

ITEM 9

**PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS
FINAL STAFF ANALYSIS**

Government Code Sections 3300 through 3310
As Added and Amended by Statutes 1976, Chapter 465;
Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes
1983, Chapter 964; Statutes 1989, Chapter 1165; and
Statutes 1990, Chapter 675

Peace Officer Procedural Bill of Rights
09-PGA-05 (CSM-4499)

City of Los Angeles, Requestor

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LOS ANGELES POLICE DEPARTMENT

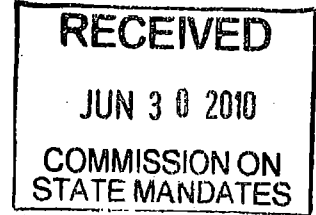
Exhibit A



CHARLIE BECK
Chief of Police

ANTONIO R. VILLARAIGOSA
Mayor

P. O. Box 30158
Los Angeles, Calif. 90030
Telephone: (213) 486-8590
TDD No.: (877) 275-5273
Ref #: 14.7



June 29, 2010

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

City of Los Angeles
Request to Amend Parameters and Guidelines
Peace Officers Procedural Bill of Rights (CSM-4499)

We herein file a request to amend the Parameters and Guidelines for the above named program in accordance with Government Code section 17557 and the California Code of Regulations, title 2, section 1183.11(a).

If you have any questions, please contact Management Analyst II Erica M. Swift at (213) 486-8591 or via e-mail at N2199@lapd.lacity.org.

Very truly yours,

CHARLIE BECK
Chief of Police

A handwritten signature in black ink, appearing to read "Laura Filatoff".

LAURA FILATOFF, Police Administrator
Commanding Officer
Fiscal Operations Division

Enclosure

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Government Code Sections 3301, 3303, 3304, 3305, 3306

As Added and Amended by Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675

Peace Officers Procedural Bill of Rights (POBOR)

City of Los Angeles, Requestor

The City of Los Angeles (City) herein files a request to amend the parameters and guidelines (P's and G's) in accordance with the California Code of Regulations 1183.131 for the POBOR. More specifically, the City requests to add a reasonable reimbursement methodology (RRM) to apply only and solely to the City. It does not propose to make any other changes to the current parameters and guidelines.

At its March 28, 2008, hearing, the Commission on State Mandates adopted the last set of parameters and guidelines for the POBOR mandate. For the first time in those P's and G's, the Commission adopted a RRM based on Government Code Section 17518.5, as amended by AB 1222 (Stats. 2007, Ch. 329, effective January 1, 2008). The new definition requires that two elements be met:

1. A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
2. A reasonable reimbursement methodology shall consider the variation of costs among local agencies and school districts to implement the mandate in a "cost-effective manner." (Gov. Code, section 17518.5, subdivisions (b) and (c)).

The City of Los Angeles proposal satisfies the first requirements, since the proposed RRM is based on information from the only agency that would be eligible to use it.

The City of Los Angeles satisfies the first part of the second requirement to consider variation in costs since, once again, it is the only agency affected by the proposed amendment. The City satisfies the second part of that requirement to implement the mandate in a "cost efficient manner," since it is based on a program activities audited by the State Controller and found to be reimbursable.

In developing the initial POBOR RRM, the Commission staff used assumptions that the RRM be based on audited costs, at a rate that was calculated by using those allowable costs and dividing it by the number of peace officers covered by the mandate. That is precisely the process the City used in developing this proposed RRM.

Claim Preparation and Submission

The current parameters and guidelines allow for claimants to be reimbursed for the activities described in Section IV of the P's and G's by using the reasonable reimbursement methodology or by filing an actual cost claim. The City's proposed amendment would add a second RRM option to be used only by the City of Los Angeles. That proposed rate of \$452.53 per officer is for the 2009-10 fiscal year and should be adjusted by the Controller's implicit price deflator each subsequent year.

No other changes to the parameters and guidelines are requested.

Audited Cost Data & RRM Calculation

Attached is a copy of the State Controller's Audit of the Los Angeles Police Department's POBOR program issued in September 2009 for the five fiscal years ending on June 30, 2008. The costs found to be eligible are for activities claimed by the City in three of the four reimbursable activities (components) in the current parameters and guidelines. The three are as follows:

1. Administrative Activities
2. Interrogation
3. Adverse Comments

The RRM does not include any costs for the Administrative Appeal activities. If the City later determines it has incurred costs in for eligible and identifiable administrative appeal activities, it may request a subsequent change to this Los Angeles City only RRM.

The State Controller issued its final audit report for the five fiscal year period from July 1, 2003, through June 30, 2008. The State Controller audit disclosed that \$20,131,194 is allowable. During that same period of time the Los Angeles Police Department had an average of 10,000 filled peace officer positions or 50,000 for the audit period. The actual number of officers for each fiscal year is shown below:

Fiscal Year	No. of Sworn Officers
2003-04	9215
2004-05	9146
2005-06	9284
2006-07	9442
2007-08	9609
Five Year Total	<u>46,696</u>

If you divide the \$20,131,194 or total allowable costs, by the five year total of 46,696 peace officers the result or proposed RRM is \$452.53 per officer. Confirmation on the number of sworn officers shown above can be confirmed by contacting the Department of Justice.

CITY OF LOS ANGELES

Audit Report

PEACE OFFICERS PROCEDURAL BILL OR RIGHTS PROGRAM

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178,
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983;
Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990

July 1, 2003, through June 30, 2008



JOHN CHIANG
California State Controller

September 2009



JOHN CHIANG
California State Controller

September 29, 2009

The Honorable Antonio Villaraigosa
Mayor of the City of Los Angeles
200 North Main Street, Suite 303
Los Angeles, CA 90012

Dear Mayor Villaraigosa:

The State Controller's Office audited the costs claimed by the City of Los Angeles for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2008.

The city claimed \$50,281,773 for the mandated program. Our audit disclosed that \$20,131,194 is allowable and \$30,150,579 is unallowable. The costs are unallowable primarily because the city claimed costs that are ineligible for reimbursement. The State will pay allowable costs claimed that exceed the amount paid, totaling \$5,938,160, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's Web site at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/vb

The Honorable Antonio Villaraigosa

-2-

September 29, 2009

cc: Wendy Greuel, City Controller
City of Los Angeles
Laura Filatoff, Commanding Officer
Fiscal Operations Division
Los Angeles Police Department
Todd Jerue, Program Budget Manager
Corrections and General Government
Department of Finance
Carla Castaneda
Principal Program Budget Analyst
Department of Finance
Paula Higashi, Executive Director
Commission on State Mandates

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Los Angeles for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2008.

The city claimed \$50,281,773 for the mandated program. Our audit disclosed that \$20,131,194 is allowable and \$30,150,579 is unallowable. The costs are unallowable primarily because the city claimed costs that are ineligible for reimbursement. The State paid the city \$14,193,034. The State will pay allowable costs claimed that exceed the amount paid, totaling \$5,938,160, contingent upon available appropriations.

Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990 added and amended Government Code sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR) was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the statement of decision. The CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code section 17514. The CSM further defined that activities covered by due process are not reimbursable.

The parameters and guidelines establish the state mandate and define reimbursement criteria. The CSM adopted the parameters and guidelines on July 27, 2000 and corrected it on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative Appeal, Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

In 2005, Statutes 2005, Chapter 72, section 6 (AB 138) added Government Code section 3313. This legislation directed the CSM to "review" the statement of decision, adopted in 1999, on the POBOR test claim to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal. 4th 859 and other applicable court decisions. On April 26, 2006, the CSM reviewed its original findings and adopted a statement of decision on reconsideration, which became final on May 1, 2006. The CSM found that the above-mentioned court case supports the CSM's 1999 statement of decision. The CSM further found that the test claim legislation constitutes a partial reimbursable state-mandated program for all activities previously approved by the CSM except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304.
- The activity of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause.

The CSM adopted amended parameters and guidelines on March 28, 2008. The amended parameters and guidelines allows claimants to be reimbursed for reimbursable activities by claiming costs pursuant to the reasonable reimbursement methodology or by filing an actual cost claim. The amended parameters and guidelines apply to costs incurred and claimed beginning on July 1, 2006.

The reasonable reimbursement methodology allows each eligible claimant to be reimbursed for fiscal year (FY) 2006-07 at the rate of \$37.25 per full-time sworn peace officer employed by the agency and reported to the Department of Justice. The rate per full-time sworn peace officer is adjusted each year by the Implicit Price Deflator referenced in Government Code section 17523.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the POBOR Program for the period of July 1, 2003, through June 30, 2008.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the city's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and

conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the city's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, the City of Los Angeles claimed \$50,281,773 for costs of the POBOR Program. Our audit disclosed that \$20,131,194 is allowable and \$30,150,579 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payment to the city. Our audit disclosed that \$4,045,094 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$4,045,094, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the city. Our audit disclosed that \$3,502,946 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$3,502,946, contingent upon available appropriations.

For the FY 2005-06 claim, the State paid the city \$6,863,452. Our audit disclosed that \$3,771,678 is allowable. The State will offset \$3,091,774 from other mandated program payments due the city. Alternatively, the city may remit this amount to the State.

For the FY 2006-07 claim, the State paid the city \$7,329,582. Our audit disclosed that \$3,382,309 is allowable. The State will offset \$3,947,273 from other mandated program payments due the city. Alternatively, the city may remit this amount to the State.

For the FY 2007-08 claim, the State made no payment to the city. Our audit disclosed that \$5,429,167 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$5,429,167, contingent upon available appropriations.

Views of Responsible Official

We issued a draft audit report on August 12, 2009. William J. Bratton, Chief of Police, responded by letter dated September 15, 2009 (Attachment), disagreeing with the significant audit results in Finding 1, and agreeing with the remaining two findings. This final audit report includes the city's response.

Restricted Use

This report is solely for the information and use of the City of Los Angeles, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

September 29, 2009

**Schedule 1—
Summary of Program Costs
July 1, 2003, through June 30, 2008**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries	\$ 4,858,882	\$ 2,110,512	\$ (2,748,370)	Findings 1,2,3
Benefits	1,519,373	654,782	(864,591)	Findings 1,2,3
Services and supplies	708,683	—	(708,683)	Findings 1,2,3
Total direct costs	7,086,938	2,765,294	(4,321,644)	
Indirect costs	2,989,184	1,279,800	(1,709,384)	Findings 1,2,3
Total program costs	<u>\$ 10,076,122</u>	4,045,094	<u>\$ (6,031,028)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 4,045,094</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries	\$ 4,401,434	\$ 1,751,065	\$ (2,650,369)	Findings 1,3
Benefits	1,599,249	636,890	(962,359)	Findings 1,3
Total direct costs	6,000,683	2,387,955	(3,612,728)	
Indirect costs	2,748,667	1,114,991	(1,633,676)	Findings 1,3
Total program costs	<u>\$ 8,749,350</u>	3,502,946	<u>\$ (5,246,404)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 3,502,946</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries	\$ 4,985,402	\$ 1,993,037	\$ (2,992,365)	Findings 1,3
Benefits	1,916,184	765,985	(1,150,199)	Findings 1,3
Total direct costs	6,901,586	2,759,022	(4,142,564)	
Indirect costs	2,493,899	1,012,656	(1,481,243)	Findings 1,3
Total program costs	<u>\$ 9,395,485</u>	3,771,678	<u>\$ (5,623,807)</u>	
Less amount paid by the State		(6,863,452)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (3,091,774)</u>		

Schedule 1 (continued)

