutes, and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.

(5) Statues § 52--Construction--Conflicting Provisions--General and Specific Provisions.
The principle that a specific statute prevails over a general one applies only when the two statutes cannot be reconciled. If a court can reasonably harmonize two statutes dealing with the same subject, the court must give concurrent effect to both, even though one is specific and the other general.

COUNSEL

Tomas Nunez and Henry D. Nunez for Plaintiff and Appellant.

Steven Rood, Eisen & Johnston, Jay-Allen Eisen and Marian M. Johnston as Amici Curiae on behalf of Plaintiff and Appellant.

Borton, Petrini & Conron and Gary C. Harvey for Defendants and Respondents.

CHIN, J.

In this case, we consider the scope of a trial court's power to dismiss an action for noncompliance with local court rules implementing the 1990 Trial Court Delay Reduction Act (Act) (Gov. Code, § 68600 et seq.). We conclude that, under the governing statutes, a court may not impose this sanction if noncompliance is the responsibility of counsel, not of the litigant. Therefore, we affirm the Court of Appeal judgment, which reversed the trial court's dismissal of plaintiff's action.

Facts

In April 1993, plaintiff Danny Garcia filed a complaint in the Fresno County Superior Court seeking damages for injuries he received during an altercation at Henry's Cantina, a cocktail lounge in Clovis, California. The complaint alleged claims for personal injury, general negligence, premises liability, and intentional tort, and named, among other defendants, Fern and *472 David Avila, individually and doing business as Henry's Cantina (collectively the Avilas). On June 28, 1993, the clerk of the court served on Garcia's counsel, Tomas Nunez, a notice of failure to comply with former rule 5.4A of the Superior Court of Fresno County Rules, [FN1] which required a plaintiff to serve the complaint on all named defendants and file a proof of service within 60 days of filing the complaint. Former rule 5.4A was one of the rules that the Fresno County Superior Court promulgated "pursuant to Code of Civil Procedure $575.1" to implement the Act. [FN2] (Former rule 5.1.) The notice also cautioned: "It Is the Plaintiff's Responsibility to Timely Prosecute General Civil Actions Filed in Fresno County. See [former] Rule 5."

FN1 Except as otherwise indicated, all further rule references are to the Superior Court of Fresno County Rules. A revised set of local rules for Fresno County took effect January 1, 1997.

FN2 Except as otherwise indicated, all further statutory references are to the Code of Civil Procedure.

On November 1, 1993, the clerk served Nunez with a notice pursuant to former rule 5.6B ordering him to appear at a status hearing on January 19, 1994. Former rule 5.6B directed the trial court to order all parties to attend a status hearing if an at issue memorandum was not filed within 180 days after filing of the complaint. The notice ordered Nunez to comply with former rule 5.7, which required counsel for each represented party to file and serve at least five court days before the status hearing a sworn declaration addressing a number of matters, including counsel's explanation for failing to satisfy the requirements of former rules 5.4 (serving complaint and filing proof of service) and 5.6 (filing at issue memorandum). The notice also ordered Nunez to appear in person unless he was going to be out of the county on the hearing date and he arranged at least 14

days before that date to appear by telephone.

Nunez did not appear at the status hearing on January 19, 1994. Instead, that morning he informed the court he was out of the county in trial, but he did not arrange to appear by telephone. The Honorable Gary R. Kerkorian sanctioned Nunez $50 for failing to appear and $50 for failing to serve and file the required declaration. Judge Kerkorian continued the matter to April 19, 1994, "for hearing on the Court's sua sponte motion to dismiss the entire action." The court's minute order indicated that counsel's appearance would be unnecessary if an at issue memorandum was filed, or a dismissal or judgment was entered.

On January 27, 1994, Judge Kerkorian followed up his order by issuing a notice of motion to dismiss the action, citing in the caption former rule *473 5.10. [FN3] Former rule 5.10 provided: "In the event that any attorney, or any party represented by counsel or any party appearing in pro se fails to comply with any of the requirements of [former] Rule 5 or any order made pursuant to [former] Rule 5, the Court may, upon motion of a party or on its own motion: [¶] ... [¶] B. Dismiss the action or proceeding or any part thereof ...." Consistent with the caption's reference to former rule 5.10, the notice cited as grounds for the motion "Plaintiff['s] ... fail[ure] to comply with ... [former] rule 5, and the Court's directives thereunder." The notice provided that all supporting or opposing papers should be filed at least five calendar days before the hearing. Although the notice was directed to "all parties and their attorneys," the clerk mailed it only to counsel.

