

**ITEM 10**  
**FINAL STAFF ANALYSIS**  
**PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES**  
**DIRECTED BY THE LEGISLATURE**

Statutes 1975, Chapter 486  
Statutes 1984, Chapter 1459  
Statutes 1995, Chapter 303 (Budget Act of 1995)  
Statutes 1996, Chapter 162 (Budget Act of 1996)  
Statutes 1997, Chapter 282 (Budget Act of 1997)  
Statutes 1998, Chapter 324 (Budget Act of 1998)  
Statutes 1999, Chapter 50 (Budget Act of 1999)  
Statutes 2000, Chapter 52 (Budget Act of 2000)  
Statutes 2001, Chapter 106 (Budget Act of 2001)  
Statutes 2002, Chapter 379 (Budget Act of 2002)  
Statutes 2003, Chapter 157 (Budget Act of 2003)  
Statutes 2004, Chapter 208 (Budget Act of 2004)  
Statutes 2005, Chapter 38 (Budget Act of 2005)

TO ADD:

Statutes 2006, Chapter 47 (Budget Act of 2006)  
Statutes 2007, Chapter 171 (Budget Act of 2007)  
Statutes 2008, Chapter 268 (Budget Act of 2008)  
Statutes 2009-2010, Third Extraordinary Session, Chapter 1 (Budget Act of 2009)

*Mandate Reimbursement Process*  
CSM-4204 and 4485

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**EXECUTIVE SUMMARY**

The *Mandate Reimbursement Process* program allows local agencies and school districts to be reimbursed for costs incurred in preparing and presenting successful test claims to the Commission and submitting reimbursement claims to the State Controller's Office (SCO). Incorrect reduction claims are considered an element of reimbursement claims.

The 2006, 2007, 2008, and 2009 State Budget Acts<sup>1</sup> require the Commission to amend the *Mandate Reimbursement Process* parameters and guidelines as follows:

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<sup>1</sup> Statutes 2006, Chapter 47, Item 0840-001-0001, Provision 7; Statutes 2007, Chapter 171, Item 0840-001-0001, Provision 7; Statutes 2008, Chapter 268, Item 0840-001-0001, Provision 6; Statutes 2009, Chapter 1, Third Extraordinary Session, Item 0840-001-0001, Provision 6.

The Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:

- (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the less of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.
- (b) The maximum amount of reimbursement provided in subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

This language addresses local reimbursement for the costs of contracting with an independent contractor, and is included in Appendix A to the parameters and guidelines. From 1995 through 2005-2006, the Commission amended the parameters and guidelines for the *Mandate Reimbursement Process* and Appendix A to comply with the State Budget Acts that contained the same language.

The Commission did not update the amended parameters and guidelines in 2006 through 2009 because of the Commission's 2006 decision on reconsideration that denied the test claim, effectively ending reimbursement for most of the previously state-mandated activities as of June 30, 2006.

The decision on reconsideration was challenged by the California School Boards Association, local agencies and school districts in Sacramento County Superior Court, Case No. 06CS01335. On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

Set aside as null and void the Statement of Decision on Reconsideration adopted on May 25, 2006, reconsidering its prior decisions in proceedings CSM-4204 and CSM-4485 (Mandate Reimbursement Process) in their entirety, including any modifications made to parameters and guidelines as a result of the May 25, 2006 decision, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

On September 25, 2009, in accordance with the Peremptory Writ of Mandate, the Commission reinstated the original Statement of Decision and the parameters and guidelines (as last amended on September 27, 2005) for the *Mandate Reimbursement Process* program.

## **Proposed Amendments**

The proposed amendments makes the following changes:

- Adds Budget Act citations to the first page of the parameters and guidelines.
- Updates Section III, Period of Reimbursement to conform with 2008 amendments to Government Code section 17560, and includes the following boilerplate language: “There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.” (Page 7).
- Amends footnote 1 of the parameters and guidelines to update and include the following citations to the 2006, 2007, and 2008 State Budget Acts, which suspended the program for local agencies: Statutes 2006, Chapter 47, Item 8885-295-0001, Schedule (3)(y); Statutes 2007, chapter 171, Item 8885-295-0001, Schedule (3)(y); Statutes 2008, chapter 268, Item 8885-295-0001, Schedule (3)(y). (Page 7).
- Adds Budget Act citations to the first page of Appendix A. (Page 23).