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>	<u>Reference¹</u>
<u>July 1, 2006, through June 30, 2007</u>				
Direct costs:				
Salaries	\$ 4,516,381	\$ 1,800,575	\$ (2,715,806)	Findings 1,3
Benefits	1,966,746	784,387	(1,182,359)	Findings 1,3
Total direct costs	6,483,127	2,584,962	(3,898,165)	
Indirect costs	1,974,526	797,347	(1,177,179)	Findings 1,3
Total program costs	<u>\$ 8,457,653</u>	3,382,309	<u>\$ (5,075,344)</u>	
Less amount paid by the State		(7,329,582)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (3,947,273)</u>		
<u>July 1, 2007, through June 30, 2008</u>				
Direct costs:				
Salaries	\$ 6,699,960	\$ 2,664,537	\$ (4,035,423)	Findings 1,3
Benefits	3,184,851	1,267,328	(1,917,523)	Findings 1,3
Total direct costs	9,884,811	3,931,865	(5,952,946)	
Indirect costs	3,718,352	1,497,302	(2,221,050)	Findings 1,3
Total program costs	<u>\$ 13,603,163</u>	5,429,167	<u>\$ (8,173,996)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 5,429,167</u>		
<u>Summary: July 1, 2003, through June 30, 2008</u>				
Direct costs:				
Salaries	\$ 25,462,059	\$ 10,319,726	\$ (15,142,333)	
Benefits	10,186,403	4,109,372	(6,077,031)	
Services and supplies	708,683	—	(708,683)	
Total direct costs	36,357,145	14,429,098	(21,928,047)	
Indirect costs	13,924,628	5,702,096	(8,222,532)	
Total program costs	<u>\$ 50,281,773</u>	20,131,194	<u>\$ (30,150,579)</u>	
Less amount paid by the State		(14,193,034)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 5,938,160</u>		
<u>Recap by Component</u>				
Administrative Activities	\$ 4,072,635	\$ 179,583	\$ (3,893,052)	
Interrogations	17,519,767	1,709,075	(15,810,692)	
Adverse Comment	28,689,371	18,242,536	(10,446,835)	
Total program costs	<u>\$ 50,281,773</u>	<u>\$ 20,131,194</u>	<u>\$ (30,150,579)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Unallowable salaries, benefits, and related indirect costs

The city claimed \$35,648,462 in salaries and benefits for the audit period. We determined that \$14,183,993 is allowable and \$21,464,469 is unallowable. The costs are unallowable because the activities claimed are not identified in the parameters and guidelines as reimbursable costs. The related unallowable indirect costs totaled \$8,307,090.

The following table summarizes the claimed, allowable, and unallowable costs for the audit period by reimbursable component:

Reimbursable Component	Amount Claimed	Allowable Costs	Audit Adjustment
Direct costs:			
Administrative Activities	\$ 2,864,828	\$ 118,411	\$ (2,746,417)
Interrogations	12,505,518	1,216,206	(11,289,312)
Adverse Comments	20,278,116	12,849,376	(7,428,740)
Total direct costs	35,648,462	14,183,993	(21,464,469)
Indirect costs	13,924,628	5,617,538	(8,307,090)
Total	\$ 49,573,090	\$ 19,801,531	\$ (29,771,559)

We have broken down the audit findings for overstated salaries and benefits by individual cost component.

Administrative Activities

For the Administrative Activities cost component, the city claimed \$2,864,828 in salaries and benefits for the audit period. We determined that \$118,411 is allowable and \$2,746,417 is unallowable. The costs are unallowable because the city claimed reimbursement for unallowable activities. Related unallowable indirect costs totaled \$1,054,878.

The program's parameters and guidelines allow reimbursement for the following activities under the cost component of Administrative Activities:

- Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities;
- Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate; and
- Updating the status report of the POBOR cases.

The city claimed costs for nine activities under this component. We determined that the following two activities are reimbursable:

- **Status:** This activity occurs in the Administrative Records Section (ARS) and involves the time needed to update status changes within POBOR case files. Per LAPD staff, the cases are updated for every activity and/or procedural change.
- **Assign:** This activity consists solely of updating the database and noting the case assignment to an investigator for adjudication.

We also determined that the following seven activities are not reimbursable:

- **Comment:** The ARS section in Internal Affairs performs this task by creating a file and a case number when the Professional Standards Bureau receives a "1.28" complaint form. Per LAPD staff, this activity is an internal procedure created by the LAPD to ensure compliance with the investigation time frame of one year.
- **Locate:** This activity denotes the time required for the Classifications Unit to read the "1.28" (complaint form) and determine the best entity to perform the investigation. After determining which entity will investigate, the form is sent to the ARS.
- **Invest:** When the investigation is complete, the case file is sent to the Review and Evaluation Section. This activity consists of updating the database to note this information.
- **IA Review:** This activity consists of the time it takes to update the database for Internal Affairs' (IAG) review. Per LAPD staff, this activity is similar to Invest, but one IAG section or division will review the investigation of another IAG investigation unit for thoroughness, facts, results, and conclusions. It is another type of review and another change in status.
- **Appeal:** This activity takes place when the case is going to the Advocate Section, where another file is created and entered into the Advocate Database. Per LAPD staff, the case is in the appeal phase and is no longer being investigated or reviewed. This activity pertains to the procedural process of transferring a case in the Advocate Unit, tracking the appeal process, and tracking where the case is.
- **Note:** This activity consists of distributing copies of the face sheet (which contains the summary of allegations and the names of the involved parties) to concerned parties. This activity occurs in the ARS and is based on the time it takes to update the database for the activity.
- **Close Out:** The ARS closes out the case file and documents this activity. This activity is a database update function.

The CSM staff analysis (dated July 27, 2000) for the proposed parameters and guidelines noted that "before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary hearings, and maintaining files for those cases."

Accordingly, it is our understanding that reimbursement is unallowable for activities related to managing case files. The parameters and guidelines allow reimbursement for activities that relate to updating the status report of the mandate-related activities.

Additional clarifying language was provided in the amended parameters and guidelines (section IV.A.—Administrative Activities), which states that "Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases."

Interrogations

For the Interrogations cost component, the city claimed \$12,505,518 in salaries and benefits for the audit period. We determined that \$1,206,216 is allowable and \$11,289,312 is unallowable. The costs were unallowable because the city claimed reimbursement for unallowable activities. The related unallowable indirect costs totaled \$4,525,705.

The parameters and guidelines for the POBOR program allow the following activities for reimbursement under the Interrogations cost component:

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.
- Tape recording the interrogation when the peace officer employee records the interrogation.
- Providing the peace officer employee with access to the recording prior to any further investigation at a subsequent time, or if any further proceedings are contemplated.
- Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer.

The city claimed the following 15 activities under the cost component of Interrogations:

1. Admin Task (Administrative Task)
2. Call out
3. CO Contact (Commanding Officer Contact)
4. Evidence Collect
5. Interview in person
6. Interview Telephone
7. Kickback Editing
8. Meet/Brief/Notify
9. Non-Evidence Task
10. Paraphrasing
11. Prep for Interview
12. Report Formatting
13. Telephone contact
14. Travel
15. VI Computer Task

The city did not provide a formal description of these activities. LAPD staff stated that these activities involved time for conducting investigations, collecting evidence, writing reports, and editing reports. We determined that these activities are unallowable because they relate to the investigation process.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM final staff analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBOR was enacted.

In addition, the amended parameters and guidelines (section IV.C.—Interrogations) state that “Investigation activities, including assigning an investigator to the case, reviewing the allegations, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses” are not reimbursable.

The amended parameters and guidelines (section IV.D.—Adverse Comment) also state that “investigating a complaint,” “interviewing a complainant,” and “preparing a complaint investigation report” are not reimbursable activities.

The activities numerated above were not included in the documents that were attached to the city's claims supporting its time study. We noted during the course of audit fieldwork that the city's time study included the five activities described below under the component of Interrogations. However, none of these activities were included in the city's claims.

- **Interview:** Conducting the interrogation of the accused officer. The start and end time of the interrogation is noted. Per LAPD staff, interrogations usually take place during normal working hours and rarely happen during overtime (accused officer's off-duty time). The city's time study did not specify if and when the officers were paid overtime for the interviews.
- **ID, ID-A, ID-W:** Providing prior notice to the officer (accused and/or witness) regarding the nature of the interrogation and identification of the investigating officer. This activity occurs in the Administrative or Criminal Investigation Division.
- **Determine:** Determination of the investigating officers. This activity is assigned to the section Officer-in-Charge (OIC).
- **Tape:** Tape recording the interrogation. Per LAPD staff, this activity rarely happens. In fact, no time increments were claimed for the tape recording activity.
- **Booking Tape:** Booking (storing) the tape at the Scientific Investigations Division.

We were able to calculate how much time was spent to conduct the five activities that were omitted from the city's claims. We also determined that four of the activities are allowable (ID, Determine, Tape, and Booking Tape) and one (Interview) is unallowable. Interview is unallowable because the city indicated that most peace officer interviews

occur during normal working hours. In addition, the city did not keep track of the instances when officers were compensated for interviews that took place during their off-duty time.

Adverse Comment

For the Adverse Comment cost component, the city claimed \$20,278,116 in salaries and benefits for the audit period. We determined that \$12,849,376 is allowable and \$7,428,740 is unallowable. The costs were unallowable because the city claimed reimbursement for unallowable activities. The related unallowable indirect costs totaled \$2,726,507.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines allow these activities for reimbursement under the Adverse Comment cost component:

- Providing notice of the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances leading to adverse comment by supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment; attaching same to adverse comment and filing.

The city claimed costs for 16 activities under this cost component. We determined that the following 11 activities are reimbursable:

- **Review:** This activity involves the review of the "1.28" (complaint form) and the circumstances leading to the adverse comment. This is the preliminary review of the comment to determine if it is an adverse comment and warrants further investigation. The Complaint Classification Unit performs this activity. This activity also includes the time it takes to prepare a face sheet concerning the complaint.
- **Note:** This activity consists of providing notice to the peace officer of the adverse comment or complaint fact sheet. This activity is associated with the first notice of adverse comment to the officer and that an investigation is taking place.
- **Respond:** This activity is also associated with providing first notice of the adverse comment and that an investigation is taking place. The activity provides the officer an opportunity to respond within 30 days.

- **Sign:** This activity occurs when the officer under investigation reviews and signs the adverse comment or complaint fact sheet, which is the first notice of complaint from Internal Affairs.
- **Refuse:** If the accused officer refuses to sign the face sheet or initial the adverse comment, the time involved is noted.
- **Approval:** This activity consists of the review by Internal Affairs Management of a completed case prior to sending the case to an Area or Division for notification to the officer under investigation.
- **Adjudication:** This activity consists of the time spent by the Command Officer (accused officer's supervisor) of the Area to adjudicate the complaint. This activity would include a review of the completed complaint and the formulation of a Letter of Transmittal (LOT).
- **CO Review:** According to LAPD staff, "CO review" is closely tied with "Adjudication." This activity consists of the time spent by the commanding officer of the Area to review the complaint and LOT.
- **Preparation:** This activity consists of the preparation of the "Charge Sheet" for the Chief of Police to sign.
- **Serve:** This activity entails ensuring that the accused officer is served with the "Charge Sheet" and obtaining the officer's signature or noting the officer's refusal to sign the charge sheet.
- **Accuracy:** This activity involves reviewing the accused officer's response to the complaint or "1.28" (complaint form).

The city also claimed the following five activities that are not reimbursable.

- **Preliminary:** This activity involves investigating the circumstances surrounding the adverse comment.
- **Collect:** This activity consists of the preliminary investigation conducted by supervisors, detectives, and the command staff in the Area where the complaint was taken. This activity can include report writing, interviews, or any activity in which information is gathered for the "1.28" (complaint form).
- **Area Invest:** This activity consists of the time spent by an Area to investigate the complaint or "1.28" (complaint form). This activity occurs after the preliminary investigation.
- **Inspect:** This activity occurs when the assigned Advocate reviews the investigation for status and thoroughness.
- **RE Invest:** This activity involves the time needed to conduct any additional investigations.

These activities were unallowable because they are part of the city's investigative process. We noted in the Interrogations section of this finding that investigative activities are ineligible for reimbursement.

In addition, we noted that the amended parameters and guidelines (section IV.C.—Interrogations) state that “Investigation activities, including assigning an investigator to the case, reviewing the allegations, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses” are not reimbursable.

