

ITEM 6

PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS FINAL STAFF ANALYSIS

Government Code Sections 3300 through 3310
As Added and Amended by Statutes 1976, Chapter 465;
Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes
1983, Chapter 964; Statutes 1989, Chapter 1165; and
Statutes 1990, Chapter 675

Peace Officer Procedural Bill of Rights
09-PGA-05 (CSM-4499)

City of Los Angeles, Requestor

Executive Summary

This item was originally scheduled for the October 27, 2011 hearing. During the hearing, the claimant requested that the matter be postponed to the March 23, 2012 hearing for the following reasons: (1) Commission staff tentatively set a number of other requests to amend parameters and guidelines and proposed parameters and guidelines that contained proposed reasonable reimbursement methodologies (RRMs) for the March 23, 2012 hearing; (2) Commission staff also issued a request for comment from the claimants and parties of these matters regarding the legislative intent of the RRM statutes that was due in December 2011; and (3) Claimant requested that it be given time to respond to the request for comment on RRMs, which was due after the October hearing, and that this matter be moved to the March 2012 hearing with the other proposed RRMs. Following discussion among the Commission members and staff, claimant, and Department of Finance, where Finance stated that it was not necessary to postpone this matter because it was different from the other proposed RRMs, the Commission approved the request for postponement to the March hearing by a vote of 4-1.¹

Please note that the analysis and recommendation that follow have not changed since the October 27, 2011 hearing.

Background

This item addresses a request to amend the parameters and guidelines for the *Peace Officers Procedural Bill of Rights* (also known as POBOR) program to add a reasonable reimbursement methodology (RRM) “to apply only and solely” to the City of Los Angeles.

¹ At the January 27, 2012 hearing, Commission staff indicated that due to staffing changes, staff was no longer scheduling all of the matters with proposed RRMS for the March 23, 2012 hearing. Instead, staff would schedule these matters over the course of several hearings, starting with the March 23, 2012 hearing. In addition to this item, the proposed parameters and guidelines and proposed RRM for the *Voter Identification Procedures* program is on the agenda as Item 5. The remaining proposed RRMs will be set at other hearings during 2012.

The POBOR program provides a series of rights and procedural safeguards to peace officers employed by local agencies that are subject to investigation or discipline. Generally, POBOR prescribes certain procedural protections that must be afforded peace officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action, as defined by statute, is taken against them, or they are denied promotion on grounds other than merit. Under the existing parameters and guidelines, local agencies may claim reimbursement based on a unit cost RRM in the amount of \$37.25 per officer, or on actual costs to comply with the program.

The City proposes a new unit cost RRM in the amount of \$425.53 per officer to be claimed by only the City of Los Angeles beginning July 1, 2009, and increased by the implicit price deflator in subsequent years, for all the reimbursable activities *except* for the activity of providing the opportunity for an administrative appeal to officers subject to specified disciplinary actions. The RRM is based on the total costs reimbursed by the State Controller's Office to the City of Los Angeles for the POBOR program for five fiscal years (from fiscal year 2003-2004 through 2007-2008), divided by the number of sworn peace officers employed with the City of Los Angeles during that time.

Both the Department of Finance and the State Controller's Office oppose this request.

Staff Analysis

The City's proposal fails for two reasons. First, the proposed RRM does not satisfy the requirements of Government Code section 17518.5. The RRM proposed by the City is not based on cost information from a representative sample of eligible claimants as required by section 17518.5(b). Nor does the proposed RRM consider the variation in costs among other local agencies mandated by the state to comply with the POBOR program as required by section 17518.5(c). There is no authority in Government Code section 17518.5 to allow the adoption of an RRM based on the costs of one local agency.

Second, the City suggests that the Commission can adopt an RRM for only one local agency or should adopt RRMs for each individual local entity in the State that may be eligible to claim reimbursement for a mandated program. This argument, however, contradicts the purpose of the test claim and parameters and guidelines process established by the Legislature. There are 58 counties, 482 cities, 1,131 school districts, and numerous special districts that are be subject to article XIII B and may be entitled to reimbursement under section 6 for any given program. In this case, all counties, cities, and some police protection districts in the State are entitled to reimbursement. The statutory process governing the mandates process does not envision the Commission adopting different conclusions and reimbursement amounts for each individual entity, especially when the test claim process is to be completed with the adoption of a statewide cost estimate within 12 months after receipt of a test claim.²

Rather, the process was adopted as a class action process to resolve disputes affecting multiple local agencies.³ While there may be occasions when the Commission can appropriately consider separate proposed RRMs included in one set of parameters and guidelines based on the types of entities that may be affected by a mandated program differently (e.g., separate RRMs for rural

² Government Code section 17553(a)(2).

