

COMMISSION ON STATE MANDATES

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May 8, 2013

Ms. Evelyn Tseng
City of Newport Beach
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92659-1769

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

Re: **Proposed Parameters and Guidelines and Statement of Decision
and Notice of Hearing**

Peace Officers Procedural Bill of Rights II, 03-TC-18
Statutes 1976, Chapter 465; Statutes 1998, Chapter 786;
Statutes 2000, Chapter 209; and Statutes 2002, Chapter 170
City of Newport Beach, Claimant

Dear Ms. Tseng:

The proposed parameters and guidelines and statement of decision for the above-named matter are enclosed.

Hearing

This matter is set for hearing on **Friday, May 24, 2013**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Jason Hone at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM 6
PROPOSED PARAMETERS AND GUIDELINES
AND
STATEMENT OF DECISION

Government Code Sections 3304, 3306.5, 3309 and 3312
Statutes 1976, Chapter 465; Statutes 1998, Chapter 786;
Statutes 2000, Chapter 209; and Statutes 2002, Chapter 170

Peace Officers Procedural Bill of Rights II

03-TC-18
City of Newport Beach, Claimant

EXECUTIVE SUMMARY

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission on State Mandates' (Commission's) regulations. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission's regulations.¹ Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.² Oral or written testimony is offered under oath or affirmation in article 7 hearings.³

I. Summary of the Mandate

The *Peace Officers Procedural Bill of Rights II* (03-TC-18) test claim addresses amendments to activities associated with the Peace Officers Procedural Bill of Rights Act (POBOR) (Gov. Code, § 3300 et seq.). POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies, school districts, and special districts that are subject to investigation or discipline.

On December 1, 2011, the Commission adopted a statement of decision for the test claim finding that Government Code sections 3304, 3306.5, 3309 and 3312, as amended by the test claim statutes, impose reimbursable state-mandated programs on cities, counties, cities and counties, and special police protection districts named in Government Code section 53060.7,⁴ within the

¹ California Code of Regulations, Title 2, section 1187.

² Government Code section 17559(b); California Code of Regulations, Title 2, 1187.5.

³ *Ibid.*

⁴ Government Code section 53060.7 identifies Bear Valley Community Services District, the Broadmoor Police Protection District, the Kensington Police Protection and Community Services

meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514.

The reimbursable state-mandated program activities address notices required to be provided to an officer in order to take disciplinary action, access to officer personnel files, and the notice requirements to search an officer's locker.

Procedural History

On December 1, 2011, the Commission adopted a statement of decision for the test claim. On January 5, 2012, the claimant submitted proposed parameters and guidelines to the Commission. On February 17, 2012, the State Controller's Office (SCO) filed comments on the proposed parameters and guidelines. On April 12, 2013, the Commission issued a draft staff analysis and proposed parameters and guidelines with a comment period ending on May 3, 2013. On April 26, 2013, the SCO filed comments on the draft staff analysis and proposed parameters and guidelines. The SCO comments are addressed in the staff analysis. On May 3, 2013 the Department of Finance (Finance) filed comments stating that they had no concern with the reimbursable activities as they appear to be consistent with the test claim statement of decision.

II. Staff Analysis

The language of *section IV. Reimbursable Activities* in the claimant's proposed parameters and guidelines is largely consistent with the reimbursable activities adopted in the test claim decision. The claimant has included additional language to clarify the steps involved in providing a notice. Pertaining to a written notice, the claimant has described "provide" as "draft, review, edit, approve, serve and file." Staff recommends approving this clarifying language with the exception of "serve and file." Draft, review, edit, and approve clarify steps in the preparation of a written notice. However, serving and filing are not required by the plain language of the statutes and there is no evidence in the record that they are reasonably necessary to comply with the mandated activities. Therefore, staff has deleted the activities to "serve and file" and made minor edits for grammatical clarity.