FN3 The caption also cited section 583.410 and California Rules of Court, rule 372, which address discretionary dismissal for delay in prosecuting an action that has been pending at least two years. Garcia's action did not satisfy this requirement, and the trial court ultimately did not dismiss it under these provisions.

At the hearing on April 19, Judge Kerkorian sanctioned Nunez $300 for not complying with the court's service and at issue memorandum requirements and $25 for late filing of a declaration explaining his noncompliance. Judge Kerkorian continued the hearing on the dismissal motion to June 21 before the Honorable Dwayne Keyes. He cautioned that, if the case was not at issue by June 21, counsel would "have to show Judge Keyes very good cause why he shouldn't dismiss it." Judge Kerkorian's minute order provided that counsel's appearance would be unnecessary if an at issue memorandum was filed, or a dismissal or judgment was entered.

In May, Nunez sought and obtained permission to serve summons on several defendants by publication. Also in May, several of the other defendants who had already been served, including the Avilas, filed demurrers to Garcia's second amended complaint. On June 17, the Honorable Gary S. Austin sustained the demurrer of one defendant without leave to amend. He sustained the demurrer of the Avilas only in part and granted Garcia leave to amend until July 20.

As scheduled, on June 21, four days after the demurrer hearing, a hearing on the motion to dismiss was held before Judge Keyes. Nunez did not appear at the hearing. Judge Keyes granted the motion and dismissed the case without prejudice. Although the dismissal was without prejudice, the statute of limitations would have barred claims alleged in a new complaint.

Accordingly, after learning of the dismissal, Nunez filed a motion for reconsideration on Garcia's behalf. In support of the motion, Nunez asserted that the dismissal was based on failure to serve the remaining defendants *474 with the second amended complaint by June 21. He explained that he had not served the remaining defendants because of the demurrers that had been pending before Judge Austin. The Avilas opposed the motion, arguing that the court's dismissal was not based on failure to serve the remaining defendants, but "on plaintiff's willful and repeated failure to file status conference declarations, repeated *failure* to appear at status hearings, and finally, failure to appear at the June 21, 1994, hearing on the court's motion to dismiss."

At the hearing on the reconsideration motion, Nunez asserted that he had not attended the June 21 hearing on the dismissal motion because he believed that Judge Austin's order partially sustaining the demurrer "had obviated [the dismissal] hearing, because he gave me an extension to file a third amended complaint for July 20." Nunez also discussed his efforts to serve the other defendants. Judge Keyes replied: "That does not concern me as much as your cavalier attitude of when you appear in court and when you do not appear in court." Judge Keyes then denied the motion for reconsideration. His order of dismissal states that he based the ruling on "the moving papers, the lack of opposition papers, and the absence of plaintiff's counsel ...."

The Court of Appeal reversed the trial court's ruling, concluding that section 575.2, subdivision (b) (section 575.2(b)), prohibits dismissal as a sanction where noncompliance with local court rules is the fault of counsel, not of the litigant. This section, the court explained, "makes clear the legislative intent that a party's cause of action should not be impaired or destroyed by his or her attorney's procedural mistakes." The court found nothing in the Act rendering section 575.2(b) inapplicable. On the contrary, it concluded that the relevant provision of the Act, Government Code section 68608, subdivision (b) (Government Code section 68608(b)), merely incorporates "the general authority granted to the courts by section 575.2, subdivision (a) to impose sanctions, including the sanction of dismissal. The limitation on that authority, as reflected in [section 575.2(b)], that parties not be punished for counsel's noncompliance with local rules, is not affected by any contrary expression of intent in [Government Code section 68608(b)]."

