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DEPARTMENT OF
FINANCE

CITY OF SACRAMENTO
CALIFORNIA

BUDGET DIVISION

April 12, 1988

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Budget and Finance Committee
Sacramento, California

Honorable Members In Session:

SUBJECT: EMERGENCY RESPONSE COST RECOVERY PROGRAM

SUMMARY

At the request of Councilmember Serna, staff has developed an Emergency Response Cost Recovery (ERCR) Program. This program will implement the provisions of SB795 (as amended) which provides local agencies with the authority to recover the costs for police and fire to respond to certain types of emergency incidents.

At this time staff is presenting the conceptual outline for an ERCR program. This report presents the various program elements including the types of emergency response incidents for which cost recovery will be attempted, the timing on billing the responsible party, the determination of the billing rate, the responsibilities of the several departments involved, and the anticipated revenue and costs associated with the program.

Upon approval of the conceptual outline, staff will report back within 45 days with a specific implementation plan and enabling resolution.

This report has been reviewed by representatives of the City Attorney, Police Department, Fire Department, Finance Department Revenue and Budget Divisions, and the City Manager's Office.

BACKGROUND

During 1987, the Sacramento Police Department recorded 3135 arrests for driving under the influence (DUI) of alcohol and/or drugs (see Exhibit 1). Of this total, 789 were accidents involving one or more vehicles. Most of these accidents also required an emergency response by the Fire Department. The cost of responding to these emergencies in 1987 is estimated to be \$675,000, or \$215 per incident.

Until recently, public agencies have been restricted from attempting to recover the costs incurred in responding to an emergency incident. In January 1985, the California Legislature approved SB795, introduced by Senator Edward Royce, which allows local governmental agencies to recover up to \$1,000 from certain individuals for the costs of providing services as a result of an emergency response necessitated by a DUI-related incident. Specifically, section 53150 of the Government Code states:

"Any person who is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, whose negligent operation of a motor vehicle caused by that influence proximately causes any incident resulting in an appropriate emergency response, and any person whose intentionally wrongful conduct proximately causes any incident resulting in an appropriate emergency response, is liable for the expense of an emergency response by a public agency to the incident." (Exhibit 2)

Under provisions of this law the fee assessed to an individual is not insurable. Therefore, an individual may not include the fee as part of the cost of damages in an accident in a claim to their insurance carrier.

At this time, many local agencies have implemented an ERCR program. Exhibit 3 lists the agencies surveyed during the development of this report. It should be noted that although the California Highway Patrol (CHP) has implemented an ERCR program, most of the largest police agencies in the state have not: Los Angeles, San Diego, San Francisco, and Oakland. All of the cities surveyed which do not currently have an ERCR program have indicated that they are reviewing the various programs currently in place and intend to introduce their own program in the coming fiscal year.

Of the programs currently in operation, there are some significant differences in the substantive program elements between the various agencies. These differences center around three program areas: the type of incident, the type of violation, and when to bill.

Type of incident. Section 53150 states that "Any person who is under the influence...(and) causes any incident resulting in an appropriate emergency response..." (emphasis added). The CHP and a minority of other agencies has interpreted this to intend that only accidents, where DUI was the cause, can be pursued for cost recovery. Other agencies (Long Beach and San Jose, for example) interpret this as not to be limited to accidents, but more broadly, to any DUI related incident where an emergency response (use of emergency lights and/or siren) was required.

Type of violation. Again, the statute refers to "Any person who is under the influence...and any person whose intentionally wrongful conduct proximately causes an incident..." (emphasis added). Most agencies (including the CHP and San Jose) are restricting their cost recovery efforts to those incidents where DUI was the probable cause. The City of Long Beach is also applying their program to non-DUI related incidents where there was negligent and intentional wrongful conduct. These include Hit and Run (20001, 20002 CVC), Reckless Driving (23103, 23104 CVC), Speed Contests (23109 CVC), non-injury accidents (902T, 902 CPD), and injury accidents (901T, 901 CPD). Long Beach sees this as an opportunity to recover against a broader group than just DUI.