The claimant's proposed parameters and guidelines include additional activities that go beyond the scope of the mandate approved by the Commission. The test claim statement of decision allows reimbursement for the following activity:

Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer.

The claimant is proposing that reimbursement for this activity include "schedule appointment to inspect personnel file, monitor officer while he or she reviews information and payment of officer for time away from normal duty." In the test claim statement of decision, the Commission found that the plain language of Government Code section 3306.5(b) requires the local agency to "make the file or copy thereof available within a reasonable period of time after a request by the officer." Although it is conceivable that it could be reasonably necessary to schedule an appointment and to monitor an officer reviewing a personnel file in order to "make the personnel file or copy thereof available," claimant has put no evidence in the record to

District, the Lake Shastina Community Services District, and the Stallion Springs Community Services District.

support a finding that this is so. Moreover, with regard to paying the officer for time away from normal duty, the Commission specifically found, in the test claim decision, that the statute does not require reimbursement for the salary of the officer while the officer inspects his or her personnel file. The Commission's statement of decision on the test claim states the following:

Although, as argued by the claimant, an employer may have to pay officers that inspect personnel records while on duty, this section does not require that an officer inspect his or her file while on duty. The activity imposed by section 3306.5(a) is for an employer to permit an officer to inspect the officer's personnel files. The provision that the officer shall be permitted to do so "with no loss of compensation" does not impose an activity on employers.⁵

Therefore, these additional activities have been deleted from the proposed parameters and guidelines.

The reimbursable activities performed by counties upon receipt of a request by an officer to inspect his or her personnel files (Gov. Code § 3306.5) have been modified for consistency with the test claim statement of decision. Permitting an officer to inspect his or her personnel files, *excluding letters of reference and records relating to the investigation of a possible criminal offense* does not constitute new programs or higher levels of service as applied to county employers because prior law required that inspection be allowed at reasonable intervals during the regular business hours of the employer. Therefore, language has been added to indicate that activities 5(b) through 5(e) for counties are reimbursable only when performed in connection to a peace officer's inspection of letters of reference and records relating to the investigation of a possible criminal offense.

The claimant's proposed parameters and guidelines include boilerplate language in section V, authorizing eligible claimants to receive reimbursement for the direct costs of training. Training has not been approved by the Commission as a reimbursable activity, and there is no evidence in the record that training is reasonably necessary to comply with the mandated activities. Thus, the direct cost of training has been deleted from the claimant's proposed parameters and guidelines.

The SCO's comments on the claimant's proposed parameters and guidelines stated that timesheets should be included as potential evidence supporting a source document and suggested minor edits to sections V and VIII "to change the boilerplate language for consistency." SCO's comments also recommended an edit to *Section VIII State Controller's Claiming Instructions* noting that current law allows 90 days for the SCO to issue claiming instructions, rather than 60 days as was included in the claimant's proposed parameters and guidelines. Staff has incorporated the SCO comments in sections V and VIII of the proposed parameters and guidelines. However, the SCO's suggested edits to *section VII Offsetting Revenues and Reimbursements* were not incorporated because the language in this section of the claimant's proposed parameters and guidelines conforms to the most current boilerplate. In comments received on April 26, 2013, the SCO recommended removal of "school districts" from the brief program description under "Section I. Summary of the Mandate" in the statement of decision because school districts are not eligible for reimbursement. Since the purpose of the "Summary

⁵ Exhibit A, Test Claim Statement of Decision adopted December 1, 2011, p.27.

of the Mandate” section of the statement of decision is to provide broad general background on the overall nature of the program and not to identify eligible claimants, staff recommends that the Commission not remove “school districts” from the general program description. The SCO also recommended clarifying language for activity 6. d. Staff is recommending adoption of parameters and guidelines that include the revised language as suggested by the SCO.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision and the attached parameters and guidelines. Staff further recommends that the Commission authorize staff to make non-substantive, technical corrections to the statement of decision and parameters and guidelines following the Commission hearing on this matter.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
FOR:

Government Code Sections 3304, 3306.5,
3309 and 3312

Statutes 1976, Chapter 465; Statutes 1998,
Chapter 786; Statutes 2000, Chapter 209; and
Statutes 2002, Chapter 170

Period of reimbursement begins July 1, 2002,
or later for specified activities added by
subsequent statutes.