³ Government Code section 17500; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-332.

and urban entities, or large and small districts that have significant population differences), those RRM proposals would still have to comply with the requirements of Government Code section 17518.5 and be based on the cost information from a representative sample of local governments. There is no support in the plain language of the mandates statutes adopted by the Legislature to suggest that the Commission can adopt separate and individual reimbursement amounts for each local entity.

If the City continues to believe that the current RRM of \$37.25 is too low, it has options. Under the existing parameters and guidelines, the City can claim reimbursement based on actual costs incurred, subject to the audit of the State Controller's Office. The City may also file a request to amend the parameters and guidelines to modify the current unit cost of \$37.25 and provide evidence in the record that complies with all the elements identified in Government Code section 17518.5.

Conclusion and Staff Recommendation

For the foregoing reasons, staff recommends that the Commission adopt this analysis and deny the City of Los Angeles' request to amend the parameters and guidelines.

STAFF ANALYSIS

Requestor

City of Los Angeles

Chronology

- 03/28/2008 Parameters and guidelines for *Peace Officers Procedural Bill of Rights* (POBOR, 06-PGA-06, CSM-4499) were amended to include the option of claiming costs using a reasonable reimbursement methodology (RRM) in the form of a unit cost of \$37.25 per officer or by showing actual costs incurred to comply with the program
- 06/30/2010 City of Los Angeles files request to amend parameters and guidelines to add an RRM based on a unit cost of \$452.53 per officer “to apply only and solely” to the City of Los Angeles (Exhibit A)
- 08/13/2010 Department of Finance files comments opposing the request (Exhibit B)
- 08/13/2010 State Controller’s Office files comments opposing the request (Exhibit C)
- 08/17/2011 Draft staff analysis issued for comment (Exhibit D)
- 09/07/2011 Department of Finance files comments agreeing with draft staff analysis (Exhibit E)
- 09/09/2011 City of Los Angeles files comments on the draft staff analysis (Exhibit F)
- 10/27/2011 Claimant requests that matter be postponed to March 23, 2012 Commission hearing, and Commission grants postponement

I. Background

This item addresses a request to amend the parameters and guidelines for the *Peace Officers Procedural Bill of Rights* (POBOR) program to add a reasonable reimbursement methodology (RRM) in the form of a unit cost applicable only to claims filed by the City of Los Angeles for some of the reimbursable activities. Pursuant to Government Code section 17557(d)(2)(C), a request to amend the parameters and guidelines may be filed to include an RRM for all or some of the reimbursable activities. The Commission may, after public notice and a hearing, amend the parameters and guidelines.

The POBOR program provides a series of rights and procedural safeguards to peace officers employed by local agencies that are subject to investigation or discipline. Generally, POBOR prescribes certain procedural protections that must be afforded officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action, as defined by statute, is taken against them, or they are denied promotion on grounds other than merit. The reimbursable activities identified in the parameters and guidelines include the following ongoing activities:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.

- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

Under the current parameters and guidelines, cities, counties, and certain police protection districts are authorized to claim reimbursement for the cost of these activities, beginning July 1, 2006, based either on the actual costs incurred or pursuant to an RRM adopted by the Commission in March 2008 of \$37.25 per full-time sworn peace officer.⁴

Proposal of the City of Los Angeles

The City of Los Angeles requests that the parameters and guidelines be amended to add a second RRM option “to apply only and solely to the City.” The proposed RRM is in the form of a unit cost of \$425.53 per officer to be claimed beginning July 1, 2009, and increased by the implicit price deflator in subsequent years, for all the reimbursable activities *except* for the activity of providing the opportunity for an administrative appeal to officers subject to specified disciplinary actions. Costs incurred to provide the administrative appeal would be based on actual costs incurred.

The City’s proposed unit cost is based on the following information:

The State Controller issued its final audit report for the five fiscal year period from July 1, 2003, through June 30, 2008. The State Controller audit disclosed that \$20,131,194 is allowable. During that same period of time the Los Angeles Police Department had an average of 10,000 filled peace officer positions or 50,000 for the audit period. The actual number of officers for each fiscal year is shown below:

Fiscal Year	No. of Sworn Officers
2003-04	9,215
2004-05	9,146
2005-06	9,284
2006-07	9,442
2007-08	9,609
Five Year Total	<u>46,696</u>

⁴ Amended parameters and guidelines adopted on March 28, 2008 (06-PGA-03/06).

