

Item 8

**Final Staff Analysis
Proposed Statewide Cost Estimate**

\$9,674,284

(Approximate Prospective Cost of \$1,719,552 Annually)

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act

02-TC-10 and 02-TC-51

STAFF ANALYSIS

Background and Summary of the Mandate

The California Public Records Act (CPRA) has long required the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education.

On May 26, 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 and K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Specifically, the Commission found that the test claim statutes imposed an incremental higher level of service only for the limited activities specified below which do not include the primary Public Records Act activities of providing access to public records for review or providing paper copies of such records, since those activities were not new. Parameters and guidelines were adopted on April 19, 2013 and corrected on July 26, 2013¹ approving the reimbursable activities described below under the *Reimbursable Activities* section.

Eligible claimants were required to file initial reimbursement claims (for costs incurred between fiscal years 2001-2002 and 2012-2013) with the State Controller's Office (SCO) by February 28, 2014. Late initial reimbursement claims may be filed until February 28, 2015.

Eligible Claimants and Period of Reimbursement

Any city; county; city and county; special district subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes; or any "school district" as defined in Government Code section 17519 which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

¹ Exhibit A.

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 County of Los Angeles filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred pursuant to the test claim statutes are reimbursable on or after July 1, 2001.

Reimbursable Activities

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

B. Ongoing Activities

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:

- a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
- 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
- 3) Sending or transmitting the notice to the requestor.

- b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
- 3) Sending or transmitting the notice to the requestor.

- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
- 3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining

whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
 - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and

their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

- b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

Statewide Cost Estimate

Assumptions

Staff reviewed the reimbursement claims data submitted by approximately 160 local agencies, 29 school districts, and two community college districts and compiled by the SCO.² The actual claims data showed that 1124 initial claims were filed for a 12-year period including fiscal years 2001-2002 through 2012-2013 for a total of \$9,674,284. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
 - There are currently 482 cities, 58 counties and over 6,000 special districts in California. Combined, only 160 local agencies filed reimbursement claims totaling just over nine million dollars for this program for a 12-year period including fiscal years 2001-2002 through 2012-2013. Likewise, there are 1043 school districts and 58 county offices of education (COEs). Yet only 29 districts and no COEs filed claims totaling \$473,409. Finally, only two of the 72 community college districts in the state filed claims for a total of \$25,705. If other eligible claimants file late or amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial reimbursement claims for this program for fiscal years 2001-2002 through 2012-2013 may be filed until February 28, 2015.
 - There also may be several reasons that non-claiming local agencies, school districts, and community college districts did not file reimbursement claims in the initial claiming period, including but not limited to: (1) they did not incur more than \$1,000 in increased costs for this program; (2) they did not have supporting documentation to file a reimbursement claim; and (3) they determined that the elaborate claiming process and long-delays in reimbursement did not warrant the investment of necessary staff time.
 - Additionally, the number of claimants that submitted reimbursement claims and the total costs claimed in the initial claiming period, in all 12 fiscal years for local agencies as well as school districts, are trending upward. It is likely that the number of claimants that submit reimbursement claims as well as the cost of the activities will continue to increase moving forward.

² Exhibit B. Claims data reported as of March 13, 2014.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate.*
 - The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable.
 - The state-mandated reimbursable activities represent only an incremental increase in the level of service required under prior law. Therefore, it is possible that claimants may submit invalid claims based on activities that exceed the limited scope of this program.
 - Only those special districts subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes are eligible claimants. Therefore, it is possible that some of the claims may have been submitted by ineligible claimants.
 - Some local agencies assert that they may not file reimbursement claims because the elaborate claiming process and long-delays in reimbursement do not warrant the investment of necessary staff time. This may include some agencies that did file initial claims.

Methodology

Fiscal Years 2001-2002 through 2012-2013

The statewide cost estimate for fiscal years 2001-2002 through 2012-2013 was developed by totaling the 1124 reimbursement claims filed with the SCO for these years totaling \$9,674,284. Staff finds that the averages for the most recent three-year period are most indicative of potential future costs. For the most recent three-year period, costs averaged \$1,719,552 annually.