Case No.: 03-TC-18

Peace Officer Procedural Bill of Rights II

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500 ET SEQ.;
CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION
2, CHAPTER 2.5, ARTICLE 7.

(Adopted May 24, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on May 24, 2013. [Witness list will be included in the final statement of decision.] The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision and parameters and guidelines by a vote of [vote count will be included in the final statement of decision].

I. Summary of the Mandate

The *Peace Officers Procedural Bill of Rights II* (03-TC-18) test claim addresses amendments associated with the Peace Officers Procedural Bill of Rights Act (POBOR) (Gov. Code, § 3300 et seq.). POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies, school districts, and special districts that are subject to investigation or discipline.

On December 1, 2011, the Commission adopted a statement of decision for the test claim finding that Government Code sections 3304, 3306.5, 3309 and 3312, as amended by the test claim statutes, impose reimbursable state-mandated programs on cities, counties, cities and counties, and special police protection districts named in Government Code section 53060.7,⁶ within the

⁶ Government Code section 53060.7 identifies Bear Valley Community Services District, the Broadmoor Police Protection District, the Kensington Police Protection and Community Services District, the Lake Shastina Community Services District, and the Stallion Springs Community Services District.

meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514 for the following activities:

1. Provide a chief of police that is dismissed with a written notice and the reason or reasons for the dismissal when the charges supporting the dismissal *do not* damage the chief of police's ability to find other employment and trigger existing notice requirements under the due process clause of the United States and California Constitutions. (Gov. Code, § 3304(c) (Stats. 1998, ch. 786).)
2. Within one year of discovery of any misconduct, provide notice to the peace officer being investigated that he or she may face disciplinary action after the investigation is completed. (Gov. Code, § 3304(d) (Stats. 1998, ch. 786).)
3. After the investigation and any predisciplinary response or procedure utilized by the employer, notify the peace officer in writing that the employer has decided to impose discipline on the officer. (Gov. Code, § 3304(f) (Stats. 1998, ch. 786)):
 - a. Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest *are not* affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
 - b. Transfer of permanent, probationary and at-will employees for purposes of punishment;
 - c. Denial of promotion for permanent, probationary, and at-will employees for reasons other than merit; and
 - d. Other actions against permanent, probationary, and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Conducting investigations is not reimbursable.

4. Provide notice in order to take any of the following disciplinary actions for wearing a pin or displaying any other item containing the American flag (Gov. Code, § 3312 (Stats. 2002, ch. 170)):
 - a. Dismissal of a probationary or at-will officer when the charges supporting the dismissal *do not* damage the officer's ability to find other employment;
 - b. Demotion, suspension, salary reduction, or written reprimand of a probationary or at-will officer;
 - c. Transfer for purposes of punishment of a permanent, probationary, or at-will officer;
 - d. Denial of promotion to a permanent, probationary, or at-will officer; and
 - e. Other actions against permanent, probationary, or at-will officer that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the officer.

The notice must include: (1) a statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag; (2) a citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates; and (3) a statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to the applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

5. Perform the following activities upon receipt of a request by an officer to inspect his or her personnel files (Gov. Code, § 3306.5):

Counties

- a. Permit a peace officer to inspect letters of reference and records relating to the investigation of a possible criminal offense if they are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a) (Stats. 2000, ch. 209).)
- b. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b) (Stats. 2000, ch. 209).)
- c. Make an officer's written request to correct or delete a portion of the officer's personnel file, which the officer believes to be mistakenly or unlawfully placed in the file, part of the officer's personnel file. (Gov. Code, § 3306.5(c) (Stats. 2000, ch. 209).)
- d. Within 30 days of receiving an officer's request to correct or delete a portion of his or her personnel file pursuant to Government Code section 3306.5(c), grant the request and make the requested changes or notify the officer of the decision to refuse the request. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)
- e. If the employer refuses to grant the request, in whole or in part, state in writing the reasons for refusing the request, and make the written statement part of the requesting officer's personnel file. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)