If you divide the \$20,131,194 or total allowable costs, by the five year total of 46,696 peace officers the result or proposed RRM is \$452.53 per officer.

The City of Los Angeles filed comments on the draft staff analysis arguing that the existing RRM of \$37.25 per officer does not offer the City of Los Angeles a reasonable amount of reimbursement for the mandated activities and that it has never filed its POBOR claims using the \$37.25 unit cost rate. By adopting the proposed amended RRM, the City plans to use the new formula, saving the City and the Controller's Office time and costs in the claiming and auditing process. The City also argues the following points:

1. The City's proposal meets all statutory requirements and is consistent with the legislative intent for creating an RRM. The City argues that the purpose of the RRM is to provide local agencies with a reasonable level of reimbursement that may vary by entity. Section 17518.5 allows a separate RRM formula for one agency or a group of agencies that can demonstrate that its eligible costs are significantly different from the whole group of eligible claimants. "When developing an RRM, if it is determined that one or more groupings or categories of local agencies require substantially more or less time or resources that result in higher or lower costs, that difference should be reflected [in an] RRM formula." The City's proposal is justified by its large population, number of sworn officers, POBOR caseload and number of citizen complaints, and the actual costs it incurs for performing the program.
2. In 2008, the Commission rejected a proposed \$302 per officer unit rate RRM for the POBOR program because it did not meet the requirements of an RRM and instead, adopted a unit cost of \$37.25 based on audit reports from cities and counties. One of audit reports relied on by the Commission was the 2007 audit report for the City of Los Angeles. In that audit report, the Controller disallowed over 99% of the costs claimed. However, the City's audit was later revised by the Controller to allow for 17.03% of the costs. The City's proposed RRM here is also based on a final Controller audit of costs that exceed ten times the current RRM amount.
3. Commission staff recognizes the need to ensure reasonable reimbursement is received by each local government entity. The Commission's executive director recently issued a letter for other pending requests to adopt an RRM based on unit rates that stated "staff believes that it is constitutionally permissible to develop an RRM unit cost rate that reasonably reimburses each local agency even if some local agencies receive more and some local agencies receive less than the RRM rate."
4. The Legislature encourages the use RRMs to provide local agencies with a reasonable level of reimbursement. The Commission should be encouraging proposed amendments from other local agencies, such as the City's, to provide a more accurate reflection of statewide costs. The RRM statutes should be interpreted liberally.⁵

⁵ The City also argues that the Commission adopted parameters and guidelines that identify specific dollar amounts to agencies by name in the *Voter Registration Procedures* mandate. The

The City also responded to the points raised by the State Controller's Office regarding the dollar amount of the proposed unit rate.

Position of the State Controller's Office

The State Controller's Office opposes the proposed RRM for the following reasons:

- The amount proposed as an RRM is mathematically incorrect. Allowable costs of \$20,131,194 divided by 46,696 peace officers equals \$431.11, instead of \$452.53.
- The costs reimbursed to the City of Los Angeles' claims for the five fiscal years identified in the proposal were based on a time study that the City conducted during a one-month period in May 2004. It is not appropriate to adopt an RRM to claim costs prospectively based on a time study that is six years old. Also, the time study was based on inconsistent data.
- The Controller also audited the City's reimbursement claims for fiscal years 1994-1995 through 2001-2002. Incorporating the May 2004 time study results to the case statistics reported by the City for fiscal years 1994-1995 through 2001-2002 produces costs substantially less than the proposed per peace officer amount of \$452.53.
- The proposed RRM, which is based on the costs of one agency and applicable only to that agency, does not consider the variation in costs among local agencies to implement the mandate in a cost-efficient manner pursuant to Government Code section 17518.5.

Position of the Department of Finance

The Department of Finance contends the proposed RRM does not meet the requirements in Government Code section 17518.5. The RRM must be based on cost information from a representative sample of eligible claimants and consider the variation of costs among local agencies to implement the mandate in a cost-efficient manner.

II. A proposed RRM based on the costs of one local agency and made applicable to one local agency does not satisfy the requirements of the Government Code.