## **Comments Filed by the League of Cities and CSAC, Interested Persons**

The League of Cities and CSAC contend that the language in the proposed parameters and guidelines amendment in Section III relating to the Legislature’s suspension of the program for local agencies is legally incorrect in this case on the following grounds:

- There was no program to suspend because of the Commission’s decision on reconsideration, which denied the test claim for *Mandate Reimbursement Process* effective June 30, 2006.
- The suspension language violates the court’s decision in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183.
- The program can never be suspended since it would essentially violate the intent and requirements of article XIII B, section 6.

The League of Cities and CSAC do not dispute the proposed language addressing local reimbursement for the costs of contracting with an independent contractor.

## **Staff Analysis**

Staff disagrees with the comments raised by the League of Cities and CSAC. In 2006, 2007, and 2008, the Legislature enacted the State Budget Acts and specifically included language suspending the *Mandate Reimbursement Process* program (Statutes 2006, Chapter 47, Item 8885-295-0001, Schedule (3)(y); Statutes 2007, chapter 171, Item 8885-295-0001, Schedule (3)(y); Statutes 2008, chapter 268, Item 8885-295-0001, Schedule (3)(y)). The State Budget Acts that suspended the *Mandate Reimbursement Process* program are duly enacted statutes, were not challenged in the *CSBA* case, and thus are presumed to be constitutional. The Commission, as an administrative agency, is prohibited by the California Constitution from refusing to enforce a statute or from declaring a statute unconstitutional. Only the courts have jurisdiction to declare a statute, such as the State Budget Acts, unconstitutional. Thus, staff recommends that the Commission include the Budget Act suspension language in the parameters and guidelines amendment.

## **Staff Recommendation**

Staff recommends that the Commission:

- Adopt this staff analysis.
- Adopt the proposed amendments to the parameters and guidelines, as last amended on September 27, 2005, beginning on page 14.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

## STAFF ANALYSIS

### Chronology

- 03/27/1986 Commission adopts Statement of Decision
- 11/20/1986 Original parameters and guidelines adopted by Commission
- 1995–2006 Parameters and guidelines amended to comply with State Budget Act
- 05/25/2006 Commission reconsidered Statement of Decision as directed by Statutes 2005, chapter 72 (AB 138) and denied the claim
- 07/28/2006 Commission amended the parameters and guidelines consistent with the decision on reconsideration
- 03/09/2009 Third District Court of Appeal issued published decision in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, finding that the Legislature’s direction to reconsider the program violates the separation of powers doctrine of the California Constitution<sup>2</sup>
- 07/13/2009 Sacramento County Superior Court, Case No. 06CS01335, issued the Judgment and Peremptory Writ of Mandate directing the Commission to set aside as null and void the Statement of Decision on reconsideration and any modifications to the parameters and guidelines, and to reinstate previous determinations<sup>3</sup>
- 09/25/2009 Commission complies with Peremptory Writ of Mandate and reinstates original Statement of Decision and parameters and guidelines<sup>4</sup>
- 02/18/2010 Draft staff analysis and proposed parameters and guidelines amendment issued to comply with the 2006, 2007, 2008, and 2009 State Budget Acts.<sup>5</sup>
- 03/10/2010 Comments on the draft staff analysis filed by the League of Cities and CSAC<sup>6</sup>

### Summary of the Program and Proposed Amendments

On March 27, 1986, the Commission on State Mandates (Commission) determined that Statutes 1975, chapter 486, and Statutes 1984, chapter 1459 imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs. The original parameters and guidelines for this program were adopted on November 20, 1986.

The *Mandate Reimbursement Process* program allows local agencies and school districts to be reimbursed for costs incurred in preparing and presenting successful test claims to the

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<sup>2</sup> Exhibit C.

<sup>3</sup> Exhibit C.