The amended parameters and guidelines (section IV.D.—Adverse Comment) also state that “investigating a complaint,” “interviewing a complainant,” and “preparing a complaint investigation report” are not reimbursable activities.

Averaging Methodology and Calculation of Allowable Hours

The city developed a time study to document activities and tasks that are related to the POBOR Program. The time study was conducted for the duration of one month and was completed in May 2004. The city recorded the time study results in an internal database that summarized average time increments spent for each activity by employee classification.

To calculate time increments applicable to each case, the city developed an averaging methodology that combined all task/activity entries per classification and per activity into one average time increment. The average time increments were then used to prepare the city’s claims. During the audit, we separated the time that was attributable to each individual task. We did this because not all activities recorded in the time study were allowable for reimbursement. As the database tracked all individual task entries for each classification, we were able to separate minute increments for individual activities in order to exclude time spent on unallowable activities.

We were able to use data from the time study to calculate the allowable time per case. We manually added all of the entries for each individual task and determined how much time was spent to perform each individual activity. We then took a percentage of minutes for allowable tasks and determined the amount of reimbursable time per each POBOR case.

After we determined the allowable time increments per case, the time increments were applied to the number of cases claimed in each fiscal year. We did not make any adjustments to the number of cases that were included in the city’s claims.

Case Statistics

We noted that the city was inconsistent in its application of case statistics in its claims. Case counts included in the claims were based on closed cases in some years and based on in progress cases in other years. However, we did not adjust the number of cases that were claimed. The SCO time study guidelines indicate that agencies may employ any methodology as long as the agency consistently applies the chosen methodology. Neither the parameters and guidelines nor the SCO claiming instructions specify whether agencies should use the number of

closed cases or the number of cases in progress to calculate their costs for reimbursement. However, we recommend that the city use a more consistent approach in applying its case counts to calculate costs for reimbursement in future years.

Database Rounding Errors

During our review of the time study and the internal database, we noted a few minor rounding errors in the city's database that calculates average minutes per case. In a few instances, the city's calculations of average minutes per case were off by about a minute per case. The discrepancies were due to errors in converting minutes to hours and vice versa. We manually added up all of the individual time entries and incorporated the rounding errors (in the city's favor) into the calculation of allowable hours.

Summary

The following table summarizes the audit adjustments by fiscal year:

Cost Categories	Fiscal Year				
	2003-04	2004-05	2005-06	2006-07	2007-08
Salaries	\$ (2,837,773)	\$ (2,650,369)	\$ (2,998,526)	\$ (2,715,806)	\$ (4,119,748)
Benefits	(887,371)	(962,359)	(1,152,572)	(1,182,359)	(1,957,586)
Subtotal	(3,725,144)	(3,612,728)	(4,151,098)	(3,898,165)	(6,077,334)
Related indirect costs	(1,745,798)	(1,633,676)	(1,483,051)	(1,177,179)	(2,267,386)
Audit adjustment	\$ (5,470,942)	\$ (5,246,404)	\$ (5,634,149)	\$ (5,075,344)	\$ (8,344,720)

The parameters and guidelines for POBOR Program that were adopted by the CSM on July 27, 2000, and corrected on August 17, 2000, define the criteria for procedural protection for the city and county's peace officers. The parameters and guidelines, amended on December 4, 2006, and again on March 28, 2008, were applicable for claims filed for FY 2006-07 and beyond. A significant amount of clarifying language was included in the amended versions. The most recent version of the parameters and guidelines allow claimants the option of claiming costs using a reasonable reimbursement methodology.

The parameters and guidelines (section IV.—Reimbursable Activities) outline specific tasks that are deemed to go beyond due process. The statement of decision, on which the parameters and guidelines were based, noted that due process activities were not reimbursable.

The parameters and guidelines (section V.A.1.—Salaries and Benefits) require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee.

The parameters and guidelines (section VI.—Supporting Data) require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

The amended parameters and guidelines (section V.B.—Actual Cost Claims) indicate that the claimant is allowed to claim and be reimbursed only for increased costs for reimbursable activities. Increased costs are 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. Time study usage is subject to the review and audit conducted by the SCO.

Recommendation

We recommend that the city establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City's Response

The City claimed \$35,648,462 in salaries and benefits for the audit period. The Controller determined that \$14,183,993 is allowable and \$21,464,469 is unallowable. The costs are unallowable because the Administrative, Interrogation, and Adverse Comment Activities claimed are not identified in the Parameters and Guidelines as reimbursable costs.

Administrative Activities

The Controller determined that only \$118,411 of the \$2,864,828 is allowable because the City claimed reimbursement for unallowable activities.

The City disagrees with all of the State Controller's disallowances. It is the City's opinion that all of those activities are administrative in nature and reasonably necessary to carry out the POBOR program in such a large agency as the LAPD.

The City disagrees with what it perceives as the Controller's very narrow interpretation of the Administrative Activities component of the Commission on State Mandates' Parameters and Guidelines. When the Statement of Decision for the test claim was adopted nearly 10 years ago, there was no discussion of administrative activities for the POBOR Program. When the Parameters and Guidelines was adopted, it was assumed that, for the most part, any reasonably necessary administrative activities associated with the POBOR Program were eligible for reimbursement. A few activities, such as training, were normally addressed specifically, since the Controller often would not allow for training costs if they were specifically addressed in the Parameters and Guidelines. By including the Administrative Activities component, it is believed that the Commission intended to include anything reasonably necessary unless it was specifically excluded, such as the limitation on training for only human resources, law enforcement and legal counsel regarding the requirements of the mandate.

Interrogation Activities

The Controller determined that of the \$12,505,518 in salaries and benefits claimed for the audit period, \$1,206,216 is allowable and \$11,289,312 is unallowable. Once again, the Controller contends the City's costs were unallowable because they were for unallowable activities.

The City is appreciative of the fact the Controller allowed for the \$1,206,216 of costs which were not specifically addressed in its claims. But rather, the Controller, at its own initiative, based on the City's very detailed time study, calculated how much time was spent to conduct the five reimbursable activities it allows for as part of the Interrogation component in the parameters as noted on page ten (10) of the draft audit report.

The City, along with numerous other local agencies, disagrees with the State Controller's interpretation of the primary eligible costs for this component. The City believes the Parameters and Guidelines, as amended at the Controller's request in December 2006, do not accurately reflect the original Statement of Decision which found that eligible costs included: "Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts." The Controller has limited reimbursement to only officers being compensated for overtime. The City believes the costs for conducting interrogations during regular work time is reimbursable, as is preparation for those interrogations.

Adverse Comment

The City claimed \$20,278,116 in salaries and benefits for the audit period. The Controller determined that \$12,849,376 is allowable and \$7,428,740 is unallowable. The costs were deemed unallowable because the City claimed reimbursement for unallowable activities.

The City identified 16 activities in its time study under this cost component. The Controller found that 11 activities were eligible for reimbursement and 5 were not. The Controller points out that the 5 activities are part of the City's investigative process and are, therefore, not reimbursable. It is the City's contention that, for the most part, the 5 activities are necessary activities to prepare the Adverse Comment and therefore should be reimbursable. The City does not dispute the Controller's statement that the revised Parameters and Guidelines (section IV(D)-Adverse Comment) state that the "investigating a complaint," "interviewing a complainant," and "preparing a complaint investigation report" are not reimbursable activities.

SCO's Comment

The finding and recommendation remain unchanged.

We concur that the unallowable costs contained in the audit report were not caused by an inflation of costs by the city. Instead, costs were unallowable due to a misinterpretation of what is and what is not allowable for reimbursement from the State under the mandated program.

We will address the rest of our comments for the audit finding in the same order as they appear in the city's response.

Administrative Activities

We do not dispute that the administrative activities included in the city's time study are necessary and reasonable for the conduct of the city's internal affairs investigations of police officer misconduct. The issue is the determination of whether the activities were eligible for reimbursement under the mandated program.

We concur that there was no discussion of administrative activities in the statement of decision adopted by the CSM on November 30, 1999. The purpose of the statement of decision is to determine whether or not the test claim statutes support or do not support a finding that costs are being mandated by the State. The CSM recognizes that certain administrative tasks are necessary to carry out mandated activities and typically includes these in the adopted parameters and guidelines. The city states its assumption that when the parameters and guidelines were adopted for this mandate, "any reasonably necessary administrative activities associated with the POBOR program were eligible for reimbursement." The city goes on to state that "By including the Administrative Activities component, it is believed that the Commission intended to include anything reasonably necessary unless it was specifically excluded, such as the limitation on training for only human resources, law enforcement, and legal counsel regarding the requirements of the mandate." However, we can find no language in the adopted parameters and guidelines or in the legal record for this mandate confirming this assumption.

In the staff analysis for the proposed POBOR Program's parameters and guidelines (Item #10 in the CSM hearing of July 27, 2000), the CSM discussed its analysis of the test claimant's proposed parameters and guidelines for administrative activities. The proposed activities included the following:

1. Developing or updating policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities,
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate,
3. Maintenance of the systems to conduct the mandated activities,
4. Providing direct supervision over the agency staff performing the mandated activities.

The CSM's staff analysis goes on to state:

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and *maintaining* files for those cases. Thus, the component "maintenance of systems to conduct the mandated activities is too broad." Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBOR cases."

The CSM also considered the topic of Administrative Activities in its December 4, 2006, final staff analysis (Item #13-Request to Amend Parameters and Guidelines), which states:

Section IV. A (3)

Section IV. A (3) currently states the following: "Updating the status of the POBOR cases."

SCO requests that Section IV. A (3) be amended as follows (proposed language is underlined):

Updating the status report of mandate-reimbursable POBOR cases. The updating relates to tracking the procedural status of cases. It does not relate to maintaining or updating the cases (e.g. setting up, reviewing, evaluating, or closing the cases).

In response to the SCO proposal, the City of Sacramento and the *City of Los Angeles* [emphasis added] filed comments contending that the proposal is too narrow because of the time constraints imposed by the POBOR legislation. The City of Sacramento states the following:

The proposal concerning administrative activities and updating the cases is much too narrowly drawn. There are strict time constraints imposed by POBOR: if the time limits are not met, the case must be dismissed and no discipline can be imposed. Therefore, not only must the case filed be updated, but they must be reviewed in order to make sure that all deadlines have been met. To restrict the language as desired by the Controller would make it next to impossible to assure that the time limits set forth in POBOR are met. In order to make sure that the time lines are met, the case must be reviewed at various points in order to make sure that all investigations are completed, as well as to make sure all interrogations are completed timely. This is reasonably necessary in order to make sure that the time lines are met.

Staff finds that the City's comments go beyond the scope of the test claim statutes and are not consistent with the Commission's findings in the Statement of Decision on reconsideration. As indicated in footnote 5, page 6 of the Commission's Statement of Decision on reconsideration (05-RL-4499-01), the POBOR Act has been subsequently amended by the Legislature. One of those amendments imposed the time limitations described by the City. The subsequent amendments were not pled in this test claim and, thus, they were not analyzed to determine whether they impose reimbursable state-mandated activities within the meaning of article XIII B, section 6. The City's arguments relating to the time limitations imposed by subsequent legislation are outside the scope of the Commission's decision in POBOR (CSM 4499). Thus, the City's rationale is not consistent with the Commission's findings.

Staff further finds that the SCO proposal is consistent with the Commission's findings when it adopted the parameters and guidelines. The Commission adopted the following finding:

The claimant's proposed parameters and guidelines include the following administrative activities:

[]

3. Maintenance of the systems to conduct mandated activities.

[]

The Department of Finance states that the component "maintenance of the systems to conduct the mandated activities" is too ambiguous. [CSM] Staff agrees.

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and maintaining files for those cases. Thus, the component "maintenance of the systems to conduct the mandated activities" is too broad. Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBOR cases."