When to bill. This legislation made ECR a civil remedy, and as such, a public agency may pursue restitution independent of criminal proceedings. Therefore, most agencies are initiating collection efforts prior to the disposition of any criminal actions. The CHP postpones billing until after conviction. The rationale for billing upon arrest is: (1) as a civil matter it is permissible, (2) the shorter the time elapsed between the incident and billing, the greater the chances of collection, and (3) the difficulty in interfacing with the courts to determine how and when a case is decided. Most agencies now will reimburse if the case is dismissed or acquitted.

Subsequent amendments to the legislation do allow the court to consider whether the defendant shall be required, as a condition of probation, to make restitution to the public agency for the cost of the emergency response.

PROGRAM DESCRIPTION

The Emergency Response Cost Recovery Program proposed here attempts to glean the most successful elements from those programs already in place throughout the state. This program is consistent with the intent of the legislation in providing a method for recovering the costs incurred by the negligent actions of those individuals who drive while under the influence of alcohol and/or drugs or whose intentionally wrongful conduct causes an appropriate emergency response.

Under the City of Sacramento Emergency Response Recovery Program, the City will charge any motorist whose intoxication causes the motorist to operate his/her vehicle negligently or whose intentionally wrongful conduct proximately causes any incident, thus resulting in an emergency response by the Police or Fire Department.

A person will be considered to be "under the influence", within the meaning of the California Vehicle Code, when the alcohol or a

combination of alcohol and drugs has physically impaired, to an appreciable degree, their ability to operate a vehicle in a manner like that of an ordinary and prudent and cautious person in full possession of his/her faculties using reasonable care and under like conditions. Intoxication will be measured by a combination of a trained police officer's observation and chemical test results, including blood, breath intoxilyzer, or urine. For example, when a person is stopped for driving under the influence of alcohol, that person will be presumed intoxicated if the person's blood alcohol level is .10 percent or above. When a person's blood alcohol level is .05 percent or more but less than .10 percent, that fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol at the time of the alleged offense. Since chemical tests are not necessary for a conviction of driving under the influence of alcohol, or a combination of alcohol and drugs, an officer's observations may provide sufficient evidence of intoxication. When a person is arrested and they refuse, or fail to complete a chemical test, the fact that there was sufficient probable cause to justify an arrest and booking for a DUI violation makes them liable for costs incurred under the Emergency Response Recovery Program.

An emergency response under the program is defined as a response to a traffic accident or moving traffic violation which causes Police or Fire Department personnel to use their emergency lights or siren or both. That is, a traffic accident or a DUI driver who is driving so erratically that a police officer would be expected to stop the driver in order to insure public safety. Such erratic driving might include excessive speed, driving on the wrong side of the road, or any other hazardous moving violation.

It is proposed that the responsible person be billed as soon as possible following their arrest. A refund will be granted only if the individual can successfully demonstrate that either the District Attorney has dismissed the case or that they were granted an acquittal.

The bill will represent the actual time and expenses involved for the officer(s) to respond to the incident, complete field work and investigation, transport the suspect, booking, and report writing. The billing rate will include the officer's salary and benefits, vehicle and communication equipment costs, the cost of emergency dispatching, and departmental support. The rate for 1987-88 would be \$54.66 per hour for police personnel and \$92.40 per hour for each fire crew (4 personnel per unit) responding.

The program would require the cooperative efforts of several departments with the Police Department responsible for the overall coordination of the ERCR program. This would include collecting the

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initial data from police field reports, determining if the incident is appropriate to bill under the program, requesting Fire Department information when they are involved, and transmitting the billing information to the Revenue Division of the Finance Department. The Revenue Division would be responsible for billing the responsible person and ensuring collection.

It is anticipated that approximately 3000 bills will be mailed in the first year of the program. During this initial year recovery is expected on 33% of the billings. Cost recovery should increase to 50% during the second year of the program.