We then granted review to resolve an apparent conflict between the Court of Appeal's decision and the decision in *Intel Corp. v. USAIR, Inc.* (1991) 228 Cal.App.3d 1559 [279 Cal.Rptr. 569] (*Intel*). The court in *Intel*, construing the predecessor of Government Code section 68608(b), concluded that section 575.2(b) does not limit a court's power to dismiss an action as a sanction for counsel's noncompliance with local rules implementing statutory delay reduction programs (fast track rules). (*Intel, supra*, 228 Cal.App.3d at pp. 1563-1566.) *475

Discussion

In 1982, the Legislature gave courts express statutory power to adopt local rules "designed to expedite and facilitate the business of the court." (§ 575.1.) At the same time, it enacted section 575.2, subdivision (a), which permits a court's local rules to prescribe sanctions, including dismissal of an action, for noncompliance with those rules. Section 575.2(b), on which the Court of Appeal relied, provides: "It is the intent of the Legislature that if a failure to comply with these rules is the responsibility of counsel and not of the party, any penalty shall be imposed on counsel and shall not adversely affect the party's cause of action or defense thereto."

Courts have interpreted section 575.2(b) as "sharply limit[ing] penalties in instances of *attorney* negligence." (*State of California* ex rel. *Public Works Bd. v. Bragg* (1986) 183 Cal.App.3d 1018, 1025 [228 Cal.Rptr. 576] (*Bragg*), original italics.) In *Bragg*, the court stated that section 575.2(b) creates "an exception to the general rule that the negligence of an attorney is imputed to the client [citations], with the client's only recourse a malpractice action against the negligent attorney. [Citations.]" (*Bragg, supra*, at p. 1026.) Similarly, in *Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, 502 [256 Cal.Rptr. 296] (*Moyal*), the court explained that, in section 575.2(b), "[t]he Legislature has made clear its intent a party's cause of action should not be impaired or destroyed by his or her attorney's procedural mistakes." In *Cooks v. Superior Court* (1990) 224 Cal.App.3d 723, 727 [274 Cal.Rptr. 113], the court construed section 575.2(b) "to proscribe any sanction against an innocent party for local rule violations of counsel and to proscribe sanctions against counsel that adversely affect the party's cause of action or defense thereto." These decisions also hold that a court must invoke section 575.2(b) on its own motion when necessary to protect an innocent party. (*Cooks, supra*, 224 Cal.App.3d at p. 727; *Moyal, supra*, 208 Cal.App.3d at p. 502; *Bragg, supra*, 183 Cal.App.3d at pp. 1028-1029; see also *In re Marriage of Colombo* (1987) 197 Cal.App.3d 572, 579-580 [242 Cal.Rptr. 100] [following *Bragg*].)

(1a) The Avilas do not challenge this judicial construction of section 575.2(b). Rather, they contend that a trial court's power under Government Code section 68608(b) to dismiss an action for violation of local fast track rules is not subject to the limits of section 575.2(b). Government Code section 68608(b) provides: "Judges shall have all the powers to impose sanctions authorized by law, including the power to dismiss actions or strike pleadings, if it appears that less severe sanctions would not be effective after taking into account the effect of previous sanctions or previous lack of compliance in the case. Judges are encouraged to impose sanctions to *476 achieve the purposes of this [Act]." The Avilas view this section as creating a dismissal power that is both independent of and greater than the court's power under section 575.2(b). We disagree.

The Avilas' construction of these provisions violates several rules of statutory interpretation. (2) As in any case involving statutory interpretation, "[o]ur first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning. [Citations.]" (*People v. Valladoli* (1996) 13 Cal.4th 590, 597 [54 Cal.Rptr.2d 695, 54 Cal.Rptr.2d 695, 918 P.2d 999].) (1b) By its terms, Government Code section 68608(b) gives trial courts only those sanctioning powers "authorized by law." Under its plain and commonsense meaning, the phrase,

"authorized by law," incorporates only those sanctioning powers that the law otherwise establishes, including those set forth in section 575.2. It does not express a legislative intent to establish an independent sanctioning power. Because section 575.2(b) directs that "any penalty shall be imposed on counsel and shall not adversely affect the party's cause of action" when noncompliance "is the responsibility of counsel and not of the party," dismissal without consideration of whether counsel or the client is at fault is not a sanction "authorized by law." (Gov. Code, § 68608(b); cf. *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 486 [204 Cal.Rptr. 897, 683 P.2d 1150] [in conditioning permit on "compliance with the 'law,' " the Legislature "intended to require compliance with other state statutes"]; *Bateman v. Colgan* (1896) 111 Cal. 580, 585 [44 P. 238] [requirement that board proceed " 'in the manner and method authorized by law' " refers "to the manner and method for making improvements provided in the law governing said board"].)

