

ITEM 11

PROPOSED STATEWIDE COST ESTIMATE STAFF ANALYSIS

Education Code Sections 44830.1, 44830.2, 45125, 45125.01, and 45125.2

Statutes 1998, Chapters 594 and 840

Statutes 1999, Chapter 78

California Code of Regulations, Title 11, Sections 700-708

Criminal Background Checks II (00-TC-05)

Napa County Office of Education, Claimant

EXECUTIVE SUMMARY

The Commission on State Mandates (Commission) adopted the Statement of Decision for *Criminal Background Checks I* on March 25, 1999, the parameters and guidelines on October 28, 1999, and the statewide cost estimate on May 25, 2000.

In 1998 and 1999, the Legislature enacted legislation which added or amended Education Code sections relating to the following: criminal background checks of district employees, monitoring or separation of employees of construction contractors who work on school grounds, sending fingerprints to the Federal Bureau of Investigation (FBI), requesting from Department of Justice (DOJ) reports of subsequent arrest for employees, and storage and destruction of criminal record summaries. In December 2000, the claimant submitted a test claim alleging a reimbursable state mandate for school districts for these specific new activities and costs.

The Commission adopted the Statement of Decision for *Criminal Background Checks II* on February 27, 2003, and the parameters and guidelines on December 2, 2003. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by June 7, 2004.

The SCO provided unaudited claims totals to the Commission on July 9, 2004. Staff reviewed this data and actual reimbursement claims to develop the proposed statewide cost estimate. The proposed statewide cost estimate includes six fiscal years for a total of \$262,599. This averages to \$43,767 annually in costs for the state.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate for costs incurred in complying with the *Criminal Background Checks II* program. If the statewide cost estimate is adopted, staff will report the estimate to the Legislature.

STAFF ANALYSIS

Background and Summary of the Mandate

In 1997, the Legislature enacted the Michelle Montoya School Safety Act that requires school districts to obtain criminal background checks on specified types of school district employees. School districts must also obtain criminal background checks of employees of entities that contract with the districts. The act also prohibits districts from employing or retaining temporary, substitute or probationary employees who have been convicted of a serious or violent felony.

On March 25, 1999, the Commission adopted its Statement of Decision finding that the *Criminal Background Checks I* test claim imposes a reimbursable state-mandated program on school districts under article XIII B, section 6 of the California Constitution and Government Code section 17514. The parameters and guidelines were adopted on October 28, 1999. The statewide cost estimate was adopted on May 25, 2000.

In 1998 and 1999, the Legislature enacted legislation which added or amended Education Code sections relating to the following: criminal background checks of district employees, monitoring or separation of employees of construction contractors who work on school grounds, sending fingerprints to the Federal Bureau of Investigation (FBI), requesting from Department of Justice (DOJ) reports of subsequent arrest for employees, and storage and destruction of criminal record summaries. In December 2000, claimant, Napa County Office of Education, submitted a test claim alleging a reimbursable state mandate for school districts for these specific new activities and costs.

On February 27, 2003, the Commission adopted its Statement of Decision for the *Criminal Background Checks II* test claim, finding that Education Code sections 44830.1, 45125, 45125.01, and 45125.2 constitute new programs or higher levels of service for school districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514 for the following activities:

- communication with DOJ and related activities;
- storage of DOJ documents;
- destroying DOJ information;
- requesting the DOJ to forward copies of non-certificated employees' fingerprint cards to the FBI;
- maintaining a list of the current number of employees who have not completed the requirements of Education Code section 45125, with the noted pupil exception;
- requesting subsequent arrest service from the DOJ for certificated and non-certificated positions; and
- taking precautions in dealing with contractors.

The Commission adopted the parameters and guidelines on December 2, 2003. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by June 7, 2004. The Commission uses these initial claims to develop the statewide cost estimate.

Discussion

Reimbursable Activities

The Commission approved this test claim for the following new activities:

A. Communication with the Department of Justice

(Stats. 1998, ch. 840; Ed. Code, §§ 44830.1, subd. (i) & 45125, subd. (j).)

1. Complete DOJ “Contract for Subsequent Arrest Notification Service” to receive notification of subsequent arrests.
2. Notify the DOJ when the employment of the applicant is terminated, when the applicant’s certificate is revoked, or when the applicant may no longer renew or reinstate the certificate.
3. Return the subsequent arrest notification to the DOJ and inform the DOJ that the District is no longer interested in the applicant for a person unknown to the District, or for a person no longer employed by the District, or no longer eligible to renew the certificate or license for which subsequent arrest notification service was established.
4. Notify the DOJ if the applicant is denied licensing or certification.

B. Storage of Department of Justice Documents

(Stats. 1998, ch. 840, and Stats. 1999, ch. 78; Ed. Code, §§ 44830.1, subd. (n)(2), 44830.2, subd. (f)(2), 45125.01 subd. (f)(2), & 45125, subd.(k)(2).)