Cities and Special Police Protection Districts Named in Government Code Section 53060.7

- a. Permit a peace officer to inspect personnel files at reasonable times and intervals, and during usual business hours, upon request by the officer. The personnel files that an officer may inspect are limited to those that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a) (Stats. 2000, ch. 209).)
- b. Make the file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b) (Stats. 2000, ch. 209).)

- c. Make an officer's written request to correct or delete a portion of the officer's personnel file, which the officer believes to be mistakenly or unlawfully placed in the file, part of the officer's personnel file. (Gov. Code, § 3306.5(c) (Stats. 2000, ch. 209).)
 - d. Within 30 days of receiving an officer's request to correct or delete a portion of his or her personnel file pursuant to Government Code section 3306.5(c), grant the request and make the requested changes or notify the officer of the decision to refuse the request. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)
 - e. If the employer refuses to grant the request, in whole or in part, state in writing the reasons for refusing the request, and make the written statement part of the requesting officer's personnel file. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)
6. Notify an officer, either orally or in writing, that a search of the officer's employer assigned locker or storage space will be conducted, if during the course of an investigation into officer misconduct an employer determines it is necessary to conduct a search of the officer's employer assigned locker or storage space. (Gov. Code, § 3309 (Stats. 1976, ch. 465).)

II. Procedural History

On December 1, 2011, the Commission adopted the statement of decision partially approving the test claim.⁷ Pursuant to Government Code section 17557 and section 1183.11 of the Commission's regulations, the claimants submitted proposed parameters and guidelines to the Commission on January 5, 2012.⁸

On February 17, 2012, the State Controller's Office (SCO) filed comments stating that timesheets should be included as potential evidence supporting a source document and suggesting minor edits to sections V, VII, and VIII for consistency with boilerplate language and current statutory language.⁹

On April 12, 2013 the Commission issued a draft staff analysis and proposed parameters and guidelines with a comment period ending on May 3, 2013.¹⁰

On April 26, 2013 the SCO filed comments recommending a minor edit to the summary of the mandate found in the proposed statement of decision and revised language for clarity and consistency in section IV of the parameters and guidelines.¹¹

⁷ Exhibit A, Test Claim Statement of Decision adopted December 1, 2011.

⁸ Exhibit B, Claimant's Proposed Parameters and Guidelines dated January 5, 2012.

⁹ Exhibit C, State Controller's Office Comments dated February 17, 2012.

¹⁰ Exhibit D, Draft Staff Analysis and Proposed Parameters and Guidelines issued April 12, 2013.

¹¹ Exhibit E, State Controller's Office Comments dated April 26, 2013.

On May 3, 2013 the Department of Finance (Finance) filed comments stating that they had no concern with the reimbursable activities as they appear to be consistent with the test claim statement of decision.¹²

III. Commission Findings

The Commission reviewed the claimants' proposed parameters and guidelines, the adopted statement of decision on the test claim and the comments received. Non-substantive, technical changes for purposes of clarification, consistency, and conformity to the statement of decision and statutory language have been made. In comments received on April 26, 2013, the SCO recommended removal of "school districts" from the following sentence in *Section I Summary of the Mandate* in the proposed statement of decision:

POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies, school districts, and special districts that are subject to investigation or discipline.

