

ITEM 7
FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES,
AS MODIFIED BY STAFF

Public Resources Code Section 5164, Subdivisions (b)(1) and (b)(2)

Statutes 2001, Chapter 777

Local Recreational Areas: Background Screenings
01-TC-11

City of Los Angeles, Claimant

EXECUTIVE SUMMARY

Background and Summary of the Claim

The test claim statutes involve the employment and background screening of volunteers at local operated parks, playgrounds, recreational centers or beaches used for recreation purposes.

On December 9, 2005, the Commission adopted the Statement of Decision for *Local Recreational Areas: Background Screenings* (01-TC-11). The Commission found that the test claim statute constitutes a new program or higher level of service and imposes a 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.

Commission staff prepared and issued the draft parameters and guidelines on December 14, 2005. The proposed reimbursable activities were limited to those approved in the Statement of Decision. On May 10, 2006, staff issued the draft staff analysis and proposed parameters and guidelines. On June 30, 2006, claimant requested inclusion of a reasonable reimbursement methodology in the parameters and guidelines, proposing reimbursement as follows: (1) actual cost methods to reimburse initial costs and Department of Justice fingerprint processing fees; and (2) a standard time rate for ongoing costs at 19 minutes per clerical staff and 6 minutes per technical staff.

At that time, Government Code section 17518.5 required a reasonable reimbursement methodology to meet specific conditions. At a July 27, 2006 prehearing, it was determined that the claimant's proposed reasonable reimbursement methodology did meet these statutory conditions. The claimant did not provide a revised methodology that met the statutory conditions under Government Code section 17518.5 requirements.

Therefore, staff set this matter for the December 2006 hearing. On November 16, 2006, claimant requested that the matter be postponed "for the purpose of determining if there is some other method, other than actual costs, to claim the costs that have been and will be incurred by cities, counties, and special districts in performing the mandated background screenings." Claimant did not provide a revised reasonable reimbursement methodology proposal.

AB 1222

In 2007, AB 1222 (Laird) was enacted to establish an alternative to the Commission adopting parameters and guidelines and statewide cost estimates. Under this alternative, Department of Finance and local governments may jointly submit to the Commission a proposed reasonable reimbursable methodology and statewide estimate of costs for approved mandates in lieu of proposing parameters and guidelines.

The claimant verbally indicated that they would be working with Department of Finance to develop a methodology using the new provisions of AB 1222. No formal letter of intent to pursue this process was forthcoming. Therefore, Commission staff set the matter for the December 2007 hearing. On November 30, 2007, the claimant requested postponement of the hearing in order to negotiate a reasonable reimbursement methodology with Department of Finance under the provisions of AB 1222. Since that time, neither Department of Finance nor the claimant have submitted a joint proposed reimbursement methodology, or statewide estimate of costs.

Therefore, staff recommends the proposed parameters and guidelines be adopted using actual cost methodology for this program.

Discussion

Staff made non-substantive, technical changes for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language. Staff made only two substantive changes to the draft parameters and guidelines since we initially issued them:

1. Clarified what activities are not reimbursable.
2. Added special districts as eligible claimants because Government Code section 17518 includes special districts as eligible claimants.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 7.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Claimants

City of Los Angeles

Chronology

02/08/02 Claimant, City of Los Angeles files test claim

12/09/05 Commission on State Mandates (Commission) adopts Statement of Decision

12/14/05 Commission staff issues draft parameters and guidelines

05/10/06 Commission staff issues draft staff analysis and proposed parameters and guidelines

05/24/06 Claimant requests an extension of time to comment on proposed parameters and guidelines and a prehearing conference

05/30/06 Commission grants extension of time and sets prehearing.