(3) The Avilas' interpretation also violates the rule of statutory interpretation that requires us, if possible, to give effect and significance to every word and phrase of a statute. (*Steinberg v. Amplica, Inc.* (1986) 42 Cal.3d 1198, 1205 [233 Cal.Rptr. 249, 729 P.2d 683].) "When two statutes touch upon a common subject, we must construe them 'in reference to each other, so as to harmonize the two in such a way that no part of either becomes surplusage.' [Citations.]" (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 778-779 [38 Cal.Rptr.2d 699, 889 P.2d 1019].) We must presume that the Legislature intended "every word, phrase and provision ... in a statute ... to have meaning and to perform a useful function." (*Clements v. T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 233 [273 P.2d 5].) (1c) Contrary to these principles, the Avilas' view that Government Code section 68608(b) establishes an independent sanctioning power reads the phrase "authorized by law" out of the statute.

Finally, the Avilas' interpretation runs counter to the rule regarding repeal by implication. (4) "[A]ll presumptions are against a repeal by implication. [Citations.]" (*477 *Flores v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 171, 176 [113 Cal.Rptr. 217, 520 P.2d 1033].) Absent an express declaration of legislative intent, we will find an implied repeal "only when there is no rational basis for harmonizing the two potentially conflicting statutes [citation], and the statutes are 'irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.' " (*In re White* (1969) 1 Cal.3d 207, 212 [81 Cal.Rptr. 780, 460 P.2d 980].) (1d) As we have explained, there is a rational basis for harmonizing section 575.2(b) and Government Code section 68608(b). By reading Government Code section 68608(b) as incorporating the limits of section 575.2(b), we "maintain the integrity of both statutes ...." (*Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160, 176 [74 P.2d 252].). In contrast, the Avilas, by reading Government Code section 68608(b) as authorizing dismissal for counsel's noncompliance with local rules, would repeal section 575.2(b) with respect to all fast track rules.

To support their interpretation, the Avilas invoke the principle that "specific statutory provisions relating to a particular subject will govern, as against a general provision, in matters concerning that subject." Citing *Intel*, they assert that, because Government Code section 68608(b) is the more specific statute regarding delay reduction, it "controls over" section 575.2(b). In *Intel*, the court considered section 575.2(b)'s application to fast track cases in light of Government Code section 68608(b)'s predecessor, Government Code former section 68609, subdivision (d). That section provided in relevant part: "In order to enforce the requirements of an exemplary delay reduction program and orders issued in cases assigned to it, the judges of the program shall have all the powers to impose sanctions authorized by law, including the power to dismiss actions or strike pleadings, if it appears that less severe sanctions would not be effective after taking into account the effect of previous sanctions or previous lack of compliance in the case." (Stats. 1988, ch. 1200, § 1, pp. 4008-4009.) The court held that, notwithstanding section 575.2(b), dismissal for noncompliance with local delay reduction rules was proper, stating: "While [section 575.2(b)] is concerned with penalties for violation of any local rules, the Government Code provision addresses imposition of sanctions for violation of local delay reduction rules. The Government Code provision is clearly more narrowly circumscribed and specific than [section 575.2(b)], and is therefore controlling." (*Intel, supra*, 228 Cal.App.3d at p. 1565.) The Avilas urge that the same analysis governs interpretation of Government Code section 68608(b).

The Avilas have incorrectly applied this principle of statutory construction. Initially, we question the assertion that Government Code section 68608(b) is the more specific provision. Although that section applies specifically to delay reduction programs, it speaks only generally about a *478 court's power to

impose sanctions "authorized by law" in connection with these programs. It does *not* expressly address the power of a court to impose sanctions for noncompliance with local rules. The Legislature has expressly addressed that subject in section 575.2 and has expressly limited the court's power in subdivision (b) of that section. Thus, it is arguable which statute is the more specific and which the more general. (Cf. *People v. Tanner* (1979) 24 Cal.3d 514, 521 [156 Cal.Rptr. 450, 596 P.2d 328].)