To support that recommendation, the SCO cited the July 31, 2009 amendment of the April 26, 2006 test claim decision for Peace Officer Procedural Bill of Rights (POBOR) (05-RL-4499-01) to deny reimbursement to school districts, community college districts, and special districts that are permitted by statute but not required to employ peace officers who supplement the general enforcement units of cities and counties. Since the purpose of the "Summary of the Mandate" section of the statement of decision is to provide a broad general background on the nature of the program and not to identify eligible claimants, the Commission has not removed "school districts" from the description in section I of this statement of decision. Furthermore, the summary of the mandate in section I of the adopted parameters and guidelines makes no mention of school districts.

The following analysis addresses the substantive changes adopted by the Commission.

A. Reimbursable Activities

The claimant included additional language to clarify the steps involved in providing a notice. Pertaining to a written notice, the claimant described "provide" as "draft, review, edit, approve, serve and file." Staff recommends approving this clarifying language with the exception of "serve and file." Draft, review, edit and approve clarify the steps involved in the preparation of a written notice. However, serving and filing are not required by the plain language of the statute, which only requires that a written notice be *given* to the officer. Furthermore, there is no evidence in the record that it is reasonably necessary to file and serve the written notice to implement the mandated activities. Activities to "serve and file" are not included in the parameters and guidelines for this activity and minor edits have been made for grammatical clarity in the parameters and guidelines.

With regard to 5(b) under *section IV Reimbursable Activities*, the test claim statement of decision approved the following activities:

5. Perform the following activities upon receipt of a request by an officer to inspect his or her personnel files (Gov. Code, § 3306.5):

¹² Exhibit F, Department of Finance Comments dated May 3, 2013.

- a. Permit a peace officer to inspect letters of reference and records relating to the investigation of a possible criminal offense if they are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a) (Stats. 2000, ch. 209).)
- b. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b) (Stats. 2000, ch. 209).)

The claimant's proposed parameters and guidelines request reimbursement for the following activities:

5. Perform the following activities upon receipt of a request by an officer to inspect his or her personnel files (Gov. Code, § 3306.5):
 - a. Permit a peace officer to inspect letters of reference and records relating to the investigation of a possible criminal offense if they are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. This includes schedule appointment to inspect personnel file, monitor officer while he or she reviews information and payment of officer for time away from normal duty. (Gov. Code, § 3306.5(a) (Stats. 2000, ch. 209).)
 - b. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. This includes schedule appointment to inspect personnel file, monitor officer while he or she reviews information and payment of officer for time away from normal duty. (Gov. Code, § 3306.5(b) (Stats. 2000, ch. 209).)

For both (a) and (b), the claimant's proposal states that "[t]his includes schedule appointment to inspect personnel file, monitor officer while he or she reviews information and payment of officer for time away from normal duty." In the test claim statement of decision, the Commission found that the plain language of Government Code section 3306.5(b) requires the local agency to "make the file or copy thereof available within a reasonable period of time after a request by the officer." Although it is conceivable that it could be reasonably necessary to schedule an appointment and to monitor an officer reviewing a personnel file in order to "make the personnel file or copy thereof available," claimant has put no evidence in the record to support a finding that this is so.

Government Code section 17557(a) and section 1183.1 (a)(4) of the Commission's regulations authorize the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program." A finding that an activity is necessary to carry out the mandated program must be supported by evidence in the record.¹³ There is no explanation of

¹³ Government Code section 17559; California Code of Regulations, title 2, sections 1183.14, 1187.5.

why these activities are reasonably necessary to comply with the mandate as required by section 1183.12 of the Commission's regulations. Additionally, there is no evidence in the record to support these assertions.

Moreover, in the analysis on section 3306.5(a), with regard to paying the officer for time away from normal duty, the Commission specifically found in the test claim decision that the statute does not require reimbursement for the salary of the officer while the officer inspects his or her personnel file. The Commission's statement of decision on the test claim states the following:

Although, as argued by the claimant, an employer may have to pay officers that inspect personnel records while on duty, this section does not require that an officer inspect his or her file while on duty. The activity imposed by section 3306.5(a) is for an employer to permit an officer to inspect the officer's personnel files. The provision that the officer shall be permitted to do so "with no loss of compensation" does not impose an activity on employers.¹⁴

That is a final, binding decision of the Commission, and the parameters and guidelines must be consistent with that decision.¹⁵

Therefore, claimant's proposed additional activities are denied.