06/30/06 Claimant submits a proposed reasonable reimbursement methodology for inclusion in the proposed parameters and guidelines

07/27/06 Commission staff conducts prehearing conference to discuss reasonable reimbursement methodology

11/14/06 Commission staff prepares final staff analysis and proposed parameters and guidelines prepared for release

11/16/06 Claimant requests hearing be postponed to revise reasonable reimbursement methodology

11/21/07 Commission staff issues final staff analysis and proposed parameters and guidelines

11/30/07 Claimant requests postponement of hearing in order to negotiate a reasonable reimbursement methodology with Department of Finance under the provisions of AB 1222

12/04/07 Commission staff grants postponement of hearing

06/11/08 Commission staff issues final staff analysis

Background and Summary of the Claim

On December 9, 2005, the Commission adopted the Statement of Decision for *Local Recreational Areas: Background Screenings* (01-TC-11). The Commission found that the test claim statute constitutes a new program or higher level of service and imposes a state-mandated program on local agencies within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514.¹ Accordingly, the Commission approved this test claim for the following reimbursable activities:

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of

¹ Exhibit A.

any offense specified in Public Resources Code section 5164, subdivision (a). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.

- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to DOJ: (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).²

The Commission denied any remaining alleged costs or activities because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

Specifically, the Commission found that the following activities are not reimbursable:

- Taking fingerprints.
- Paying DOJ's fingerprint processing fee for a prospective volunteer.

Commission staff prepared and issued the draft parameters and guidelines on December 14, 2005.³ The proposed reimbursable activities were limited to those approved in the Statement of Decision. No comments were received on the draft. Staff modified the draft parameters and guidelines to clearly identify the activities that are not reimbursable. On May 10, 2006, staff issued the draft staff analysis and proposed parameters and guidelines.⁴ On May 24, 2006, the claimant requested an extension of time to comment on the draft and requested a prehearing conference.⁵ The request was granted on May 30, 2006.⁶

On June 30, 2006, the claimant submitted comments requesting the inclusion of a reasonable reimbursement methodology (RRM) in the parameters and guidelines.⁷ Claimant proposed that initial costs would be claimed using the actual cost method as would reimbursement for Department of Justice fingerprint processing fees. The claimant proposed that a local agency would claim ongoing costs using the following standard times:

19 minutes – clerical staff time related to the subject state mandate

6 minutes – technical staff time for processing the subject state mandate

Claimant explained that “[e]ach standard time is multiplied by the average productive hour rate, including applicable indirect cost for each classification assigned state mandated duties and the results totaled to obtain a reimbursable unit cost. Such reimbursable unit cost is then multiplied by the total number of reported prospective employees and volunteers for which a mandated

² Public Resources Code section 5164, subdivision (b)(1) and (b)(2).

³ Exhibit A.

⁴ Exhibit B.

⁵ Exhibit C.

⁶ Exhibit D.

⁷ Exhibit E.

screening procedure is performed.” According to the claimant, “[t]he units of time used in the RRM are based primarily on a limited analysis of our own process. We are working with the California Parks and Recreation Society in an effort to gather a broad sample of local agency data to either validate the above time units or amend them to reflect average statewide times.”

At that time, Government Code section 17518.5 defined a *reasonable reimbursement methodology* as a formula that meets the following conditions:⁸

(1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.

(2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

A prehearing conference was held on July 27, 2006 to further discuss the proposed reasonable reimbursement methodology and the fact that the proposed methodology did not meet the statutory conditions and lacked supporting documentation. Following the prehearing conference, no additional documentation was submitted by claimant to meet the statutory conditions. Therefore, staff set this matter for the December 2006 hearing. On November 16, 2006, claimant requested that the matter be postponed “for the purpose of determining if there is some other method, other than actual costs, to claim the costs that have been and will be incurred by cities, counties, and special districts in performing the mandated background screenings.”⁹ Claimant did not provide a revised reasonable reimbursement methodology proposal.

AB 1222

In 2007, AB 1222 (Laird)¹⁰ was enacted to establish an alternative to the Commission adopting parameters and guidelines and statewide cost estimates. Under this alternative, Department of Finance and local governments may jointly submit to the Commission a proposed reasonable reimbursable methodology and statewide estimate of costs for approved mandates in lieu of proposing parameters and guidelines.