Staff has clarified the activity and added the following proposed language to Section IV. C (3):

Updating the status report of the mandate-reimbursable POBOR ~~eases~~ activities. "Updating the status report of mandate-reimbursable POBOR ~~eases~~ activities" means tracking the procedural status of ~~eases~~ the mandate-reimbursable activities only. Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

We believe that from this record of evidence, the position taken by the city in its response to our audit findings regarding allowable administrative activities has already been considered by CSM and denied for the reasons stated above. The amendments to the POBOR statutes cited by the CSM in its staff analysis of December 4, 2006, were contained in Statutes of 1997, Chapter 148. To date, no interested party has filed a test claim to determine whether this legislation imposes a state mandate. In the meantime, SCO will continue to use the criteria contained in the adopted parameters and guidelines to determine the allowable activities under this mandated program.

Interrogations

The city is objecting to our finding that costs incurred for interrogating accused and witnessing officers during regular working hours and preparation for those interrogations are unallowable. Further, the city claims that the finding is based on SCO's "interpretation of the primary eligible costs for this component." We disagree. Rather, we contend that the finding is based on the language contained in the parameters and guidelines adopted by CSM for this mandated program.

The city is relying on specific language that appears on page 13 of the original statement of decision adopted by the CSM on November 30, 1999, for the mandated program. The city claims that the language cited in their response supports a CSM finding that interrogations conducted during on-duty hours and preparing for those interrogations are

reimbursable. However, the statement of decision does not define the reimbursable activities. The purpose of the statement of decision is stated on page 2 of that document as follows:

Issue: Does the test claim legislation, which established rights and procedures for peace officers subject to investigation or discipline, constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

On November 30, 1999, the CSM adopted its statement of decision that the test claim legislation constitutes a partial reimbursable mandated program within the meaning of Article XIII B, section 6 of the California Constitution, and Government Code section 17514. On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines as modified by staff were issued to the interested parties. The draft staff analysis was based on a review of the claimant's proposed parameters and guidelines, the test claim legislation, and the CSM's statement of decision. Subsequently, the reimbursable activities were written into regulation when the CSM adopted the parameters and guidelines for POBOR on July 27, 2000, and corrected them on August 17, 2000.

We re-examined the statement of decision and noted that the city is taking the language cited in their response out of context. The language cited by the city is found in the section of the statement of decision titled "Compensation and Timing of an Interrogation." The purpose of this section was to address the test claimant's assertion that government code section 3303, subdivision (a) results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities.

The section begins on page 12 by stating that:

Government Code section 3303 describes the procedures for the interrogation of a peace officer. The procedures and rights given to peace officers under section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.

Government Code section 3303, subdivision (a), establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer. This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the "normal waking hours" of the peace officer, unless the seriousness of the investigation requires otherwise. If the interrogation takes place during the off-duty *time of the peace officer, the peace officer "shall" be compensated for the off-duty time in accordance with regular department procedures.*

The claimant contended that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities. The claimant stated the following:

"If a typical police department works in three shifts, such as the Police Department for this City, two-thirds of the police force work hours [that are] not consistent with the work hours of Investigators in the Internal Affairs section.

Even in a smaller department without such a section, hours conflict if command staff assigned to investigate works a shift different than the employees investigated. Payment of overtime occurs to the employees investigated or those performing the required investigation, or is at least a potential risk to an employer for the time an employee is interrogated pursuant to this section."

The Commission agreed. Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts.

Accordingly, the Commission found that Government Code section 3303, subdivision (a), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes "costs mandated by the state" under Government [sic] Code section 17514.

The city believes that the language used by the CSM in the paragraphs above support that costs incurred for interrogating officers during their regular on-duty time and preparing for those interrogations are reimbursable. We believe this to be an expanded interpretation, given that the issue under analysis in this section of the statement of decision was whether or not the test claim statute imposed the payment of overtime to the investigated employee, which it does. The city ignores the CSM's language in the beginning of this section when it noted that the procedures under Government Code section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor. The CSM even italicized the word "not" to make its point clear.

In addition, there is no language in this section of the statement of decision wherein the test claimant asserted that costs incurred to prepare for the interrogation of peace officers is reimbursable. Therefore, as this issue was not pled by the test claimant, the CSM did not determine that interrogation preparation costs are reimbursable.

We also re-examined CSM's staff analysis for the proposed parameters and guidelines (Item #10 for its hearing of July 27, 2000) regarding the Interrogations cost component. This document contains the following language:

Section IV.(C)(1) and (2), Compensation and Timing of an Interrogation, Interrogation Notice

The Commission's Statement of Decision includes the following reimbursable activity:

"Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)"

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a) requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking [sic] hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, *the claimant contended that this section resulted in the payment of overtime to the peace officer employee* [emphasis added]. (See page 12 of the Commission's statement of decision.)

The staff analysis goes on to state:

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR [sic] was enacted.

Based on the foregoing, staff has modified Section IV(C) as follows:

~~"1. Conducting an interrogation of a peace officer while the officer is on duty or compensating~~ When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code section 3303, subd. (a).)

We believe the city is trying to expand the CSM's staff analysis of the Interrogation cost component to include activities that were not included in the adopted parameters and guidelines. The adopted parameters and guidelines (section IV.C.-Interrogation) state that "claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or any other routine or unplanned contact with, a supervisor or any other public safety officer." The document goes on to specify five activities that are reimbursable.

Section IV.C.1. describes the only reimbursable activity that relates to interrogations. It states "when required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures."

To state that interrogations conducted during an officer's regular on-duty time and preparing for those interrogations is reimbursable is contrary to the wording that appears in the statement of decision, the staff analysis for the proposed parameters and guidelines, and in the adopted parameters and guidelines. Therefore, the preponderance of evidence on this issue does not support the city's contention.

We also noted that CSM re-examined the issue of allowable costs under the Interrogation cost component in its December 4, 2006 final staff analysis (Item #13-Request to Amend Parameters and Guidelines), which states:

The County of San Bernardino, the City of Sacramento, and the *City of Los Angeles* [emphasis added] contend that investigation costs and the cost to conduct the interrogation are reimbursable.

However, as identified below, the Commission has already rejected the arguments raised by the County and Cities for reimbursement of investigation costs and the cost to conduct the interrogation. Thus, staff finds that the SCO proposal is consistent with the Commission findings when adopting the parameters and guidelines and the Statement of Decision on reconsideration.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate and review complaints or to conduct interrogations. The Commission adopted the following findings when adopting the parameters and guidelines:

The Commission's Statement of Decision includes the following reimbursable activity:

Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a), requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, the claimant contended that this section resulted in the payment of overtime to the peace officer employee. (See page 12 of the Commission's Statement of Decision.)

This document also states:

In addition, staff has included the activities that are not reimbursable at the end of Section IV. C as follows:

The following activities are **not** reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.

3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

In addition, during testimony for this item, a San Bernardino County representative testified that the county had submitted an amendment to clarify what was adopted in the original statement of decision. The county representative believed the CSM staff's conclusion regarding interrogations was inconsistent with the original statement of decision. The Chief Legal Counsel for the CSM responded that some statements in the original statement of decision were being taken out of context. She clarified that the test claim legislation does not mandate local agencies to interrogate an officer and it does not mandate local agencies to investigate. Rather, these activities are based on local policy and regulation.

Adverse Comment

The city argues that the five time study activities that we found to be unallowable were for allowable activities. Similar to the discussion of unallowable costs for the administrative activities cost component, we do not dispute that these five activities are necessary and reasonable for the preparation of an adverse comment. The issue is the determination of whether the activities were eligible for reimbursement under the mandated program.

In the draft audit report, we stated the following:

The city also claimed the following five activities that are not reimbursable.

- **Preliminary:** This activity involves investigating the circumstances surrounding the adverse comment.
- **Collect:** This activity consists of the preliminary investigation conducted by supervisors, detectives, and the command staff in the Area where the complaint was taken. This activity can include report writing, interviews, or any activity in which information is gathered for the "1.28" (complaint form).
- **Area Invest:** This activity consists of the time spent by an Area to investigate the complaint or "1.28" (complaint form). This activity occurs after the preliminary investigation.
- **Inspect:** This activity occurs when the assigned Advocate reviews the investigation for status and thoroughness.
- **RE Invest:** This activity involves the time needed to conduct any additional investigations.

In the audit report, we determined that the activity "review" was reimbursable. This activity involves the review of the complaint form and the circumstances leading to the adverse comment. By contrast, the activity "preliminary" cited above, involves the actual investigation of the adverse comment circumstances. Similarly, the activities "collect," "area invest," and "re invest" involve investigation of the complaint. We also determined that the activities of "adjudication" and "CO review" were reimbursable. These activities involve review of the completed complaint and the letter of transmittal by the accused officer's supervisor and the Commanding Officer. By contrast, the activity "inspect" involves review of the investigation.

City representatives did not dispute our interpretation of these five activities during the course of audit fieldwork and did not raise any objections during the audit exit conference. Subsequent to the exit conference and draft report, the city has not presented any evidence to us that there is a distinction between the five activities cited above and the language in the parameters and guidelines stating that costs for conducting investigations are not reimbursable. In addition, the city states in the response that it does not dispute the language in the audit report that investigating a complaint, interviewing a complainant, and preparing a complaint investigation report are not reimbursable activities.

**FINDING 2—
Overstated services
and supplies**

The city claimed services and supplies costs totaling \$708,683 in FY 2003-04. However, the claimed costs were actually salary, benefit, and related indirect costs incurred for non-sworn employees. The costs were incurred to perform the same activities discussed in Finding 1. Therefore, the adjustments in this finding are attributed to the same analysis that is presented in Finding 1. We determined that \$137,415 is allowable and \$571,268 is unallowable. The costs were unallowable because the city claimed reimbursement for unallowable activities.

We reclassified the allowable costs from services and supplies to salaries, benefits, and related indirect costs. The following table summarizes the adjustments to claimed services and supplies by individual cost component:

<u>Cost Component</u>	<u>Costs Claimed</u>	<u>Costs Allowed</u>	<u>Audit Adjustment</u>
Administrative Activities:			
Salaries	\$ 70,663	\$ 14,318	\$ (56,345)
Benefits	18,008	3,648	(14,360)
Related indirect costs	28,786	5,832	(22,954)
Subtotal	117,457	23,798	(93,659)
Adverse Comment Activities:			
Salaries	355,701	68,357	(287,344)
Benefits	90,638	17,418	(73,220)
Related indirect costs	144,887	27,842	(117,045)
Subtotal	591,226	113,617	(477,609)
Total	\$ 708,683	\$ 137,415	\$ (571,268)

The parameters and guidelines (section V.A.1.—Salaries and Benefits) require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits. Reimbursement includes compensation paid for salaries, wages, and employee benefits.

Recommendation

We recommend that the city establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City's Response

The City claimed \$708,683 for services and supplies in its Fiscal Year (FY) 2003/04 claim. The Controller found the costs were for actual salary, benefit and related indirect costs incurred for non-sworn employees. The City agrees that these costs were for salaries and were inadvertently included in the service and supplies areas. As such, the Controller considered these costs in the appropriate salary category and treated them in the same manner as all other salaries. Other than the City's disagreement with how the Controller has interpreted the eligible activities in its Finding 1, the City has no disagreement with this finding.

SCO's Comment

The finding and recommendation remains unchanged.

**FINDING 3—
Misstated productive
hourly rates**

The city understated allowable salary and benefit costs by \$141,364 during the audit period because it overstated and understated productive hourly rates. This amount also includes \$8,442 for the salary and benefit costs claimed as services and supplies in FY 2003-04 (as noted in Finding 2). The related indirect costs totaled \$50,884. All of these adjustments were made because of errors in the city's calculation of productive hourly rates.

Productive hourly rates were erroneously misstated for all employee classifications in the city's claim for FY 2007-08. The misstatements occurred for two reasons: (1) the city used 1,800 productive hours to calculate the rates instead of its calculated productive hours; and, (2) the average annual salaries the city used in the calculations for some employee classifications did not match the rates from the city's report of average annual salaries. We recalculated the rates using the correct salary base and the correct annual productive hours provided by city staff.

We also identified errors with productive hourly rate calculations in FY 2003-04 and FY 2005-06. The city had claimed the rate for Police Services Representative I instead of Police Services Representative II.