Accordingly, the proposed parameters and guidelines identify the following reimbursable activity:

Cities and Special Police Protection Districts Named in Government Code Section 53060.7

6. Perform the following activities upon receipt of a request by an officer to inspect his or her personnel files (Gov. Code, § 3306.5):
 - b. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b) (Stats. 2000, ch. 209).)

This activity does not include scheduling appointment to inspect personnel file, monitoring the officer while he or she reviews information, or paying the officer for time away from normal duty.

The claimant's proposed reimbursable activities performed by counties upon receipt of a request by an officer to inspect his or her personnel files (Gov. Code § 3306.5) have been modified for consistency with the test claim statement of decision. Permitting an officer to inspect his or her personnel files, *excluding letters of reference and records relating to the investigation of a possible criminal offense*, does not constitute new programs or higher levels of service as applied to county employers. Prior law required that inspection be allowed at reasonable intervals during the regular business hours of the employer.¹⁶ Therefore, language has been added to indicate that activities 5(b) through 5(e) for counties

¹⁴ Exhibit A, Test Claim Statement of Decision adopted December 1, 2011, p.27.

¹⁵ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1200-1201.

¹⁶ Exhibit A, Test Claim Statement of Decision adopted December 1, 2011, p.28.

are reimbursable only when performed in connection to a peace officer's inspection of letters of reference and records relating to the investigation of a possible criminal offense.

For the same reasons noted above, the claimant's proposed additional activities involving scheduling an appointment, monitoring, and payment of the officer is also denied for reimbursement of counties.

Accordingly, the proposed parameters and guidelines identify the following reimbursable activities for counties:

5. Permit a peace officer to inspect letters of reference and records relating to the investigation of a possible criminal offense if they are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a), Stats. 2000, ch. 209.)

This activity does not include scheduling an appointment to inspect personnel file, monitoring the officer while he or she reviews information, or paying the officer for time away from normal duty.

The following activities are reimbursable only when performed in connection to the officer's inspection of letters of reference and records under the circumstances described above under 5:

- a. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b), Stats. 2000, ch. 209.)

This activity does not include scheduling an appointment to inspect personnel file, monitoring the officer while he or she reviews information, or paying the officer for time away from normal duty.

- b. File in an officer's personnel file a copy of the officer's written request to correct or delete a portion of the officer's personnel file, which the officer believes to be mistakenly or unlawfully placed in the file. (Gov. Code, § 3306.5(c), Stats. 2000, ch. 209.)
- c. Within 30 days of receiving an officer's request to correct or delete a portion of his or her personnel file pursuant to Government Code section 3306.5(c), grant the request and make the requested changes or notify the officer of the decision to refuse the request. This includes reviewing officer's written request for correction(s), making changes as requested, if request is granted, or giving a notice of denial of the officer's request for correction(s) to the officer, if the request is denied. (Gov. Code, § 3306.5(d), Stats. 2000, ch. 209.)
- d. If the employer refuses to grant the request, in whole or in part, draft, review, edit, approve, and file in the requesting officer's personnel file a writing describing the reasons for refusing the request. (Gov. Code, § 3306.5(d), Stats. 2000, ch. 209.)

In comments dated April 26, 2013, the SCO recommended revising language for the following activity:

Cities and Special Police Protection Districts Named in Government Code Section 53060.7

6. Perform the following activities upon receipt of a request by an officer to inspect his or her personnel files (Gov. Code, § 3306.5):
 - d. Within 30 days of receiving an officer's request to correct or delete a portion of his or her personnel file pursuant to Government Code section 3306.5(c), grant the request and make the requested changes or notify the officer of the decision to refuse the request. This includes reviewing officer's written request for correction(s), ~~make changes as requested if request is granted and respond to officer's request for correction(s)~~ making changes as requested, if request is granted, or giving a notice of denial of the officer's request for correction(s) to the officer, if the request is denied. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)

Shown above in underline and strikeout to the language in the draft parameters and guidelines issued on April 12, 2013, the SCO's recommended language for this activity makes it consistent with the description of the same activity for counties (5. c. above). The parameters and guidelines adopted by the Commission include revised language for activity 6. d as recommended by the SCO.