(5) In any event, "[t]he principle that a specific statute prevails over a general one applies only when the two sections cannot be reconciled. [Citations.]" (*People v. Wheeler* (1992) 4 Cal.4th 284, 293 [14 Cal.Rptr.2d 418, 841 P.2d 938].) If we can reasonably harmonize "[t]wo statutes dealing with the same subject," then we must give "concurrent effect" to both, "even though one is specific and the other general. [Citations.]" (*People v. Price* (1991) 1 Cal.4th 324, 385 [3 Cal.Rptr.2d 106, 821 P.2d 610].) (1e) As we have explained, Government Code section 68608(b) and section 575.2(b) are not irreconcilable. By granting trial courts sanctioning powers "authorized by law," Government Code section 68608(b) expressly incorporates the terms of section 575.2, including the limitations of subdivision (b). More generally, the Act mandates that courts, in carrying out their responsibility to eliminate delay, must act "consistent with statute ...." (Gov. Code, § 68607.) Where, as here, "the [assertedly] specific statute expressly requires compliance with other laws and when there is no direct conflict between the various laws," the principle on which the Avilas rely "is entitled to little weight." (*People ex rel. Deukmejian v. County of Mendocino, supra*, 36 Cal.3d at p. 488.) Accordingly, we reject the Avilas' claim that, because Government Code section 68608(b) specifically addresses fast track matters, it "controls over" section 575.2(b). [FN4] (See *International Assn. of Fire Fighters Union v. City of Pleasanton* (1976) 56 Cal.App.3d 959, 975-976 [129 Cal.Rptr. 68].)

FN4 We disapprove *Intel* and dictum in *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 490 [282 Cal.Rptr. 530], to the extent they are inconsistent with our conclusion.

The Avilas additionally insist that, as a matter of public policy, the power to dismiss actions when counsel violate fast track rules is necessary to further the public's interest in reducing litigation delay. They assert: "[A]ny delay in the resolution of litigation severely undermines the public confidence in the fairness and utility of the judiciary as a public institution since delay in the process reduces the chance that justice will be done and imposes severe hardships on the litigants." To support their assertion, they *partially* quote the following legislative findings and conclusions that were part of the original Trial Court Delay Reduction Act of 1986 (1986 Act): "(a) The *479 expeditious and timely resolution of [legal] actions is an integral and necessary function of the judicial branch .... [¶] (b) Delay in the resolution of ... litigation is not in the best interests of the state and the public. The people ... expect and deserve prompt justice and the speedy resolution of disputes. Delay in the resolution of litigation may reflect a failure of justice and subjects the judiciary to a loss of confidence by the public in both its fairness and utility as a public institution. Delay reduces the chance that justice will in fact be done, and often imposes severe emotional and financial hardship on litigants. [¶] (c) Cases filed in California's trial courts should be resolved as expeditiously as possible ...." [FN5] (Gov. Code, former § 68601.)

FN5 The Legislature repealed the 1986 Act, including former section 68601, in 1990 when it enacted the current version of the Act. (Stats. 1990, ch. 1232, § 2, p. 5140.) The Avilas also rely heavily on the amended version of another repealed provision of the 1986 Act, Government Code former section 68612. That section permitted a court's delay reduction rules to be "inconsistent with the California Rules of Court," to "impose procedural requirements in addition to those authorized by statute," and to "shorten any time specified by statute for performing an act." (Stats. 1988, ch. 1200, § 3, p. 4009.) Because the current Act contains no similar authorization, the repealed statute and the cases construing it are no longer relevant. (See *La Seigneurie U.S. Holdings, Inc. v. Superior Court* (1994) 29 Cal.App.4th 1500, 1503 [35 Cal.Rptr.2d 175]; *Wagner v. Superior Court* (1993) 12 Cal.App.4th 1314, 1318-1319 [16 Cal.Rptr.2d 534].)

For two reasons, we reject the Avilas' claim. First, the general policy underlying legislation "cannot supplant the intent of the Legislature as expressed in a particular statute. [Citation.]" (*Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 8 [128 Cal.Rptr. 673, 547 P.2d 449].) As we have shown, Government Code section 68608(b) expresses a legislative intent to grant trial courts only those

sanctioning powers "authorized by law." Government Code section 68607 expresses a legislative intent to require courts, in carrying out their responsibility to eliminate delay, to act "consistent with statute ...." Section 575.2(b) expresses a legislative intent that sanctions not affect a party's cause of action if a failure to comply with local rules "is the responsibility of counsel and not of the party ...." The Avilas err in relying on the general policy of delay reduction underlying the Act to the exclusion of the language of these statutes.