1. Store criminal history records and reports of subsequent arrests received from the DOJ on volunteers and current and prospective employees in a locked file separate from other files and accessible to only the custodian of records. This activity includes the costs associated with obtaining separate storage for these records. The storage method and how long the records are kept must be in accordance with how school district records of a similar nature are stored in the normal course of business.

C. Destruction of Department of Justice Information

(Stats. 1998, ch. 840, Ed. Code, §§ 44830.1, subd. (n)(3), & 45125, subd. (k)(3).)

1. Destroy information received from the DOJ upon a hiring determination in accordance with California Code of Regulations, title 11, section 708, subdivision (a), which requires that destruction of criminal offender record information be carried out so that the identity of the subject can no longer be reasonably ascertained; or
2. Provide a witness from the school district to observe the destruction of the information when records are destroyed outside the district.

D. Fingerprint Card Requests to the Federal Bureau of Investigation

(Stats. 1998, ch. 840; Ed. Code, § 45125, subd. (b)(3).)

1. Indicate (check appropriate box) to request the DOJ to forward copies of non-certificated employees’ fingerprint cards to the Federal Bureau of Investigation (FBI).

E. Maintaining a List of the Number of Current Employees
(Stats. 1998, ch. 840; Ed. Code, § 45125, subd. (d).)

1. Maintain a list indicating the current number of employees who have not completed the requirements of Education Code section 45125 (except for pupils employed in a temporary or part-time position at the school they attend).

F. Subsequent Arrest Service Requests

(Stats. 1998, ch. 840; Ed. Code, §§ 44830.1, subd. (i), & 45125, subd. (j).)

1. Request subsequent arrest service from the DOJ for certificated and non-certificated positions, as necessary.

G. Precautions Dealing with Construction Contractors

(Stats. 1998, ch. 840; Ed. Code, § 45125.2, subd. (a).)

The activities listed in section IV. G. are not reimbursable to “an entity providing construction, reconstruction, rehabilitation, or repair services to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.” (Ed. Code, § 45125.2, subd. (d).)

1. When contracting for construction, reconstruction, rehabilitation, or facility repair, determine whether the contractor will have “limited contact”¹ with pupils.
2. If the contractor’s employees will have more than limited contact:
 - a. install a physical barrier at construction worksites at school facilities; or
 - b. develop contract language that requires the contractor to install a physical barrier at construction worksites at school facilities or to continually supervise and monitor contractor employees (any individual serving as a construction employee monitor or providing employee surveillance must not have been convicted of a violent or serious felony).

Statewide Cost Estimate

Staff reviewed 23 actual claims filed by 6 school districts for fiscal years 1999-2000 through 2002-2003.² Staff made the following assumptions and used the following methodology to develop a statewide cost estimate of this program. If the Commission adopts this statewide cost estimate, the estimate, including staff’s assumptions and methodology, will be reported to the Legislature.

Assumptions

Staff made the following assumptions:

- The claims data is unaudited.

¹ Districts must consider the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. See Education Code section 45125.1, subdivision (c).

² Claims data reported by the SCO as of July 9, 2004.

- The actual amount claimed will increase when late or amended claims are filed, and could exceed the statewide cost estimate. Late claims may be filed for this program until June 7, 2005.
- Significant numbers of late claims will not be filed because the cost to perform the reimbursable activities for *Criminal Background Checks II* are minimal when compared to the costs already claimed for the original *Criminal Background Checks I* mandate and are less than the \$1,000 minimum for filing an annual reimbursement claim.
- Any reimbursement claim for this program may be reduced by the SCO if it is audited and deemed to be excessive or unreasonable. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.

Methodology

1999-2000 through 2002-2003 Projected Costs

- Staff reviewed the summary claims data provided by the SCO for fiscal years 1999-2000 through 2002-2003. Staff then reviewed the reimbursement claims to study claiming data and possible trends. No trends were identified for this program.
- The proposed statewide cost estimate was developed based on the 23 unaudited, actual reimbursement claims.

2003-2004 through 2004-2005 Projected Costs

- Staff projected totals for FY 2003-2004 by multiplying the FY 2002-2003 claim total filed by claimants with the SCO by the implicit price deflator for 2002-2003 (2.3%), as forecast by the Department of Finance. Staff projected totals for FY 2004-2005 by multiplying the FY 2002-2003 claims total by the implicit price deflator for 2003-2004 (2.9%).

The proposed statewide cost estimate includes six fiscal years for a total of \$262,599. This averages to \$43,767 annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed	Amount of Claims Filed
1999-2000	6	\$37,114
2000-2001	5	\$39,338
2001-2002	6	\$44,589
2002-2003	6	\$46,382
2003-2004 (estimated)	N/A	\$47,449
2004-2005 (estimated)	N/A	\$47,727
Total	23	\$262,599

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$262,599** for costs incurred in complying with the *Criminal Background Checks II* program.