The following table summarizes the audit adjustments:

Cost Category	Fiscal Year			Total
	2003-04	2005-06	2007-08	
Salaries	\$ 6,728	\$ 6,161	\$ 84,325	\$ 97,214
Benefits	1,714	2,373	40,063	44,150
Total direct costs	8,442	8,534	124,388	141,364
Related indirect costs	2,740	1,808	46,336	50,884
Total	\$ 11,182	\$ 10,342	\$ 170,724	\$ 192,248

The parameters and guidelines (section V.A.1.—Salaries and Benefits) require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Recommendation

We recommend that the city establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City's Response

The Controller found the City had understated the productive hourly rates for various employee classifications in the City's FY 2007/08 claim. It also found errors with productive hourly rates in the FY 2003/04 and FY 2005/06. The Controller recalculated those rates and the result was an increase of \$192,248 in direct and indirect costs. The City concurs with this finding.

SCO's Comment

The finding and recommendation remain unchanged.

**Attachment—
City's Response to
Draft Audit Report**

LOS ANGELES POLICE DEPARTMENT



WILLIAM J. BRATTON
Chief of Police

ANTONIO R. VILLARAIGOSA
Mayor

P. O. Box 30158
Los Angeles, Calif. 90030
Telephone: (213) 485-5296
TDD: (877) 275-5273
Ref #: 10.2

September 15, 2009

Mr. Jim L. Spano, Chief
Mandated Cost Audits Bureau
Office of the State Controller
Division of Audits
Post Office Box 942850
Sacramento, California 94250-5874

RE: Response to the August 12, 2009, Draft Audit Report for the Peace Officers Procedural Bill of Rights (POBOR) Program

Dear Mr. Spano,

This letter is the City of Los Angeles' (City) response to the August 12, 2009, Draft Audit Report of the Los Angeles Police Department's (LAPD) Peace Officers Procedural Bill of Rights Program (commencing with Chapter 4654, Statutes of 1976) for the period of July 1, 2003 through June 30, 2008. We would like to commend the State Controller's (Controller) staff on the conduct of this audit. The City has experienced several audits of its Police Department's mandated cost claims and, in this case, the Police Department reported that while it disagrees with most of the proposed disallowances, there were no surprises or misunderstandings during the conduct of the audit, unlike in previous audits. Also, we would like to indicate that the high amount of unallowable costs is attributed to the Controller and Commission on State Mandates' interpretation of the Parameters and Guidelines for the POBOR Program, not an erroneous inflation of costs by the City. What follows below are the positions held by the City on the Controller's three findings from the audit.

Finding 1 – Unallowable salaries, benefits and related indirect cost

The City claimed \$35,648,462 in salaries and benefits for the audit period. The Controller determined that \$14,183,993 is allowable and \$21,464,469 is unallowable. The costs are unallowable because the Administrative, Interrogation, and Adverse Comment Activities claimed are not identified in the Parameters and Guidelines as reimbursable costs.

Administrative Activities

The Controller determined that only \$118,411 of the \$2,864,828 is allowable because the City

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Mr. Jim L. Spano, Chief

Page 2

10.2

claimed reimbursement for unallowable activities.

The City disagrees with all of the State Controller's disallowances. It is the City's opinion that all of those activities are administrative in nature and reasonably necessary to carry out the POBOR program in such a large agency as the LAPD.

The City disagrees with what it perceives as the Controller's very narrow interpretation of the Administrative Activities component of the Commission on State Mandates' Parameters and Guidelines. When the Statement of Decision for the test claim was adopted nearly 10 years ago, there was no discussion of administrative activities for the POBOR Program. When the Parameters and Guidelines was adopted, it was assumed that, for the most part, any reasonably necessary administrative activities associated with the POBOR Program were eligible for reimbursement. A few activities, such as training, were normally addressed specifically, since the Controller often would not allow for training costs if they were specifically addressed in the Parameters and Guidelines. By including the Administrative Activities component, it is believed that the Commission intended to include anything reasonably necessary unless it was specifically excluded, such as the limitation on training for only human resources, law enforcement and legal counsel regarding the requirements of the mandate.

Interrogation Activities

The Controller determined that of the \$12,505,518 in salaries and benefits claimed for the audit period, \$1,206,216 is allowable and \$11,289,312 is unallowable. Once again, the Controller contends the City's costs were unallowable because they were for unallowable activities.

The City is appreciative of the fact the Controller allowed for the \$1,206,216 of costs which were not specifically addressed in its claims. But rather, the Controller, at its own initiative, based on the City's very detailed time study, calculated how much time was spent to conduct the five reimbursable activities it allows for as part of the Interrogation component in the parameters as noted on page ten (10) of the draft audit report.

The City, along with numerous other local agencies, disagrees with the State Controller's interpretation of the primary eligible costs for this component. The City believes the Parameters and Guidelines, as amended at the Controller's request in December 2006, do not accurately reflect the original Statement of Decision which found that eligible costs included: "Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts." The Controller has limited reimbursement to only officers being compensated for overtime. The City believes the costs for conducting interrogations during regular work time is reimbursable, as is preparation for those interrogations.

Adverse Comment

The City claimed \$20,278,116 in salaries and benefits for the audit period. The Controller

Mr. Jim L. Spano, Chief
Page 3
10.2

determined that \$12,849,376 is allowable and \$7,428,740 is unallowable. The costs were deemed unallowable because the City claimed reimbursement for unallowable activities.

The City identified 16 activities in its time study under this cost component. The Controller found that 11 activities were eligible for reimbursement and 5 were not. The Controller points out that the 5 activities are part of the City's investigative process and are, therefore, not reimbursable. It is the City's contention that, for the most part, the 5 activities are necessary activities to prepare the Adverse Comment and therefore should be reimbursable. The City does not dispute the Controller's statement that the revised Parameters and Guidelines (section IV(D) -Adverse Comment) state that the "investigating a complaint," "interviewing a complainant," and "preparing a complaint investigation report" are not reimbursable activities.

Finding 2 – Overstate services and supplies

The City claimed \$708,683 for services and supplies in its Fiscal Year (FY) 2003/04 claim. The Controller found the costs were for actual salary, benefit and related indirect costs incurred for non-sworn employees. The City agrees that these costs were for salaries and were inadvertently included in the service and supplies areas. As such, the Controller considered these costs in the appropriate salary category and treated them in the same manner as all other salaries. Other than the City's disagreement with how the Controller has interpreted the eligible activities in its Finding 1, the City has no disagreement with this finding.

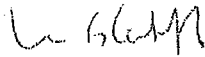
Finding 3 – Misstated productive hourly rates

The Controller found the City had understated the productive hourly rates for various employee classifications in the City's FY 2007/08 claim. It also found errors with productive hourly rates in the FY 2003/04 and FY 2005/06. The Controller recalculated those rates and the result was an increase of \$192,248 in direct and indirect costs. The City concurs with this finding.

If you have any questions concerning the City's position or request further information from the City concerning this matter, please contact Police Administrator Laura Filatoff, Commanding Officer, Fiscal Operations Division, LAPD, at (213) 485-5296.

Very truly yours,

WILLIAM J. BRATTON
Chief of Police



LAURA FILATOFF, Police Administrator
Commanding Officer
Fiscal Operations Division

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>



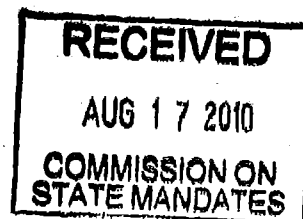
DEPARTMENT OF
FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 11, 2010

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms. Higashi:

The Department of Finance (Finance) has reviewed the proposed parameters and guidelines submitted by the City of Los Angeles (claimant) asking the Commission to adopt a reasonable reimbursement methodology (RRM) for Claim No.09-PGA-05 [05-RL-4499-01 (4499), 06-PGA-06], "Peace Officers Procedural Bill of Rights."

Finance asserts that the proposed RRM does not meet the requirements of Government Code section 17518.5. The RRM must be developed based on cost information from a representative sample of "eligible claimants" pursuant to subdivision (b) of Government Code section 17518.5, which implies more than a single county. This proposed RRM, however, applies only to the City of Los Angeles. Additionally, the RRM was developed solely on the cost information of the claimant. The RRM, therefore, does not consider the variation of costs "among local agencies" to implement the mandate in a cost-efficient manner pursuant to subdivision (c) of Government Code section 17518.5. As a result, the proposed RRM does not meet existing statutory requirements.

Finance notes that the current parameters and guidelines allow eligible claimants to file reimbursement claims based on actual costs or the established RRM of \$37.25 per officer. The actual cost filing method accomplishes the same objective as the proposed RRM by allowing claimants to recover their actual costs incurred for implementing the mandate. Therefore, this method of filing also would allow the City of Los Angeles to be reimbursed at a future date for any eligible costs incurred for reimbursable activities such as Administrative Appeal activities.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your July 12, 2010 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

Ms. Paula Higashi
August 11, 2010
Page 2

If you have any questions regarding this letter, please contact Carla Shelton, Associate Finance Budget Analyst, at (916) 445-8913.

Sincerely,

A handwritten signature in black ink, appearing to read "Zlatko Theodorovic". The signature is written in a cursive style with a large, stylized initial "Z".

ZLATKO THEODOROVIC
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF CARLA SHELTON
DEPARTMENT OF FINANCE

CLAIM NO. CSM— 09-PGA-05 [05-RL-4499-01 (4499), 06-PGA-06]

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

8/11/10

at Sacramento, CA


Carla Shelton

PROOF OF SERVICE

Test Claim Name: Peace Officers Procedural Bill of Rights
Test Claim Number: CSM—09-PGA-05 [05-RL-4499-01 (4499), 06-PGA-06]

I, the undersigned, declare as follows:

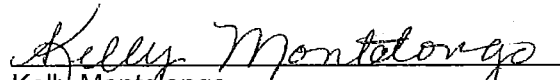
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On Aug. 12, 2010, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, as addressed on the attachment, and as addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

Ms. Laura Filatoff
City of Los Angeles
Los Angeles Police Department
Fiscal Operations Division
100 West First Street, Room 774
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 12, 2010 at Sacramento, California.


Kelly Montelongo

Commission on State Mandates

Original List Date: 7/12/2010
Last Updated:
List Print Date: 07/12/2010
Claim Number: 09-PGA-05
Issue: POBOR

Mailing Information: Completeness Determination

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. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Jim Spano

State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

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Department of Finance (A-15)
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Sacramento, CA 95814

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Fax:

Mr. Glen Everroad

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Newport Beach, CA 92659-1768

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Ms. Juliana F. Gmur

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Mr. J. Bradley Burgess

Public Resource Management Group
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Tel: (916) 595-2646

Fax:

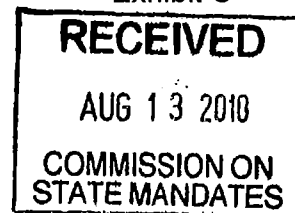
	Claimant Representative
Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: (916) 471-5538 Fax: (916) 366-4838
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Klefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Fax: (916) 368-5723
Ms. Hasmik Yaghobyan County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 893-0792 Fax: (213) 617-8106
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Ms. Bonnie Ter Keurst County of San Bernardino Office of the Auditor/Controller-Recorder 222 West Hospitality Lane San Bernardino, CA 92415-0018	Tel: (909) 386-8850 Fax: (909) 386-8830
Ms. Angie Teng State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 323-0706 Fax:
Mr. Andy Nichols Nichols Consulting 1857 44th Street Sacramento, CA 95819	Tel: (916) 455-3939 Fax: (916) 739-8712
Ms. Jill Kanemasu State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 322-9891 Fax:
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: (916) 939-7901 Fax: (916) 939-7801
Ms. Laura Filatoff Los Angeles Police Department Fiscal Operations Division P.O. Box 30158 Los Angeles, CA 90030	Tel: (213) 486-8591 Fax:
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734



JOHN CHIANG
California State Controller
Division of Accounting and Reporting

August 11, 2010

Exhibit C



Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Response to Proposed Amendments to Parameters and Guidelines Filed by the City of Los Angeles for the Peace Officers Procedural Bill of Rights Program

Dear Ms. Higashi:

In response to your notice dated July 12, 2010, the State Controller's Office is submitting its comments to the proposed parameters and guidelines amendments filed by the City of Los Angeles on June 29, 2010, for the Peace Officers Procedural Bill of Rights Program (POBOR). We do not believe the proposed reasonable reimbursement methodology (RRM) amount is appropriate.