Revenue is estimated to be \$250,000 during 1988-89. Additional staffing of 1.0 FTE (0.5 in Police and 0.5 in Revenue) for an Account Clerk level position will be required. The cost for the program will be approximately \$30,000, which represents 12% of the program's anticipated revenue. The first year start-up costs and staffing requirements are estimated based upon the experience of the agencies surveyed.

The concept of trying to recover a small fraction of the monies expended on emergency services by charging those who cause them seems to be particularly well founded during these times of fiscal constraint. This program, in particular, makes the individual responsible for the consequences of their actions by placing the financial burden of emergency responses to DUI upon the driver and not the general public. The costs of dealing with these individuals drains resources which could otherwise be utilized in other areas of law enforcement.

It is hoped that programs such as this will provide not only some cost recovery, but will provide an additional disincentive to those who would otherwise endanger the public by driving while under the influence.

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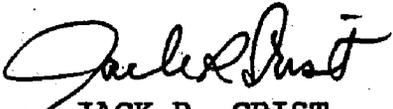
RECOMMENDATION

It is recommended that the Budget and Finance Committee approve the program concept and direct staff to develop an implementation plan for the ERCR program outlined in this report and that staff will return to this Committee with a final program within 45 days.

Respectfully submitted,


Keith T. Kramer
Senior Management Analyst

Recommendation Approved:


JACK R. CRIST
Deputy City Manager

April 19, 1988
All Districts

EXHIBIT 1

DRIVING UNDER THE INFLUENCE

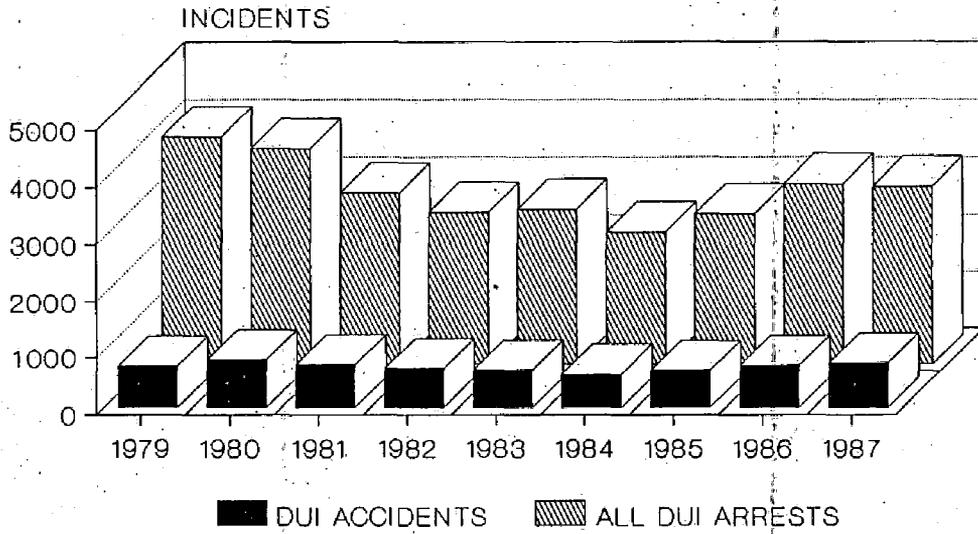


EXHIBIT 2

SENATE BILL 795

Sections 53150-53158

ARTICLE 8. COSTS OF EMERGENCY RESPONSE

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Section

- 53150. Negligent operation of motor vehicle; influence of alcoholic beverage or drug; intentional wrongful conduct; liability.
- 53151. Negligent operation of boat or vessel; influence of alcoholic beverage or drug; intentional wrongful conduct; liability.
- 53152. Negligent operation of civil aircraft; influence of alcoholic beverage or drug; intentional wrongful conduct; liability.
- 53153. Influence of alcoholic beverage or drug; inability to operate motor vehicle, boat or vessel, or aircraft; presumptions.
- 53154. Charge against person liable; collection of debt; insurance.
- 53155. Limit on liability.
- 53156. Definitions.
- 53157. Admissibility of evidence in criminal proceedings.
- 53158. Legislative intent.

Article 8 was added by Stats.1985, c. 337, § 1.

