

ITEM 8
FINAL STAFF ANALYSIS
STATEWIDE COST ESTIMATE

Education Code Section 87164

Statutes 2001, Chapter 416

Statutes 2002, Chapter 81

Reporting Improper Governmental Activities
02-TC-24

Santa Monica Community College District, Claimant

Executive Summary

The proposed statewide cost estimate includes two fiscal years for a total of \$41,516 for the *Reporting Improper Governmental Activities* program. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2006-2007	1	\$17,211
2007-2008	2	\$24,305
TOTAL	3	\$41,516

Summary of the Mandate

The approved test claim statutes address the procedures used to protect community college employees and applicants for employment from employees, officers, or administrators who intentionally engage in acts of reprisal, or coercion against an employee or applicant for employment who has disclosed improper governmental activity of the employer.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Reporting Improper Governmental Activities* program (02-TC-24). The Commission found that the test claim statute constitutes a new program or higher level of service and imposes a state-mandated program on community college districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514, for the cost of community college employees or applicants for employment filing complaints with the State Personnel Board (SPB), including the cost for SPB to conduct informal hearings or investigations of the complaint.

Statewide Cost Estimate

Staff reviewed the State Controller's (SCO) report on claims filed by two community college districts. The actual claims data showed that three claims were filed for fiscal years 2006-2007 and 2007-2008 for a total of \$41,516.¹ Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

¹ Claims data reported as of August 18, 2009.

Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*
2. *Non-claiming community college districts did not file claims because: (1) no complaints were filed with SPB and thus, they did not incur more than \$1,000 in increased costs for this program; or (2) they did not have supporting documentation to file a reimbursement claim.*
3. *The total costs of this program may increase in future years if there are increases in the number of reports of improper governmental activities filed against community college district employees, officers or administrators.*
4. *The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.*

Methodology

Fiscal Years 2006-2007 through 2007-2008

The proposed statewide cost estimate for fiscal years 2006-2007 and 2007-2008 was developed by totaling the three unaudited reimbursement claims filed with the SCO for these years.

The proposed statewide cost estimate includes two fiscal years for a total of \$41,516 for the *Reporting Improper Governmental Activities* program.

Comments on the Draft Staff Analysis

No comments were filed on the draft staff analysis.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$41,516** for costs incurred in complying with the *Reporting Improper Governmental Activities* program.

STAFF ANALYSIS

Summary of the Mandate

The approved test claim statutes address the procedures used to protect community college employees and applicants for employment from employees, officers, or administrators who intentionally engage in acts of reprisal, or coercion against an employee or applicant for employment who has disclosed improper governmental activity of the employer.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Reporting Improper Governmental Activities* program (02-TC-24). 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, for the cost of community college employees or applicants for employment filing complaints with the State Personnel Board (SPB), including the cost for SPB to conduct informal hearings or investigations of the complaint.

The test claim was filed on June 5, 2003. The Commission on State Mandates (Commission) adopted the Statement of Decision on September 27, 2007, and the parameters and guidelines on September 26, 2008.² Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by March 31, 2009, and must file late claims by March 31, 2010.

Reimbursable Activities

For each eligible claimant, the following activities are reimbursable when an employee or applicant for employment files a complaint with the State Personnel Board alleging retaliation, acts of reprisal, or similar improper acts prohibited by Education Code section 87163:

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board, set forth in California Code of Regulations, title 2, sections 56 – 57.4. This includes serving the employee or applicant for employment and the State Personnel Board with a written response to the applicant for employment's complaint addressing the allegations, and responding to investigations or attending hearings, and producing documents during investigations or hearings (Ed. Code, § 87164, subd. (c)(1), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by an employee or applicant for employment (Ed. Code, § 87164, subd. (c)(2), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2002, if the State Personnel Board finds that a supervisor, community college administrator, or public school employer has violated Education Code section 87163, to make an entry into that individual's official personnel file by placing a copy of the State Personnel Board's decision in that individual's official personnel file (Ed. Code, § 87164, subd. (f), as added by Stats. 2001, ch. 416).

Statewide Cost Estimate

Staff reviewed the claims data submitted by two community college districts, and compiled by the State Controller's Office (SCO). The actual claims data showed that three claims were filed for fiscal years 2006-2007 and 2007-2008 for a total of \$41,516.³ Based on this data, staff made

² Exhibit A, parameters and guidelines.

³ Exhibit B, claims data reported as of August 18, 2009.

the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*

There are 71 community college districts in California. Of those, only two filed reimbursement claims for this program. If other eligible claimants file reimbursement claims or late or amended claims, the amount of reimbursement claims may exceed the statewide cost estimate. For this program, late claims may be filed until March 2010.

2. *Non-claiming community college districts did not file claims because: (1) no complaints were filed with SPB and thus, they did not incur more than \$1,000 in increased costs for this program; or (2) they did not have supporting documentation to file a reimbursement claim.*

This program provides reimbursement only when community college district employees and applicants for employment submit complaints to the SPB, after which the SPB is required to initiate an informational hearing or investigation of the complaint. Therefore, reimbursement will only occur if complaints are filed.

Reimbursement for this program is authorized on or after January 1, 2002. However, no claims were filed until 2006-2007. No reimbursement claims were filed for fiscal years 2001-2002 through 2005-2006 because either no complaints were filed, or claimants did not retain the appropriate documentation for those years to file reimbursement claims.

3. *The total costs of this program may increase in future years if there are increases in the number of reports of improper governmental activities filed against community college district employees, officers or administrators.*
4. *The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.*

If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced.

Methodology

Fiscal Years 2006-2007 and 2007-2008

The proposed statewide cost estimate for fiscal years 2006-2007 and 2007-2008 was developed by totaling the three unaudited reimbursement claims filed with the SCO for these years.

The proposed statewide cost estimate includes two fiscal years for a total of \$41,516 for the *Reporting Improper Governmental Activities* program.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2006-2007	1	\$17,211
2007-2008	2	\$24,305
TOTAL	3	\$41,516

Comments on the Draft Staff Analysis

Staff issued the draft staff analysis on August 20, 2009.⁴ No comments were filed on the draft staff analysis.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$41,516** for costs incurred in complying with the *Reporting Improper Governmental Activities* program.

⁴ Exhibit C.