While we support the concept of revising the adopted RRM for this mandated program, we oppose the proposal recently submitted by the City of Los Angeles to adopt an RRM of \$452.53 that would be applicable only for this local agency. The \$452.53 RRM amount that the city is proposing is mathematically incorrect based on the statistics provided. Allowable costs of \$20,131,194 divided by 46,696 peace officers equals \$431.11, instead of \$452.53.

The city's analysis is based on allowable costs from our audit of the city's POBOR claims covering a period of five fiscal years, from FY 2003-04 through FY 2007-08. However, allowable costs for that audit were based on a time study that the city conducted during a one-month period in May 2004. We do not believe that it would be appropriate to adopt an RRM to claim costs prospectively that are based on a time study that is already six years old.

As we noted in our final audit report, dated September 29, 2009, the city used an inconsistent method when applying the time study to case statistics in each year of the five-year audit period. Case counts were based on the number of closed cases in some years and on cases in progress in other years. As allowable costs were based on application of the time study results to the number of cases claimed by the city, we believe that the final outcome for the five-year period as a whole was somewhat skewed. While we chose not to take an audit finding on this issue, we believe that this also creates questions as to the appropriateness of using the results of this particular audit as a basis for an RRM to be used prospectively.

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COMMISSION ON
GOVERNMENTAL
OPERATIONS

We issued a revised final audit report on August 11, 2010, for our audit of the city's POBOR claims covering eight fiscal years, from FY 1994-95 through FY 2001-02. We incorporated the updated results of the city's May 2004 time study to the case statistics reported by the city for FY 1994-95 through FY 2001-02. The average amount of allowable costs for the revised audit report totals \$1,291,486 (\$10,331,887 divided by 8), which represents a 68% reduction from the \$4,026,239 average amount (\$20,131,194 divided by 5) for the audit period covering FY 2003-04 through FY 2007-08. Therefore, if the total amount of allowable costs covering the entire 13 fiscal years that have been audited were divided by the total number of peace officers employed by the city during that same time period, the amount per peace officer would be substantially less than the proposed per peace officer amount of \$452.53.

We also question the city's ability to request an RRM that is applicable only to claims filed by the City of Los Angeles. We noted that Government Code section 17518.5, subdivision (c), states, "A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner." We believe this language indicates that an adopted RRM should be representative of costs incurred by all claimants on a statewide basis.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, Division of Audits, at (916) 323-5849.

Sincerely,



JAY LAL, Manager
Local Reimbursement Section

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>

Commission on State Mandates

Original List Date: 7/12/2010
Last Updated:
List Print Date: 07/12/2010
Claim Number: 09-PGA-05
Issue: POBOR

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: (916) 323-5849 Fax: (916) 327-0832
Mr. Jeff Carosone Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: (916) 445-8913 Fax:
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: (949) 644-3127 Fax: (949) 644-3339
Ms. Jolene Tollenaar MGT of America 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: (916) 443-9136 Fax: (916) 443-1766
Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	Tel: (916) 485-8102 Fax: (916) 485-0111
Ms. Marianne O'Malley Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: (916) 319-8315 Fax: (916) 324-4281
Mr. J. Bradley Burgess Public Resource Management Group 895 La Sierra Drive Sacramento, CA 95864	Tel: (916) 595-2646 Fax:

Exhibit C

	Claimant Representative	
<p>Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670</p>	<p>Tel: (916) 471-5538 Fax: (916) 366-4838</p>	
<p>Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826</p>	<p>Tel: (916) 368-9244 Fax: (916) 368-5723</p>	
<p>Ms. Hasmik Yaghobyan County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012</p>	<p>Tel: (213) 893-0792 Fax: (213) 617-8106</p>	
<p>Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814</p>	<p>Tel: (916) 445-3274 Fax: (916) 449-5252</p>	
<p>Ms. Bonnie Ter Keurst County of San Bernardino Office of the Auditor/Controller-Recorder 222 West Hospitality Lane San Bernardino, CA 92415-0018</p>	<p>Tel: (909) 386-8850 Fax: (909) 386-8830</p>	
<p>Ms. Angie Teng State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816</p>	<p>Tel: (916) 323-0706 Fax:</p>	
<p>Mr. Andy Nichols Nichols Consulting 1857 44th Street Sacramento, CA 95819</p>	<p>Tel: (916) 455-3939 Fax: (916) 739-8712</p>	
<p>Ms. Jill Kanemasu State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816</p>	<p>Tel: (916) 322-9891 Fax:</p>	
<p>Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630</p>	<p>Tel: (916) 939-7901 Fax: (916) 939-7801</p>	
<p>Ms. Laura Filatoff Los Angeles Police Department Fiscal Operations Division P.O. Box 30158 Los Angeles, CA 90030</p>	<p>Tel: (213) 486-8591 Fax:</p>	
<p>Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842</p>	<p>Tel: (916) 727-1350 Fax: (916) 727-1734</p>	

Hearing Date: September 29, 2011
J:\Mandates\2009\PGA\09-PGA-05\DSA

ITEM ____
PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS
DRAFT STAFF ANALYSIS

Government Code Sections 3300 through 3310
As Added and Amended by Statutes 1976, Chapter 465;
Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994;
Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officer Procedural Bill of Rights
09-PGA-05 (CSM-4499)

City of Los Angeles, Requestor

Executive Summary

Background

This item addresses a request to amend the parameters and guidelines for the *Peace Officers Procedural Bill of Rights* (also known as POBOR) program to add a reasonable reimbursement methodology (RRM) “to apply only and solely” to the City of Los Angeles.

The POBOR program provides a series of rights and procedural safeguards to peace officers employed by local agencies that are subject to investigation or discipline. Generally, POBOR prescribes certain procedural protections that must be afforded peace officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action, as defined by statute, is taken against them, or they are denied promotion on grounds other than merit.

The proposed RRM is in the form of a unit cost of \$425.53 per officer to be claimed by only the City of Los Angeles beginning July 1, 2009, and increased by the implicit price deflator in subsequent years, for all the reimbursable activities *except* for the activity of providing the opportunity for an administrative appeal to officers subject to specified disciplinary actions. The RRM is based on the total costs reimbursed by the State Controller’s Office to the City of Los Angeles for the POBOR program for five fiscal years (from fiscal year 2003-2004 through 2007-2008), divided by the number of sworn peace officers employed with the City of Los Angeles during that time.

Both the Department of Finance and the State Controller’s Office oppose this request.

Staff Analysis

The City’s proposal fails for two reasons. First, the proposed RRM does not satisfy the requirements of Government Code section 17518.5. The RRM proposed by the City is not based

on cost information from a representative sample of eligible claimants as required by section 17518.5(b). Nor does the proposed RRM consider the variation in costs among other local agencies mandated by the state to comply with the POBOR program as required by section 17518.5(c). There is no authority in Government Code section 17518.5 to allow the adoption of an RRM based on the costs of one local agency.

Second, adopting an RRM for only one local agency when the mandated program is equally imposed on all other local agencies contradicts the purpose of the test claim process. The Legislature established the test claim process to resolve disputes affecting multiple local agencies.¹ The process starts with the filing of a test claim, which like a class action, is the first claim filed on a statute or executive order that affects other similarly situated local agencies or school districts.² The parameters and guidelines are part of the test claim process. Once a test claim is approved, the Commission is required to adopt parameters and guidelines “for the reimbursement of *any* claims relating to the statute or executive order.” (Emphasis added.)³ Although the Commission has the authority to include an RRM in the parameters and guidelines, the parameters and guidelines must describe all local governmental entities that are eligible to file for reimbursement under the program.⁴ Once the parameters and guidelines are adopted or amended, they are sent to the State Controller’s Office to prepare claiming instructions to assist “local agencies and school districts” in claiming costs to be reimbursed.⁵ The POBOR program is mandated and applies equally to the law enforcement agencies of all counties, cities, and the police protection districts identified in the Commission’s decision. To adopt an RRM for only one of those agencies would contradict the purpose of the test claim process.

Conclusion and Staff Recommendation

For the foregoing reasons, staff recommends that the Commission adopt this analysis and deny the City of Los Angeles’ request to amend the parameters and guidelines.

STAFF ANALYSIS

Requestor

City of Los Angeles

Chronology

03/28/2008 Parameters and guidelines for *Peace Officers Procedural Bill of Rights* (POBOR, 06-PGA-06, CSM-4499) were amended to include the option of claiming costs using a reasonable reimbursement methodology (RRM) in the form of a unit cost of \$37.25 per officer or by showing actual costs incurred to comply with the program

¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-332.

² Government Code section 17521.

³ Government Code section 17557(a).

⁴ California Code of Regulations, Title 2, section 1183.1(a)(2).

⁵ Government Code section 17558(a) and (b).

- 06/30/2010 City of Los Angeles files request to amend parameters and guidelines to add an RRM based on a unit cost of \$452.53 per officer “to apply only and solely” to the City of Los Angeles (Exhibit A)
- 08/13/2010 Department of Finance files comments opposing the request (Exhibit B)
- 08/13/2010 State Controller’s Office files comments opposing the request (Exhibit C)

I. Background

This item addresses a request to amend the parameters and guidelines for the *Peace Officers Procedural Bill of Rights* (POBOR) program to add a reasonable reimbursement methodology (RRM) in the form of a unit cost applicable only to claims filed by the City of Los Angeles for some of the reimbursable activities. Pursuant to Government Code section 17557(d)(2)(C), a request to amend the parameters and guidelines may be filed to include an RRM for all or some of the reimbursable activities. The Commission may, after public notice and a hearing, amend the parameters and guidelines.

The POBOR program provides a series of rights and procedural safeguards to peace officers employed by local agencies that are subject to investigation or discipline. Generally, POBOR prescribes certain procedural protections that must be afforded officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action, as defined by statute, is taken against them, or they are denied promotion on grounds other than merit. The reimbursable activities identified in the parameters and guidelines include the following ongoing activities:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

Under the current parameters and guidelines, cities, counties, and certain police protection districts are authorized to claim reimbursement for the cost of these activities, beginning

July 1, 2006, based either on the actual costs incurred or pursuant to an RRM adopted by the Commission in March 2008 of \$37.25 per full-time sworn peace officer.⁶

Proposal of the City of Los Angeles

The City of Los Angeles requests that the parameters and guidelines be amended to add a second RRM option “to apply only and solely to the City.” The proposed RRM is in the form of a unit cost of \$425.53 per officer to be claimed beginning July 1, 2009, and increased by the implicit price deflator in subsequent years, for all the reimbursable activities *except* for the activity of providing the opportunity for an administrative appeal to officers subject to specified disciplinary actions. Costs incurred to provide the administrative appeal would be based on actual costs incurred.

The City’s proposed unit cost is based on the following information:

The State Controller issued its final audit report for the five fiscal year period from July 1, 2003, through June 30, 2008. The State Controller audit disclosed that \$20,131,194 is allowable. During that same period of time the Los Angeles Police Department had an average of 10,000 filled peace officer positions or 50,000 for the audit period. The actual number of officers for each fiscal year is shown below:

Fiscal Year	No. of Sworn Officers
2003-04	9215
2004-05	9146
2005-06	9284
2006-07	9442
2007-08	9609
Five Year Total	<u>46,696</u>

If you divide the \$20,131,194 or total allowable costs, by the five year total of 46,696 peace officers the result or proposed RRM is \$452.53 per officer.