Cross References

Restitution of costs as condition of probation, see Penal Code § 1203.1.

§ 53150. Negligent operation of motor vehicle; influence of alcoholic beverage or drug; intentional wrongful conduct; liability

Any person who is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, whose negligent operation of a motor vehicle caused by that influence proximately causes any incident resulting in an appropriate emergency response, and any person whose intentionally wrongful conduct proximately causes any incident resulting in an appropriate emergency response, is liable for the expense of an emergency response by a public agency to the incident.

(Added by Stats.1985, c. 337, § 1.)

§ 53151. Negligent operation of boat or vessel; influence of alcoholic beverage or drug; intentional wrongful conduct; liability

Any person who is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, whose negligent operation of any boat or vessel caused by that influence proximately causes any incident resulting in an appropriate emergency response, and any person whose intentionally wrongful conduct proximately causes any incident resulting in an appropriate emergency response, is liable for the expense of an emergency response by a public agency to the incident.

(Added by Stats.1985, c. 337, § 1.)

§ 53152. Negligent operation of civil aircraft; influence of alcoholic beverage or drug; intentional wrongful conduct; liability

Any person who is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, whose negligent operation of a civil aircraft caused by that influence proximately causes any incident resulting in an appropriate emergency response, and any person whose intentionally wrongful conduct proximately causes an incident resulting in an appropriate emergency response, is liable for the expense of an emergency response by a public agency to the incident.

(Added by Stats.1985, c. 337, § 1.)

§ 53153. Influence of alcoholic beverage or drug; inability to operate motor vehicle, boat or vessel, or aircraft; presumptions

For purposes of this article, a person is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, when as a result of drinking an

Asterisks * * * indicate deletions by amendment

§ 53153

GOVERNMENT CODE

alcoholic beverage or using a drug, or both, his or her physical or mental abilities are impaired to a degree that he or she no longer has the ability to operate a motor vehicle, boat or vessel, or aircraft with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances. For purposes of this article, the presumptions described in Sections 23152 and 23155 of the Vehicle Code shall apply.

(Added by Stats.1985, c. 337, § 1.)

§ 53154. Charge against person liable; collection of debt; insurance

The expense of an emergency response shall be a charge against the person liable for expenses under this article. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied, except that liability for the expenses provided for in this article shall not be insurable and no insurance policy shall provide or pay for the expenses.

(Added by Stats.1985, c. 337, § 1.)

§ 53155. Limit on liability

In no event shall a person's liability under this article for the expense of an emergency response exceed one thousand dollars (\$1,000) for a particular incident.

(Added by Stats.1985, c. 337, § 1. Amended by Stats.1986, c. 1112, § 1.)

1986 Legislation.

The 1986 amendment increased the limit from \$500 to \$1000.

§ 53156. Definitions

As used in this article:

(a) "Expense of an emergency response" means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising because of the response to the particular incident. Reasonable costs shall include the costs of providing police, firefighting, rescue, and emergency medical services at the scene of the incident, as well as the salaries of the personnel responding to the * * * incident.

(b) "Public agency" means the state and any city, county, municipal corporation, district, or public authority located, in whole or in part, within this state which provides or may provide firefighting, police, ambulance, medical, or other emergency services.

(c) "Intentionally wrongful conduct" means conduct intended to injure another person or property.

(Added by Stats.1985, c. 337, § 1. Amended by Stats.1986, c. 1112, § 2.)

§ 53157. Admissibility of evidence in criminal proceedings

Any testimony, admission, or any other statement made by the defendant in any proceeding brought pursuant to this article, or any evidence derived from the testimony, admission, or other statement, shall not be admitted or otherwise used in any criminal proceeding arising out of the same incident.

(Added by Stats.1985, c. 337, § 1.)