B. Boilerplate Language Regarding Training

The claimant's proposed parameters and guidelines include boilerplate language in section V, authorizing eligible claimants to receive reimbursement for the direct costs of training. Training has not been approved by the Commission as a reimbursable activity, and there is no evidence in the record that training is reasonably necessary to comply with the mandated activities. Thus, the direct cost of training has been deleted from the claimant's proposed parameters and guidelines. Costs incurred by a local agency for training are not eligible for reimbursement.

IV. Conclusion

The Commission adopts this statement of decision and the attached parameters and guidelines.

PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 3304, 3306.5, 3309 and 3312

Statutes 1976, Chapter 465; Statutes 1998, Chapter 786;
Statutes 2000, Chapter 209; and Statutes 2002, Chapter 170

Peace Officers Procedural Bill of Rights II

03-TC-18

Period of reimbursement begins July 1, 2002,
or later for specified activities added by subsequent statutes.

I. SUMMARY OF THE MANDATE

On December 1, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Specifically, the Commission found that specified notices required to be provided to an officer in order to take disciplinary action, activities regarding providing access to officer personnel files, and the notice requirements to search an officer's locker imposed an incremental higher level of service above what was required under prior law.

II. ELIGIBLE CLAIMANTS

Any city, county, city and county, or special police protection district named in Government Code section 53060.7 that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The City of Newport Beach filed the test claim on September 26, 2003, establishing eligibility for reimbursement on or after July 1, 2002. Therefore, costs incurred pursuant to Government Code sections 3304, 3306.5, and 3309 are reimbursable on or after July 1, 2002. However, because Government Code section 3312 was effective January 1 2003, costs incurred pursuant to Government Code section 3312 are reimbursable on or after January 1, 2003.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, timesheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities are reimbursable:

1. Draft, review, edit, and approve a written notice and give it to a chief of police that is dismissed when the charges supporting the dismissal *do not* damage the chief of police's ability to find other employment and trigger existing notice requirements under the due process clause of the United States and California Constitutions. Written notice must be accompanied by the reason or reasons for the dismissal. (Gov. Code, § 3304(c), Stats. 1998, ch. 786.)
2. Within one year of discovery of any misconduct, draft, review, edit, and approve a written notice and give it to the peace officer being investigated, stating that he or she may face disciplinary action after the investigation is completed. (Gov. Code, § 3304(d), Stats. 1998, ch. 786.)

3. After the investigation and any predisciplinary response or procedure utilized by the employer, draft, review, edit, and approve a written notice that the employer has decided to impose discipline on the officer and give it to the peace officer. (Gov. Code, § 3304(f), Stats. 1998, ch. 786):
 - a. Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest *are not* affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
 - b. Transfer of permanent, probationary and at-will employees for purposes of punishment;
 - c. Denial of promotion for permanent, probationary, and at-will employees for reasons other than merit; and
 - d. Other actions against permanent, probationary, and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Conducting investigations is not reimbursable.

4. On or after January 1, 2003, draft, review, edit, and approve a notice in order to take any of the following disciplinary actions for wearing a pin or displaying any other item containing the American flag (Gov. Code, § 3312 (Stats. 2002, ch. 170)):
 - a. Dismissal of a probationary or at-will officer when the charges supporting the dismissal *do not* damage the officer's ability to find other employment;
 - b. Demotion, suspension, salary reduction, or written reprimand of a probationary or at-will officer;
 - c. Transfer for purposes of punishment of a permanent, probationary, or at-will officer;
 - d. Denial of promotion to a permanent, probationary, or at-will officer; and
 - e. Other actions against permanent, probationary, or at-will officer that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the officer.