Position of the State Controller’s Office

The State Controller’s Office opposes the proposed RRM for the following reasons:

- The amount proposed as an RRM is mathematically incorrect. Allowable costs of \$20,131,194 divided by 46,696 peace officers equals \$431.11, instead \$452.53.
- The costs reimbursed to the City of Los Angeles’ claims for the five fiscal years identified in the proposal were based on a time study that the City conducted during a one-month period in May 2004. It is not appropriate to adopt an RRM to claim costs prospectively based on a time study that is six years old. Also, the time study was based on inconsistent data.
- The Controller also audited the City’s reimbursement claims for fiscal years 1994-1995 through 2001-2002. Incorporating the May 2004 time study results to the case statistics reported by the City for fiscal years 1994-1995 through 2001-2002 produces costs substantially less than the proposed per peace officer amount of \$452.53.

⁶ Amended parameters and guidelines adopted on March 28, 2008 (06-PGA-06).

- The proposed RRM, which is based on the costs of one agency and applicable only to that agency, does not consider the variation in costs among local agencies to implement the mandate in a cost-efficient manner pursuant to Government Code section 17518.5.

Position of the Department of Finance

The Department of Finance contends the proposed RRM does not meet the requirements in Government Code section 17518.5. The RRM must be based on cost information from a representative sample of eligible claimants and consider the variation of costs among local agencies to implement the mandate in a cost-efficient manner.

II. A proposed RRM based on the costs of one local agency and made applicable to one local agency does not satisfy the requirements of the Government Code.

In this case, the City proposes an RRM to be made applicable only to itself and not to other eligible claimants. The RRM is based on the total costs reimbursed by the State Controller's Office to the City for the POBOR program for five fiscal years (from fiscal year 2003-2004 through 2007-2008), divided by the number of sworn peace officers employed with the City of Los Angeles during that time.

The City's proposal fails for two reasons. First, the proposed RRM does not satisfy the requirements of Government Code section 17518.5. Section 17518.5 states the following:

- (a) "Reasonable reimbursement methodology" means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.
- (b) *A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants*, information provided by associations of local agencies and school districts, or projections of other local costs.
- (c) *A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts* to implement the mandate in a cost-efficient manner.
- (d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual costs
- (e) A reasonable reimbursement methodology may be developed by any of the following:
 - (1) The Department of Finance.
 - (2) The Controller.
 - (3) An affected state agency.
 - (4) A claimant.
 - (5) An interested party. (Emphasis added.)

The RRM proposed by the City is not based on cost information from a representative sample of eligible claimants as required by section 17518.5(b). Nor does the proposed RRM consider the variation in costs among other local agencies mandated by the state to comply with the POBOR program as required by section 17518.5(c). There is no authority in Government Code section 17518.5 to allow the adoption of an RRM based on the costs of one local agency.

Second, adopting an RRM for only one local agency when the mandated program is equally imposed on all other local agencies contradicts the purpose of the test claim process. The Legislature established the test claim process to resolve disputes affecting multiple local agencies.⁷ The process starts with the filing of a test claim, which like a class action, is the first claim filed on a statute or executive order that affects other similarly situated local agencies or school districts.⁸ The parameters and guidelines are part of the test claim process. Once a test claim is approved, the Commission is required to adopt parameters and guidelines “for the reimbursement of *any* claims relating to the statute or executive order.” (Emphasis added.)⁹ Although the Commission has the authority to include an RRM in the parameters and guidelines, the parameters and guidelines must describe all local governmental entities that are eligible to file for reimbursement under the program.¹⁰ Once the parameters and guidelines are adopted or amended, they are sent to the State Controller’s Office to prepare claiming instructions to assist “local agencies and school districts” in claiming costs to be reimbursed.¹¹ The POBOR program is mandated and applies equally to the law enforcement agencies of all counties, cities, and the police protection districts identified in the Commission’s decision. To adopt an RRM for only one of those agencies would contradict the purpose of the test claim process.

III. Conclusion

For the foregoing reasons, staff recommends that the Commission adopt this analysis and deny the City of Los Angeles’ request to amend the parameters and guidelines.

⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-332.

⁸ Government Code section 17521.

⁹ Government Code section 17557(a).

¹⁰ California Code of Regulations, Title 2, section 1183.1(a)(2).

¹¹ Government Code section 17558(a) and (b).



DEPARTMENT OF
FINANCE

EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

September 7, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

City of Los Angeles' Request to Amend Parameters and Guidelines to Adopt a Reasonable Reimbursement Methodology "Peace Officers Procedural Bill of Rights (09-PGA-05)."


Dear Mr. Bohan:

The Department of Finance has reviewed the Commission on State Mandates draft staff analysis of the City of Los Angeles' (City's) request to amend the Peace Office's Procedural Bill of Rights Parameters and Guidelines (Ps & Gs). As stated in our August 11, 2010 letter, the proposed amendment to add a Reasonable Reimbursement Methodology that applies solely to the City does not meet the requirements of Government Code section 17518.5. As such, we concur with the Commission on State Mandates draft staff analysis which recommends denial of the City's request to amend the Ps & Gs.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Jeff Carosone, Principal Program Budget Analyst at (916) 445-8913.

Sincerely,


NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

Enclosure A

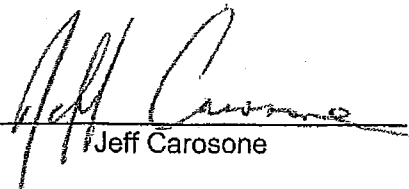
DECLARATION OF JEFF CAROSONE
DEPARTMENT OF FINANCE
CLAIM NO. 09-PGA-05

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

9/7/11

at Sacramento, CA


Jeff Carosone

LOS ANGELES POLICE DEPARTMENT



CHARLIE BECK
Chief of Police

ANTONIO R. VILLARAIGOSA
Mayor

P. O. Box 30158
Los Angeles, Calif. 90030
Telephone: (213) 486-8590
TDD: (877) 275-5273
Ref #: 14.7

September 6, 2011

Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: City of Los Angeles
Comments on Draft Staff Analysis
Request to Amend POBOR Parameters and Guidelines
09-PGA-05-(05-RL-4499-01 94499), (06-PGA-06)

Dear Mr. Bohan:

The City of Los Angeles respectfully submits its comments on the Commission's Draft Staff Analysis of the City's Request to Amend the Parameters and Guidelines to Adopt a Reasonable Reimbursement Methodology for the Peace Officers Procedural Bill of Rights (POBOR).

If you have any questions, please contact me at (213) 486-8590 or via e-mail at laura.luna@lapd.lacity.org.

Very truly yours,

CHARLIE BECK
Chief of Police

A handwritten signature in black ink, appearing to read "Laura Luna".

LAURA LUNA, Police Administrator
Commanding Officer
Fiscal Operations Division

Enclosure

City of Los Angeles
Comments on Draft Staff Analysis
Proposed Parameters and Guidelines Amendment
Peace Officers Procedural Bill of Rights (POBOR)
09-PGA-05-(05-RL-4499-01 94499), 06-PGA-06)
City of Los Angeles Requestor

On August 17, 2011, Commission staff issued their draft staff analysis of the above-named matter filed by the City of Los Angeles. The City disagrees with the Commission's staff findings that the City's proposed amendment to the POBOR parameters and guidelines fails for the following two reasons:

1. The proposed RRM does not satisfy the requirements of Government Code section 17518.5 which requires cost information from a representative sample of eligible claimants; and,
2. Adopting an RRM for only one local agency when the mandated program equally imposed on all other local agencies contradicts the purpose of the test claim process.

The City contends its amendment meets all statutory requirements and is consistent with the legislative intent for creating an RRM. The City requests that the Commission staff change its staff analysis and recommend approval of the City's request to amend the parameters and guidelines to allow for one formula amount for all cities other than Los Angeles and add a second formula amount for Los Angeles. The City's comments supporting that request are presented below.

1. The City's Proposed RRM Amendment Clearly Meets the Requirements of Government Code Section 17518.5 (b) and (c)

Government Code section 17518.5 (a) requires a reasonable reimbursement methodology to mean a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514. Section 17541 states: "costs mandated by the state means any increased costs which a local agency or school district is required to incur" to fulfill the requirements of a state mandate.

Commission staff points out that Government Code section 17518.5 (b) states an RRM shall be based on cost information from a representative sample of eligible claimants. Section 17518 (c) further requires an RRM to consider the variation in costs among other local agencies mandated by the state to comply with the mandated program activities.

The first question or test is whether the proposed RRM is based on cost information from a representative sample of eligible claimants. The Merriam-Webster dictionary defines the noun sample as follows:

"A representative part or a single item from a larger or whole group especially when presented for inspection or shown as evidence of quality."

A RRM is designed to be a formula to avoid a claimant from filing actual costs and to reduce the Controller's time to review and audit those claims. It can be a simple formula with one or several components. The City contends that there can be a "single item" or one separate category in a RRM formula for one agency or a group of agencies that can demonstrate its eligible costs are significantly different from the whole group. The City does not disagree that one requirement in the development of an RRM is to obtain a representative sample of all affected agencies. The City contends, however, that language is not intended to limit a RRM developed from that sample to one average number, but to as many formula elements as needed to provide each and every local agency with a reasonable amount of reimbursement. Conversely, separate reimbursement options should be included when necessary to insure the state is not paying a total dollar amount that is more than the statewide costs incurred by local agencies. The RRM is intended to be fair to both parties.

Because the Commission adopted the existing parameters and guidelines, it is assumed that the current RRM is based on a representative sample of eligible claimants and clearly is intended to cover the whole group of local agency law enforcement agencies. The question at issue is, does the City of Los Angeles in this specific incidence, represent a single or separate category of eligible claimants in order for it to receive reasonable reimbursement. The City contends that it is the specific combination of many factors that justify the City having a single or separate category in the parameters and guidelines. Among the factors are the following:

- Population Served - based on the Department of Finance population estimates for January 1, 2010 as shown in Exhibit 1, Los Angeles is the only city with a population in excess of four million (4,094,764) approximately triple the size of the next largest city, San Diego, with a reported population of 1,376,173. During the development of any RRM or other formula to provide state reimbursement, the three largest governments in Los Angeles County, namely the city, county and unified school district, are almost always given special consideration because of their size.
- Organizational Size and Complexity - LAPD operates 21 separate area offices, each with more sworn officers than the police departments in all but one (Long Beach) of the 49 cities in Los Angeles County that have their own police department (see Exhibit 2, Commission of Peace Officers Standards and Training report titled "Current Employed Full-time Sworn, Reserve & Dispatcher Personnel"). The City employs more than 10% of all local agency sworn officers in the state, (see Exhibit 2, the POST July 1, 2011 report on the number of sworn personnel).

- Caseload – LAPD has an unusually high POBOR caseload that averages nearly one POBOR case for every two to three officers. While there are no statistics readily available on the number of POBOR cases in each jurisdiction, one related statistic that results in major POBOR mandated costs is the number of citizen complaints. A complaint is the first step in the Department's disciplinary process. Public complaints represent roughly 80% of all complaints in LAPD. The DOJ Crime in California 2005 report (Exhibit 3) shows the number of citizen complaints reported between 2000 and 2005 ranged from approximately 24,000 in 2000 to 21,600 in 2005. It is believed the number of statewide complaints has gone down each year since 2005. There have been over 6,000 complaints in a single year in Los Angeles this decade and there were 5,536 citizen or public complaints filed against sworn LAPD officer in 2007. That number represents over 26% of the statewide citizen complaints reported in 2006. Given the fact the statewide number has been going down, the City's actual percentage of citizen complaints could have been even higher in 2007.
- Actual Cost – based on the State Controller's October 10, 2010 final audit report revised, which replaces the March 30, 2007 final audit report used by the Commission staff in calculating the current RRM, the average cost per sworn officer for that period is \$431 compared to rates calculated by CSM staff on page 22 of the Final Staff Analysis of \$33.22 for 2004-05, \$35.34608 for FY 2005-06 and \$37.25 for FY 2006-07 for all agencies shown on pages 21 and 22 of the Final Staff Analysis. A copy of the Controller's October 10, 2010 final audit report revised is attached as Exhibit 4.