Following is a breakdown of estimated costs per fiscal year:

| Fiscal Year | # of Local Claims | Local Totals | # of School Claims | School Totals | # of CCD Claims | CCD Totals |
|-------------------------|--------------------------|---------------------|---------------------------|----------------------|------------------------|--------------------|
| 2001-2002 | 35 | \$220,290 | 1 | \$1,464 | - | - |
| 2002-2003 | 42 | \$252,852 | 2 | \$3,363 | - | - |
| 2003-2004 | 47 | \$299,186 | 2 | \$3,454 | - | - |
| 2004-2005 | 51 | \$329,837 | 2 | \$3,432 | - | - |
| 2005-2006 | 57 | \$382,715 | 6 | \$19,255 | - | - |
| 2006-2007 | 69 | \$485,586 | 7 | \$45,752 | - | - |
| 2007-2008 | 83 | \$568,344 | 5 | \$9,928 | - | - |
| 2008-2009 | 97 | \$843,199 | 6 | \$24,641 | - | - |
| 2009-2010 | 115 | \$978,139 | 9 | \$44,191 | - | - |
| 2010-2011 | 135 | \$1,242,492 | 14 | \$73,153 | - | - |
| 2011-2012 | 139 | \$1,548,724 | 19 | \$111,773 | 2 | \$21,388 |
| 2012-2013 | 157 | \$2,023,806 | 21 | \$133,003 | 1 | \$4,317 |
| TOTAL | 1027 | \$9,175,170 | 94 | \$473,409 | 3 | \$25,705 |
| TOTAL ALL CLAIMS | | | | | | \$9,674,284 |

Draft Staff Analysis and Proposed Statewide Cost Estimate

Commission staff issued a draft staff analysis on March 25, 2014.³ On April 7, 2014, the California Special Districts Association (CSDA) filed comments⁴ largely agreeing with the assumptions in the draft staff analysis but submitting that while many special districts may have incurred the minimum \$1,000 to file reimbursement claims, they often do not file for reimbursement because of the “elaborate claiming process and long-delays in reimbursement.” Commission staff has added this reason to the assumptions regarding why the total amount of reimbursement for this program may be higher or lower than the statewide cost estimate.

CSDA also suggested that the number of special districts that claim reimbursement in the future may increase due to the “recent Commission operations budget augmentation, intended to expedite the mandate determination process.”⁵ Commission staff notes that the actual payment of reimbursement claims is not administered by the Commission, nor paid out of the Commission’s operations budget. Pursuant to Government Code section 17561(c), “the amount appropriated to reimburse local agencies and school districts for costs mandated by the state shall be appropriated to the *Controller* for disbursement.” (Emphasis added.) Rather, *reimbursement claims* are filed by local agencies with the SCO and paid out of specific appropriations for each program or out of under the “local assistance” portion of the Commission’s budget. For school districts and community college districts, reimbursement claims are also administered by the SCO, but paid out of specific appropriations by program in the education portion of the state budget or out of a block grant intended to fund the mandate.

However, the addition of two staff in the 2013 budget has helped to reduce the Commission's backlog of test claims and incorrect reduction claims. Moreover, the augmented staffing will aid in the timely resolution of any new test claims, incorrect reduction claims, requests to amend parameters and guidelines, and mandate redetermination requests filed with the Commission, thus shortening the mandate determination process in the future.

Further, CSDA continues to dispute the Commission’s determination that only local agencies that receive property tax are eligible claimants for reimbursement under this program. However, that issue was the subject of a final Commission decision on the test claim and is not open for discussion in this quasi-legislative report on the estimate of statewide costs of the program.

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$9,674,284 (Approximate Prospective Cost of \$1,719,552 Annually)** for costs incurred in complying with the *California Public Records Act* program.

³ Exhibit C.

⁴ Exhibit D.

⁵ *Ibid.*