<sup>4</sup> Exhibit C.

<sup>5</sup> Exhibit A. The following statutes directed this parameters and guidelines amendment: Statutes 2006, Chapter 47, Item 0840-001-0001, Provision 7; Statutes 2007, Chapter 171, Item 0840-001-0001, Provision 7; Statutes 2008, Chapter 268, Item 0840-001-0001, Provision 6; Statutes 2009, Chapter 1, Third Extraordinary Session, Item 0840-001-0001, Provision 6.

<sup>6</sup> Exhibit B.

Commission and submitting reimbursement claims to the State Controller's Office (SCO). Incorrect reduction claims are considered an element of reimbursement claims.

Beginning in 1995 and through fiscal year 2005-2006, the State Budget Act has included the following supplemental language in the support appropriations for the SCO and the Commission.

The Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:

- (c) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the less of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.
- (d) The maximum amount of reimbursement provided in subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

This language addresses local reimbursement for the costs of contracting with an independent contractor, and is included in Appendix A to the parameters and guidelines.

And each year through 2005-2006, the Commission amended the parameters and guidelines for the *Mandate Reimbursement Process* and Appendix A to comply with the most recently enacted State Budget Act.

Statutes 2005, chapter 72 (AB 138) directed the Commission to reconsider the Statement of Decision for the *Mandate Reimbursement Process* program. On May 25, 2006, the Commission reconsidered the Statement of Decision as directed by the Legislature, denied the test claim and adopted a new Statement of Decision. On July 28, 2006, the Commission amended the parameters and guidelines for this program, effectively ending reimbursement for most of the previously state-mandated activities as of June 30, 2006.

These actions on reconsideration were challenged by the California School Boards Association, local agencies and school districts in Sacramento County Superior Court, Case No. 06CS01335. Finally, on March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. The court directed that the Commission set aside its orders setting aside the Statements of Decision and to reinstate the prior decisions. (*Id.* at p. 1218.)

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

Set aside as null and void the Statement of Decision on Reconsideration adopted on May 25, 2006, reconsidering its prior decisions in proceedings CSM-4204 and CSM-4485 (Mandate Reimbursement Process) in their entirety, including any modifications made to parameters and guidelines as a result of the May 25, 2006 decision, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

On September 25, 2009, in accordance with the Peremptory Writ of Mandate, the Commission reinstated the original Statement of Decision and the parameters and guidelines (as last amended on September 27, 2005) for the *Mandate Reimbursement Process* program.

Although the Budget Acts of 2006, 2007, 2008, and 2009 included the same supplemental language in the SCO budget,<sup>7</sup> the Commission did not update the amended parameters and guidelines because of its 2006 decision on reconsideration which denied the test claim.

However, now that the Commission has reinstated the original Statement of Decision and amended parameters and guidelines, the Commission is required to amend the *Mandate Reimbursement Process* parameters and guidelines (as last amended September 27, 2005) to comply with the Budget Acts of 2006, 2007, 2008, and 2009. The proposed amendment makes the following changes:

- Adds Budget Act citations to the first page of the parameters and guidelines.
- Updates Section III, Period of Reimbursement to conform with 2008 amendments to Government Code section 17560, and includes the following boilerplate language: “There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.” (Page 7).
- Amends footnote 1 of the parameters and guidelines to add the following citations to the suspended program for local agencies in the 2006, 2007, and 2008 budgets: Statutes 2006, Chapter 47, Item 8885-295-0001, Schedule (3)(y); Statutes 2007, chapter 171, Item 8885-295-0001, Schedule (3)(y); Statutes 2008, chapter 268, Item 8885-295-0001, Schedule (3)(y). (Page 7).
- Adds Budget Act citations to the first page of Appendix A. (Page 23).

The draft staff analysis and proposed parameters and guidelines amendment were issued on February 18, 2010. On March 10, 2010, the League of Cities and the California State Association of Counties (CSAC) filed comments on the draft staff analysis.