The notice must include: (1) a statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag; (2) a citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates; and (3) a statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to the applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

Counties

5. Permit a peace officer to inspect letters of reference and records relating to the investigation of a possible criminal offense if they are used or have been used to

determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a) (Stats. 2000, ch. 209).)

This activity does not include scheduling an appointment to inspect personnel file, monitoring the officer while he or she reviews information, or paying the officer for time away from normal duty.

The following activities are reimbursable only when performed in connection to the officer's inspection of letters of reference and records relating to the investigation of a possible criminal offense under the circumstances described above under 5.

- a. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b), Stats. 2000, ch. 209.)

This activity does not include scheduling an appointment to inspect personnel file, monitoring the officer while he or she reviews information, or paying the officer for time away from normal duty.

- b. File in an officer's personnel file a copy of the officer's written request to correct or delete a portion of the officer's personnel file, which the officer believes to be mistakenly or unlawfully placed in the file. (Gov. Code, § 3306.5(c), Stats. 2000, ch. 209.)
- c. Within 30 days of receiving an officer's request to correct or delete a portion of his or her personnel file pursuant to Government Code section 3306.5(c), grant the request and make the requested changes or notify the officer of the decision to refuse the request. This includes reviewing officer's written request for correction(s), making changes as requested, if request is granted, or giving a notice of denial of the officer's request for correction(s) to the officer, if the request is denied. (Gov. Code, § 3306.5(d), Stats. 2000, ch. 209.)
- d. If the employer refuses to grant the request, in whole or in part, draft, review, edit, approve, and file in the requesting officer's personnel file a writing describing the reasons for refusing the request. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)

Cities and Special Police Protection Districts Named in Government Code Section 53060.7

6. Perform the following activities upon receipt of a request by an officer to inspect his or her personnel files (Gov. Code, § 3306.5):
 - a. Permit a peace officer to inspect personnel files at reasonable times and intervals, and during usual business hours, upon request by the officer. The personnel files that an officer may inspect are limited to those that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a), Stats. 2000, ch. 209.)
 - b. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b), Stats. 2000, ch. 209.)

This activity does not include scheduling an appointment to inspect personnel file, monitoring the officer while he or she reviews information, or paying the officer for time away from normal duty.

- c. File in an officer's personnel file a copy of the officer's written request to correct or delete a portion of the officer's personnel file, which the officer believes to be mistakenly or unlawfully placed in the file. (Gov. Code, § 3306.5(c), Stats. 2000, ch. 209.)
 - d. Within 30 days of receiving an officer's request to correct or delete a portion of his or her personnel file pursuant to Government Code section 3306.5(c), grant the request and make the requested changes or notify the officer of the decision to refuse the request. This includes reviewing officer's written request for correction(s), making changes as requested, if request is granted, or giving notice of denial of the officer's request for correction(s) to the officer, if the request is denied. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)
 - e. If the employer refuses to grant the request, in whole or in part, draft, review, edit, approve, and file in the requesting officer's personnel file a writing describing the reasons for refusing the request. (Gov. Code, § 3306.5(d), Stats. 2000, ch. 209.)
7. Notify an officer, either orally or in writing, that a search of the officer's employer assigned locker or storage space will be conducted, if during the course of an investigation into officer misconduct an employer determines it is necessary to conduct a search of the officer's employer assigned locker or storage space. For written notices this also includes drafting, reviewing, editing, and approving the notice. (Gov. Code, § 3309, Stats. 1976, ch. 465.)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant.

Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)).

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code

adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record is on file with the Commission.

Commission on State Mandates

Original List Date: 10/3/2003
Last Updated: 4/12/2013
List Print Date: 04/12/2013
Claim Number: 03-TC-18
Issue: Peace Officers Procedural Bill of Rights II

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. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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