Second, the Avilas are incorrect in suggesting that either the 1986 Act or the current Act directs that the goal of delay reduction take precedence over all other considerations. On the contrary, in the part of Government Code former section 68601, subdivision (c), that the Avilas have failed to quote, the Legislature recognized "the strong public policy that litigation be disposed of on the merits wherever possible." (See *Hocharian v. Superior Court* (1981) 28 Cal.3d 714, 724 [170 Cal.Rptr. 790, 621 P.2d 829].) That section provided *in full*: "Cases filed in California's trial courts should be resolved as expeditiously as possible, *consistent with the obligation of the courts to* *480 *give full and careful consideration to the issues presented, and consistent with the right of parties to adequately prepare and present their cases to the courts.*" (Gov. Code, former § 68601, subd. (c), italics added.) Thus, in establishing delay reduction programs, the Legislature recognized *competing* public policy considerations and "attempt[ed] to balance the need for expeditious processing of civil matters with the rights of individual litigants." (*Moyal, supra*, 208 Cal.App.3d at p. 500.) Unlike the Avilas, we find no evidence that the Legislature intended "the policy of expeditious processing of civil cases [to] override, in all situations, the trial court's obligation to hear cases on the merits. [Citations.]" [FN6] (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795 [39 Cal.Rptr.2d 47].)

FN6 In analogous contexts, the Legislature has also recognized the public interest in disposition of cases on the merits. (See, e.g., § 583.130 ["Except as otherwise provided by statute or by rule of court adopted pursuant to statute, ... the policy favoring trial or other disposition of an action on the merits [is] generally to be preferred over the policy that requires dismissal for failure to proceed with reasonable diligence in the prosecution of an action in construing the provisions of this chapter."].)

Finally, we find unpersuasive the Avilas' assertion that an expanded dismissal power regarding fast track rules is necessary to promote calendar control. Courts have numerous other methods for maintaining control of their calendars. Under section 1209, subdivision (a)5, "[d]isobedience of any lawful ... order ... of the court" constitutes contempt. (See *In re Young* (1995) 9 Cal.4th 1052, 1053 [40 Cal.Rptr.2d 114, 892 P.2d 148].) For each separate act of contempt, the court may impose monetary sanctions or imprisonment. (§ § 1218, subd. (a), 1219.) [FN7] Applying section 1209, courts have treated "an attorney's failure to appear in court at a time he was personally ordered to appear, without valid excuse" as a punishable contempt. (*In re Baroldi* (1987) 189 Cal.App.3d 101, 106 [234 Cal.Rptr. 286].) Under Penal Code section 166, subdivision (a)(4), "[w]illful disobedience of any ... order lawfully issued by any court" is a form of contempt that is criminally punishable as a misdemeanor by jail sentence of up to six months and/or fine of up to $1,000. (See Pen. Code, § 19.) Under section 128.5, subdivision (a), courts may "order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely *481 intended to cause unnecessary delay." [FN8] Under section 177.5, courts may "impose reasonable money sanctions, not to exceed fifteen hundred dollars ($1,500) ... for any violation of a lawful court order by a person, done without good cause or substantial justification." Thus, application of section 575.2(b)'s limits on the dismissal power to violations of fast track rules will not leave courts without power to control their calendars. [FN9]

FN7 The court may fine the contemner up to $1,000 and, if the contemner is subject to the disobeyed order "as a party to the action," may order the contemner to pay to the party initiating the contempt proceeding the reasonable attorney fees and costs incurred in that proceeding. (§ 1218, subd. (a).) The court may also imprison the contemner for up to five days (§ 1218, subd. (a)) and, if "the contempt consists of the omission to perform an act which is yet in the power of the [contemner] to perform," may order the contemner "imprisoned until he or she has performed it ...." (§ 1219, subd. (a).)