### **Comments Filed by the League of Cities and CSAC, Interested Persons**

The League of Cities and CSAC contend that the language in the proposed parameters and guidelines amendment in Section III relating to the Legislature’s suspension of the program for local agencies is legally incorrect in this case on the following grounds:

- The *Mandate Reimbursement Process* program ceased to exist from June 30, 2006, until September 2009 because of the Commission’s decision on reconsideration. Thus, there was no program to suspend and the requirements to suspend outlined in Government Code section 17581 are impossible to meet.
- To argue that the reinstatement of the program following the *CSBA* decision also reinstated the suspension language in the State Budget Acts reads too much into the court’s decision. The court order is “silent as to any suspension and leaves the Commission little latitude except to act as directed.”

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<sup>7</sup> Statutes 2006, Chapter 47, Item 0840-001-0001, Provision 7; Statutes 2007, Chapter 171, Item 0840-001-0001, Provision 7; Statutes 2008, Chapter 268, Item 0840-001-0001, Provision 6; Statutes 2009, Chapter 1, Third Extraordinary Session, Item 0840-001-0001, Provision 6.

- The *Mandate Reimbursement Process* program can never be suspended. “As set forth in Government Code section 17581, suspension relieves local agencies from implementing or giving effect to the mandated program during that budget year. As a result, the performance of any mandated activities becomes voluntary. Since the Commission process is the ‘sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state’ (Government Code section 17552) suspension of MRP would negate such exclusivity, undermine the intent of the process, and throw open the doors of the courts as a remedy for unfunded mandates.”

The League of Cities and CSAC do not dispute the proposed language addressing local reimbursement for the costs of contracting with an independent contractor.

**Issue: Should the Commission amend the parameters and guidelines to include language regarding the Legislature’s suspension of the *Mandate Reimbursement Process* program in the 2006, 2007, and 2008 State Budget Acts?**

Section III of the proposed parameters and guidelines states in relevant part the following:

6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

The footnote to this provision updates the citations to the State Budget Act suspensions as follows:

Statutes 2005, chapter 38 (SB 77), Item 8885-295-0001, Schedule 3 (ff).—Statutes 2006, Chapter 47, Item 8885-295-0001, Schedule (3)(y); Statutes 2007, chapter 171, Item 8885-295-0001, Schedule (3)(y); Statutes 2008, chapter 268, Item 8885-295-0001, Schedule (3)(y).

The League of Cities and CSAC object to this language, arguing that (1) there was no program to suspend because of the Commission’s decision on reconsideration; (2) the suspension language violates the court’s decision in the *CSBA* case; and (3) the program can never be suspended since it would essentially violate the intent and requirements of article XIII B, section 6.

For the reasons outlined below, staff disagrees with these comments. The 2006, 2007, and 2008 State Budget Acts that suspended the *Mandate Reimbursement Process* program are duly enacted statutes, were not challenged in the *CSBA* case, and thus are presumed to be constitutional. The Commission, as an administrative agency, is prohibited from refusing to enforce a statute or from declaring a statute unconstitutional. Thus, staff recommends that the Commission include the Budget Act suspension language in the parameters and guidelines amendment.

Government Code section 17581 allows the Legislature to suspend a program determined to be a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution. In order to suspend a mandated program, the program must be specifically identified in the schedule of reimbursable mandates in the State Budget Act and assigned a \$0 appropriation. Once a program is suspended, the program becomes voluntary – no local agency is required to implement or give effect to any statute or executive order during the fiscal years in which the program is suspended. Government Code section 17581 states in relevant part the following:

- (a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following

that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

- (1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.
- (2) The statute or executive order, or portion thereof, or the commission's test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

In 2006, 2007, and 2008, the Legislature enacted the State Budget Acts and specifically included language suspending the *Mandate Reimbursement Process* program (Statutes 2006, Chapter 47, Item 8885-295-0001, Schedule (3)(y); Statutes 2007, chapter 171, Item 8885-295-0001, Schedule (3)(y); Statutes 2008, chapter 268, Item 8885-295-0001, Schedule (3)(y)). These statutes are duly enacted statutes and, thus, the Commission is required by law to presume the statutes to be constitutional.<sup>8</sup> Further, Article III, section 3.5 of the California Constitution prohibits administrative agencies, such as the Commission, from refusing to enforce a statute or from declaring a statute unconstitutional. Article III, section 3.5 states in relevant part the following:

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- (b) To declare a statute unconstitutional;

[¶]

Only the courts have jurisdiction to declare a statute, such as the State Budget Acts, unconstitutional.<sup>9</sup>

Moreover, the State Budget Acts were not challenged in the *CSBA* case as implied by the League of Cities and CSAC. The *CSBA case addressed the Commission's decisions on the Reconsideration of Open Meetings Act/Brown Act Reform, Reconsideration of School Accountability Report Cards, Reconsideration of Mandate Reimbursement Process, and the Mandate Reimbursement Process II* test claim. Petitioners sought to set aside the actions of the Commission on the ground that the reconsideration statutes (Stats. 2004, ch. 895 (AB 2855); Stats. 2005, ch. 677 (SB 512); and Stats. 2005, ch. 72 (AB 138)) were unconstitutional and that the amendment to Government Code section 17556, subdivision (f), by

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<sup>8</sup> *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1302. (Exhibit C.)

<sup>9</sup> *Fenske v. Public Employees Retirement System* (1980) 103 Cal.App.3d 590, 595. (Exhibit C.)

AB 138 was unconstitutional.<sup>10</sup> There was no challenge to the State Budget Act suspension of the *Mandate Reimbursement Process* program.

The court in *CSBA* held that the statutes directing prior Commission decisions to be set aside or reconsidered were unconstitutional, went beyond the power of the Legislature, and violated the separation of powers doctrine set forth in Article III, section 3 of the California Constitution. With this ruling, the Commission had no jurisdiction to reconsider the prior final decision of *Mandate Reimbursement Process*, or any other decision at issue in the case. When an administrative agency makes a decision without authority, that decision is void and unenforceable.<sup>11</sup> Thus, the court directed the Commission to set aside its orders setting aside the original Statements of Decision and to reinstate the prior decisions.<sup>12</sup>

On July 13, 2009, the Sacramento County Superior Court, Case No. 06CS01335, issued a Judgment and Peremptory Writ of Mandate Following Appeal directing the Commission to:

Set aside as null and void the Statement of Decision on Reconsideration adopted on May 25, 2006, reconsidering its prior decisions in proceedings CSM-4204 and CSM-4485 (*Mandate Reimbursement Process*) in their entirety, including any modifications made to parameters and guidelines as a result of the May 25, 2006 decision, and you are further directed to reinstate the previous determinations of the Commission in those proceedings.

On September 25, 2009, in accordance with the Peremptory Writ of Mandate, the Commission fully complied with the writ, set aside the Statement of Decision and parameters and guidelines on reconsideration in *Mandate Reimbursement Process* as *null and void*, and reinstated the original Statement of Decision and the parameters and guidelines (as last amended on September 27, 2005) for the *Mandate Reimbursement Process* program.

Thus, the court has not declared the State Budget Acts suspending the *Mandate Reimbursement Process* program unconstitutional, nor does the suspension language violate the court's ruling in *CSBA*.

Finally, the Commission cannot decide the issue raised by the League of Cities and CSAC, that the *Mandate Reimbursement Process* program can never be suspended since it would essentially violate the intent and requirements of article XIII B, section 6. This argument raises a constitutional challenge to the Legislature's suspension of this program, and as indicated above, the Commission has no authority to declare a statute unconstitutional or unenforceable.

Accordingly, staff recommends that the Commission include the Budget Act suspension language in the parameters and guidelines amendment.

### **Staff Recommendation**

Staff recommends that the Commission:

- Adopt this staff analysis.
- Adopt the proposed amendments to the parameters and guidelines, as last amended on September 27, 2005, beginning on page 14.

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<sup>10</sup> *CSBA v. State of California* (2009) 171 Cal.App.4th 1183, 1191-1198. (Exhibit C.)

<sup>11</sup> *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 679. (Exhibit C.)

<sup>12</sup> *CSBA, supra*, 171 Cal.App.4th 1183, 1218.

- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.