In this case, the City proposes an RRM to be made applicable only to itself and not to other eligible claimants. The RRM is based on the total costs reimbursed by the State Controller's Office to the City for the POBOR program for five fiscal years (from fiscal year 2003-2004 through 2007-2008), divided by the number of sworn peace officers employed with the City of Los Angeles during that time.

The City's proposal fails for two reasons. First, the proposed RRM does not satisfy the requirements of Government Code section 17518.5. Section 17518.5 states the following:

City asserts that the parameters and guidelines for that program identify six dollar amount categories and each dollar amount is assigned to the 58 counties for the costs of processing voter affidavits. The smaller counties get reimbursed at a higher rate per affidavit (\$.475) than the larger counties (\$.03276)

However, the *Voter Registration Procedures* mandate was a legislatively determined mandate. (Stats. 1975, ch. 704.) Although the State Controller's Office issued claiming instructions for this legislatively determined mandate, the Commission did not adopt a statement of decision or parameters and guidelines for the program.

(a) “Reasonable reimbursement methodology” means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.

(b) *A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants*, information provided by associations of local agencies and school districts, or projections of other local costs.

(c) *A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts* to implement the mandate in a cost-efficient manner.

(d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual costs

(e) A reasonable reimbursement methodology may be developed by any of the following:

- (1) The Department of Finance.
- (2) The Controller.
- (3) An affected state agency.
- (4) A claimant.
- (5) An interested party. (Emphasis added.)

The RRM proposed by the City is not based on cost information from a representative sample of eligible claimants as required by section 17518.5(b). Nor does the proposed RRM consider the variation in costs among other local agencies mandated by the state to comply with the POBOR program as required by section 17518.5(c). There is no authority in Government Code section 17518.5 to allow the adoption of an RRM based on the costs of one local agency.

Second, the City’s suggestion that the Commission can adopt an RRM for only one local agency or should adopt RRMs for each individual local entity in the State that may be eligible to claim reimbursement for a mandated program, contradicts the purpose of the test claim and parameters and guidelines process established by the Legislature. There are 58 counties, 482 cities, 1,131 school districts, and numerous special districts that are be subject to article XIII B and may be entitled to reimbursement under section 6 for any given program. In this case, all counties, cities, and some police protection districts in the State are entitled to reimbursement. The statutory process governing the mandates process does not envision the Commission adopting different conclusions and reimbursement amounts for each individual entity, especially when the test claim process is to be completed with the adoption of a statewide cost estimate within 12 months after receipt of a test claim.⁶

⁶ Government Code section 17553(a)(2).

Rather, the process was adopted as a class action process to resolve disputes affecting multiple local agencies.⁷ The process starts with the filing of a test claim, which is the first claim filed on a statute or executive order that affects and governs other similarly situated local agencies or school districts in the state.⁸ Once a test claim is approved, the Commission is required to adopt parameters and guidelines “for the reimbursement of any claims relating to the statute or executive order.”⁹ Although the Commission has the authority to include an RRM in the parameters and guidelines, the RRM is an “approximation of local costs” mandated by the state and is defined as a “formula for reimbursing local agencies and school districts for costs mandated by the state.” The formula must be based on cost information from a representative sample of all eligible claimants, and must consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.

While there may be occasions when the Commission can appropriately consider separate proposed RRMs included in one set of parameters and guidelines based on the types of entities that may be affected by a mandated program differently (e.g., separate RRMs for rural and urban entities, or large and small districts that have significant population differences), those RRM proposals would still have to comply with the requirements of Government Code section 17518.5 and be based on the cost information from a representative sample of local governments. There is no support in the plain language of the mandates statutes adopted by the Legislature to suggest that the Commission can adopt separate and individual reimbursement amounts for each local entity.

If the City continues to believe that the current RRM of \$37.25 is too low, it has several options. Under the parameters and guidelines, the City can claim reimbursement based on actual costs incurred, subject to the audit of the State Controller’s Office. The City may also file a request to amend the parameters and guidelines to modify the unit cost and provide evidence in the record that complies with all the elements identified in Government Code section 17518.5.

Conclusion

For the foregoing reasons, staff recommends that the Commission adopt this analysis and deny the City of Los Angeles’ request to amend the parameters and guidelines.

⁷ Government Code section 17500; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-332.

⁸ Government Code section 17521.

⁹ Government Code section 17557(a); California Code of Regulations, Title 2, section 1183.1(a)(2).