§ 53158. Legislative intent

It is not the intent of the Legislature, in enacting this article, to occupy the field of recovery of the expense of an emergency response by a public agency, nor is it the intent of the Legislature to preempt local regulations or to otherwise limit the remedies available to any public agency to recover the expenses of an emergency response to any incident not involving persons who operate a motor vehicle, a boat or vessel, or a civil aircraft while under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug. It is the intent of the Legislature that the recovery of the expenses of an emergency response under this chapter shall

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supplement and shall not supplant any other provisions of law relating to the recovery of those expenses.

(Added by Stats.1985, c. 337, § 1. Amended by Stats.1987, c. 897, § 1.)

CHAPTER 1.5. INTEGRATED FINANCING DISTRICT ACT

Article	Section
1. Definitions and General Provisions	53175
2. Proceedings to Create an Integrated Financing District	53180
3. Purposes and Powers	53185
4. Reimbursement Agreements	53190
5. Confirmation and Collection of Levy	53195

Chapter 1.5 was added by Stats.1986, c. 1512, § 1.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

- Section**
- 53175. Short title.
 - 53175.5. Alternative method of financing public facilities.
 - 53176. Liberal construction of chapter.
 - 53176.5. Validity of proceedings.
 - 53177. Application of chapter; all local agencies.
 - 53177.5. Application of chapter; construction of interchange connecting two interstate freeways.
 - 53178. Application of chapter; Division 4 of Streets and Highways Code.
 - 53178.5. Application of chapter; Division 4.5 of Streets and Highways Code.
 - 53179. Definitions.
 - 53179.5. Joint agreements; use of levy proceeds for facilities or services; contents of agreements.

[New]

Article 1 was added by Stats.1986, c. 1512, § 1.

§ 53175. Short title

This chapter shall be known and may be cited as the Integrated Financing District Act.

(Added by Stats.1986, c. 1512, § 1.)

§ 53175.5. Alternative method of financing public facilities

This chapter provides an alternative method of financing public facilities. This chapter does not limit the application of any other laws that provide for financing governmental facilities. A local agency may use the provisions of this chapter instead of, or in conjunction with, any other method of financing part or all of the cost of providing capital facilities. The provisions of this chapter governing the establishment and operation of an integrated financing district shall, to the extent of any conflict, prevail over any other provision of law.

(Added by Stats.1986, c. 1512, § 1.)

§ 53176. Liberal construction of chapter

This chapter shall be liberally construed in order to effectuate its purposes. No inadvertent error, irregularity, informality, or the inadvertent neglect or omission of any officer, in any procedure taken under this chapter, other than fraud, shall void or invalidate that proceeding, any levy imposed to finance the cost of a public facility, or any reimbursement agreement.

(Added by Stats.1986, c. 1512, § 1.)

§ 53176.5. Validity of proceedings

The inadvertent failure of any person to receive a notice, resolution, order, or other matter shall not affect in any way whatsoever the validity of any proceedings taken under this chapter, or prevent the legislative body from proceeding with any hearing so noticed.

(Added by Stats.1986, c. 1512, § 1.)

Asterisks * * * indicate deletions by amendment

EXHIBIT 3

EMERGENCY RESPONSE COST RECOVERY SURVEY

CITY	ERCR PROGRAM?	TYPE OF INCIDENT	WHEN DO THEY BILL
Anaheim	Yes	Accidents	Arrest
Bakersfield	Yes	Accidents	Arrest
CHP	Yes	Accidents	Conviction
Concord	Yes	HMV*	Arrest
Fremont	Yes	Accidents	Arrest
Fresno	No	--	--
Hayward	Yes	Accidents	Arrest
Huntington Beach	Yes	Accidents	Arrest
Long Beach	Yes	HMV	Arrest
Los Angeles	No	--	--
Oakland	No	--	--
Palo Alto	No	--	--
Pasadena	No	--	--
Pleasanton	Yes	HMV	Arrest
Riverside	No	--	--
San Francisco	No	--	--
San Jose	Yes	HMV	Arrest
Santa Clara	Yes	HMV	Arrest
Santa Cruz	Yes	HMV	Arrest
Santa Rosa	Yes	Accidents	Arrest
Stockton	No	--	--
Torrance	No	--	--

*HMV=Hazardous Moving Violations