FN8 Section 128.5 currently applies only to actions, like Garcia's, filed before December 31, 1994. (§ 128.5, subd. (b)(1).) As to actions filed after that date, the Legislature

has suspended operation of section 128.5 until January 1, 1999, substituting in its place on a trial basis section 128.7, which was modeled on rule 11 of the Federal Rules of Civil Procedure. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 690, fn. 13 [34 Cal.Rptr.2d 386, 881 P.2d 1083].) Section 128.7 sets forth certification requirements for pleadings and authorizes courts to impose sanctions for violations of those requirements upon "the attorneys, law firms, or parties that have violated" the certification requirements "or are responsible for the violation." (§ 128.7, subd. (c).)

FN9 Adoption of section 177.5 directly influenced the Legislature's decision to limit judicial power under section 575.2 to impose sanctions for noncompliance with local rules. The Senate Committee on the Judiciary cited the availability of monetary sanctions under section 177.5 as a justification for proposing the addition of subdivision (b) to section 575.2. The committee explained: "[Last] week this committee passed [Assembly Bill No. 3573,] ... a bill that would allow courts to fine lawyers up to $1,500 for failing to comply with court orders. It would appear, therefore, that authorizing courts to indirectly penalize lawyers by dismissing causes of action under this bill would be superfluous should [Assembly Bill No.] 3573 become law." (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 3784 (1981-1982 Reg. Sess.) as amended Aug. 5, 1982, p. 4.) At the request of amicus curiae Pacific Software Services, Inc., we take judicial notice of the committee's report. We also take judicial notice of the legislative reports the Avilas have submitted, and of legislative reports relating to other relevant statutes. (Evid. Code, § § 452, 459; see also *People v. Cruz* (1996) 13 Cal.4th 764, 773, 780, fn. 9 [55 Cal.Rptr.2d 117, 919 P.2d 731].)

In any event, the Avilas' interpretation of Government Code section 68608(b) might result in a proliferation of malpractice suits against counsel that would hinder, rather than promote, calendar control. This possibility was one of the concerns the Senate Committee on the Judiciary cited in recommending that the Legislature adopt section 575.2(b). The committee explained: "While the client would likely have a malpractice cause of action against a lawyer whose misconduct resulted in dismissal or default, that remedy would be counter productive, since it would result in even more complicated litigation, further clogging the courts." (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 3784 (1981-1982 Reg. Sess.) as amended Aug. 5, 1982, pp. 3-4.)

As our discussion demonstrates, granting a trial court power to dismiss an action where counsel alone is responsible for noncompliance with local rules would be a significant change in the law. Nothing in either the statutory language or the legislative history of the Act reflects a legislative intent to override section 575.2(b)'s limits on a court's sanctioning powers or to give *482 courts expanded dismissal powers with respect to fast track rules. Instead, the words the Legislature chose reflect a contrary intent, i.e., to give courts only those sanctioning powers "authorized by law." (Gov. Code, § 68608(b).) "We are not persuaded the Legislature would have silently, or at best obscurely, decided so important ... a public policy matter and created a significant departure from the existing law." (*In re Christian S.* (1994) 7 Cal.4th 768, 782 [30 Cal.Rptr.2d 33, 872 P.2d 574].) Accordingly, we affirm the judgment of the Court of Appeal. [FN10]

FN10 In their reply brief, the Avilas for the first time assert, with little argument in support, that the phrase "authorized by law" in Government Code section 68608(b) includes a "trial court's inherent authority to dismiss cases for disobedience of its orders." Obvious reasons of fairness militate against our considering this poorly developed and untimely argument. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1116, fn. 20 [36 Cal.Rptr.2d 235, 885 P.2d 1]; *Variabedian v. City of Madera* (1977) 20 Cal.3d 285, 295 [142 Cal.Rptr. 429, 572 P.2d 43].) This is especially true here, given the statutes we have discussed that specify the courts' sanctioning options. (See *Tide Water Assoc. Oil Co. v. Superior Court* (1955) 43 Cal.2d 815, 825 [279 P.2d 35] [court's inherent power may be reasonably limited by statute].)

Disposition

The judgment of the Court of Appeal is affirmed.

George, C. J., Mosk, J., Kennard, J., Baxter, J., Werdegar, J., and Brown, J., concurred.

Cal. 1997.

Garcia v. McCutchen

END OF DOCUMENT

Original List Date: 6/7/2002
Last Updated: 12/12/2005
List Print Date: 01/20/2006
Claim Number: 01-TC-16
Issue: Fire Safety Inspections of Care Facilities

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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

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