The claimant verbally indicated that they would be working with Department of Finance to develop a methodology using the new provisions of AB 1222. No formal letter of intent to pursue this process was forthcoming. Therefore, Commission staff set the matter for hearing, and on November 14, 2007, released the final staff analysis and proposed parameters and guidelines. On November 30, 2007, the claimant requested postponement of the hearing in order to negotiate a reasonable reimbursement methodology with Department of Finance under the provisions of AB 1222.¹¹ Staff granted their request on December 4, 2007.¹²

⁸ These conditions were deleted from the definition of “reasonable reimbursement methodology” by AB 1222 (Laird, Stats 2007, ch. 329, eff. January 1, 2008).

⁹ Exhibit F.

¹⁰ Statutes 2007, ch. 329, eff. January 1, 2008)

¹¹ Exhibit G.

¹² Exhibit H.

Since that time, neither Department of Finance nor the claimant have submitted a joint proposed reimbursement methodology, or statewide estimate of costs.

Therefore, staff recommends the proposed parameters and guidelines be adopted using actual cost methodology for this program.

Discussion

Staff made non-substantive, technical changes for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language. Staff made only two substantive changes to the draft parameters and guidelines since we initially issued them:

1. Clarified what activities are not reimbursable.
2. Added special districts as eligible claimants because Government Code section 17518 includes special districts as eligible claimants.

Staff Recommendation

Staff recommends that the Commission adopt the draft parameters and guidelines, as prepared by staff, beginning on page 7.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

DRAFT PROPOSED PARAMETERS AND GUIDELINES

Public Resources Code Section 5164, Subdivisions (b)(1) and (b)(2)

Statutes 2001, Chapter 777

Local Recreational Areas: Background Screenings

01-TC-11

City of Los Angeles, Claimant

I. SUMMARY OF THE MANDATE

On December 9, 2005, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Public Resources Code section 5164, subdivisions (b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to Department of Justice (DOJ): (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).¹

The Commission denied any remaining alleged costs or activities because they do not impose a new program or higher level of service, and do not impose costs mandated by the state. Specifically, the Commission found that the following activities are not reimbursable:

- Taking fingerprints.
- Paying DOJ's fingerprint processing fee for a prospective volunteer.

II. ELIGIBLE CLAIMANTS

Any city, county, ~~and city and county,~~ or special district that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

¹ Public Resources Code section 5164, subdivision (b)(2).

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (c), as amended by Statutes 1998, chapter 681, 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 Los Angeles filed the test claim on February 8, 2002, establishing eligibility for fiscal year 2000-2001. However, the operative date of Public Resources Code section 5164, subdivisions (b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, is January 1, 2002. Therefore, costs incurred pursuant to Public Resources Code section 5164, subdivisions (b)(1) and (b)(2), as amended by Statutes 2001, chapter 777, are reimbursable on or after January 1, 2002.

Actual costs for one fiscal year shall be included in each claim. ~~Estimated costs of the subsequent year may be included on the same claim, if applicable.~~ Pursuant to Government Code section 17561, subdivision (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.

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.

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, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, 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.

For each eligible claimant, the following activities are reimbursable:

1. ~~Requiring each local agency to~~ Have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). (Pub. Res. Code, § 5164, subd. (b)(1)). ~~This is a means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.~~

2. Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to the Department of Justice (DOJ): (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).² (Pub. Res. Code, § 5164, subs. (b)(1) & (b)(2)).

The Commission found that the following activities **are not** reimbursable:

- Taking fingerprints.
- Paying DOJ's fingerprint processing fee for a prospective volunteer.

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. 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 services that were performed 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 and attorney invoices with the claim and a description of the contract scope of services.

²~~Public Resources Code section 5164, subdivision (b)(2).~~

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 point, 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 the 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 OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

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 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 allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter³ 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 ~~SAVINGS~~ AND OTHER REIMBURSEMENTS

Any offsetting revenues ~~savings~~ 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, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the 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, subdivision (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.

³ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides 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, including the Statement of Decision, is on file with the Commission.