The City believes the purpose of the RRM that Government Code section 17518 requires is to ensure that an RRM reflects the cost incurred by all sizes and types of eligible local agencies. When developing an RRM, if it is determined that one or more groupings or categories of local agencies require substantially more or less time or resources that result in higher or lower costs, that difference should be reflected RRM formula. The addition of a separate factor for one or more agencies, that for whatever reasons have costs not reflected by the otherwise statewide RRM, and does not contradict with legislative intent, should be adopted.

City Conforms to Current RRM Methodology Using only Audited Costs

In analyzing the City's request, it is helpful to consider the unique nature of the specific RRM proposed for amendment. The POBOR RRM is the only RRM or other P's and G's formula that is based solely on audited costs. The current RRM is based on what was referred to as Los Angeles County's Alternate Proposal by Commission staff on page 15 of the Final Staff Analysis Request to Amend the Parameters and Guidelines. On page 15, CSM staff comments:

Los Angeles County describes this proposal as follows:

Claimants continue to be allowed to claim actual costs. In addition, it is proposed that claimants be permitted to utilize a RRM rate, in lieu of actual costs, which is based on audited costs to date. For this purpose, the County now proposes an audited cost RRM per officer rate.

CSM staff concluded that all other RRMs proposed for consideration at that time, including L.A. County's preferred RRM of \$302.37 per officer as shown on page 2 of the Final Draft Staff Analysis, did not meet the RRM requirements. Staff instead recommended the County's alternative approach, with minor adjustments, or one based solely on audited reports adopted by the Commission along with the option to file reimbursement claims based on actual costs. The Commission staff used thirteen final audit reports from both cities and counties issued by the Controller from 2004 to 2008 (see page 21 of the Draft Staff Analysis). One of the thirteen was the Controller's 2007 audit report for the City of Los Angeles. That audit disallowed over 99% of the costs claimed by the City for the initial reimbursement claims covering eight fiscal years (FY 1994-95 through FY 2001-02). That audit was later re-issued by the Controller in 2010 to allow for 17.03% of the costs or to reimburse the City \$10,331,887 instead of the less than one percent, or \$550,345, allowed in the first audit report. The City's proposed RRM is also based on a final Controller audit, which makes it consistent with the staff recommendation and subsequent Commission action to use only data from audit reports.

The City contends that because the "per officer" methodology used in the current RRM does not provide a reasonable reimbursement to the City and therefore it is entitled to be considered in a separate category of eligible claimants in order to be fairly compensated.

Commission Staff Recognizes Need to Insure Reasonable Reimbursement is Received by Each Local Government Entity

In his letter of August 23, 2011, to a number of test claimants with pending parameters and guidelines proposing the use of an RRM, the CSM Executive Director Drew Bohan, stated "that staff believes that it is constitutionally permissible to develop an RRM unit cost rate that reasonably reimburses each local agency even if some local agencies receive more and some local agencies receive less than the RRM rate." A copy of the letter is attached as Exhibit 5. Mr. Bohan goes on to reference the recent RRM for the Municipal Stormwater program where the RRM unit cost rate of \$6.74 was a constitutionally permissible figure even though one claimant whose figures were used to calculate the RRM figure had actual costs of \$14.46. Under the RRM, the claimant would be entitled to less than half of its actual costs. The City believes it is important to point out that the agencies impacted, agreed with or at least did not object to that lower amount.

Mr. Bohan used that introduction to raise the question: "At some point is the range of figures used to develop the unit cost so wide that it violates the constitutional requirement that local agencies be reimbursed for their mandated costs?" In the City's case, the RRM is approximately ten percent of its cost. While in the RRM at issue, the constitutional

question is not necessarily relative, since the City can claim actual costs. This question does, however, support the need for a proposed amendment to the current POBOR RRM. It should be pointed out that when at the March 2008 CSM hearing when the POBOR RRM was adopted, the City's representatives joined witnesses representing other cities and counties other than the County of Los Angeles in opposing the RRM amount as being reasonable. (See CSM minutes of March 2008 hearing). It should also be noted that the County of Los Angeles still contended that the RRM should be over \$302 if it was the only option for claiming costs.

The Commission staff points out that Government Code section 17518.5 (b) states an RRM shall be based on cost information from a representative sample of eligible claimants. That section also requires the proposed RRM consider the variation in costs among other local agencies mandated by the state to comply with the POBOR program as required by section 17518 (c).

The City suggests that based on Mr. Bohan's letter, reimbursing a local agency about \$40 dollars per officer when their audited cost is over ten times that amount, justifies a separate amount for that agency.

2. Adopting the Additional RRM for LAPD Clearly Meets and Does Not Contradict the Purpose of the Test Claim Process

Commission staff contends that by adopting a RRM for only one agency, when the mandated program is equally imposed on all other local agencies, contradicts the purpose of the test claim process. In response, the City contends that if one agency either benefits greatly or is disadvantaged by the RRM, a separate formula is consistent with the legislative intent. The City contends the primary factor for developing a RRM is not whether it is equally imposed, but rather to what extent the costs to perform the mandate in a cost efficient manner varies.

The staff points to the *Kinlaw v. State of California* case in contending the Legislature established the test claim process to resolve disputes affecting multiple local agencies. Commission staff goes on to say that "...the parameters and guidelines must describe all local government entities that are eligible to file for reimbursement of the program (Title 2, section 1183/a (a) (2) of the Commission's regulations." The City's proposal does nothing that contradicts those provisions. The amended set of parameters and guidelines still describe all local government entities that are eligible to file for reimbursement of the program.

The purpose of a separate RRM is to provide a reasonable amount of funding that corresponds with the variations of costs among local agencies. It is fair to say that local agencies typically prefer an RRM based on unit times that allow the consideration of workload and the specific costs associated with the claiming agency, such as the compensation of the person(s) providing mandated cost activity. The POBOR RRM is

limited to one dollar amount for agencies and is based on the number of employees and not caseload.

If Commission staff is concerned with having a specific dollar amount assigned to an agency by name, it should look to the claiming instructions for the Voter Registration Procedures mandate. Those parameters and guidelines were crafted to consider a representative sample of eligible agencies and consider the variation in costs in performing the mandate. The parameters and guidelines identify six (6) dollar amounts/categories and each of the 58 counties is assigned a specific dollar RRM amount to file for reimbursement of the costs for processing voter affidavits. There are six amounts ranging from \$.475 to \$.03276. In this case, the smaller counties get more per affidavit, such as Alpine, and Trinity get \$.03276 per affidavit and the largest counties, such as Los Angeles, San Diego and Orange receive the \$.475, the smallest dollar amount (see Exhibit 6, which is Form 2 in the 2010-11 State Controller claiming instructions for the mandate).

3. City's Response to State Agency Responses

The Draft Staff Analysis contains comments received by the State Controller and the Department of Finance on the City's proposed amendment. The City has provided its response to each below.

Response to State Controller Comments

The State Controller submitted its response which opposes the RRM based on four assertions. The following are those four assertions and the City's response to each:

- **Controller:** The amount of the RRM is mathematically incorrect. The Controller finds that \$431.11 and not \$452.53 is the mathematically correct number.

City: The City is willing to accept the State Controller's calculations and would not object if the Commission recommends adoption of \$431.11 per officer.

- **Controller:** The costs reimbursed to the City of Los Angeles' claims for the five fiscal years identified in the proposal were based on a time study and it is not appropriate to adopt an RRM to claim costs prospectively passed on a time study that is six years old.

City: The City would like to point out the current RRM is based on data, which for the most part, is from the same period of time.

- **Controller:** The Controller audited claims for an earlier period (FY 1994-95 through FY 2001-02) and seems to suggest that if those findings were

incorporated with the later audit period, the results would be less than the \$452.53 cost per officer.

City: The City finds it inconsistent for the Controller to argue the results of the FY 2003-04 to FY 2007-08 audit periods is inappropriate and then suggests that they should include consideration of data over a decade old.

- Controller: The proposed RRM does not meet the Government Code section 17518.5.

City: The City has addressed that objection in its response to the Commission staff's objections.

In summary, the City is willing to have the RRM reduced to \$431.11 per officer if the Commission should find that calculation to be correct. The other three Controller comments should not alter the Commission staff from accepting the City's amendment.

Response to the Department of Finance Comments

- Finance: The Department of Finance contends the RRM does not meet the requirements in Government Code section 17518.5.

City: This is the same objection presented by the Commission staff and it has been responded to earlier in this document.

Summary

Due to the specific methodology upon which the existing RRM was calculated, it does not offer the City with a reasonable amount of reimbursement for the mandated activities the LAPD performs to comply with the mandate. The City's proposed amendment provides an RRM for all eligible agencies; it simply provides a more reasonable and representative amount for the City of Los Angeles.

The City has never filed its POBOR claims using the RRM; instead it has always filed actual cost claims. By adopting the proposed amended RRM, the City plans to use that new RRM formula to file its claims. That will save the City considerable time and costs to prepare, support to file its claims and also save the State Controller hundreds of hours of staff time in reviewing and auditing those claims.

The Commission should look to the intent of the Government Code provisions which are to encourage the use of RRMs and to provide local agencies with reasonable level of reimbursement. As a general rule, when the state and/or local agencies are developing a cost formula, the greater the dollar amount, the more specific that formula is expected to be. Since the POBOR mandate is one of the larger dollar mandates, there is a need for greater specificity. The Commission should be encouraging proposed amendments, such as the City's, to provide a more accurate reflection of costs. In those cases where there is

a need to consider the interpretation of the RRM statutes, those statutes should be liberally construed to meet the Legislature's intent. It should not rely on any overly strict or limited interpretations of the RRM statutes which clearly fly in the face of the legislative intent.

The City respectfully requests that Commission staff amend its position and issue a Final Staff Analysis supporting the City of Los Angeles's POBOR RRM as requested or as recalculated by the State Controller.

LOS ANGELES POLICE DEPARTMENT



CHARLIE BECK
Chief of Police

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City of Los Angeles
Comments on Draft Staff Analysis
Proposed Parameters and Guidelines Amendment
Peace Officers Procedural Bill of Rights (POBOR)
09-PGA-05-(05-RL-4499-01 94499), 06-PGA-06)
City of Los Angeles Requestor

Declaration of Laura Luna

I, Laura Luna, make the following declaration and statement under oath:

I, Laura Luna, Commanding Officer of the Los Angeles Police Department Fiscal Operations Division, have directed the preparation of the City of Los Angeles's attached comments to the Commission on State Mandates Draft Staff Analysis for the above named matter.

I declare I have met and conferred with other knowledgeable City staff and outside experts in preparing the attached comments.

I am personally conversant with the foregoing facts and, if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are therein stated as information and belief, and as to those matters, I believe them to be true.

9/7/11
Date

Laura Luna
Signature

Comments on Draft Staff Analysis
Proposed Parameters and Guidelines Amendment
Peace Officers Procedural Bill of Rights (POBOR)
09-PGA-05-(05-RL-4499-01 94499), 06-PGA-06)
City of Los Angeles Requestor

Declaration of Allan P. Burdick

Allan P. Burdick makes the following declaration and statement under oath:

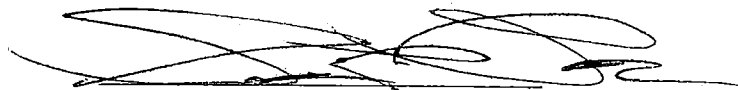
I, Allan Burdick, working with the Los Angeles Police Department, assisted in the preparation of attached City of Los Angeles response to the to the Commission on State Mandates Draft Staff Analysis issued on August 17, 2011, for the above named matter.

I declare I have conferred with knowledgeable Los Angeles Police Department staff in preparing the attached comments.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are therein stated as information and belief, and as to those matters, I believe them to be true.

9-6-2011
Date


Signature

**City of Los Angeles
Response to Draft Staff Analysis
Proposed Amendment to POBOR Parameters and
Guidelines**

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