

**ITEM 8
FINAL STAFF ANALYSIS
STATEWIDE COST ESTIMATE**

Education Code Section 87164

Statutes 2001, Chapter 416

Statutes 2002, Chapter 81

Reporting Improper Governmental Activities
02-TC-24

Santa Monica Community College District, Claimant

Executive Summary

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

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

Summary of the Mandate

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

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

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¹ Claims data reported as of August 18, 2009.

Assumptions

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

Methodology

Fiscal Years 2006-2007 through 2007-2008

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

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

Comments on the Draft Staff Analysis

No comments were filed on the draft staff analysis.

Staff Recommendation

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

STAFF ANALYSIS

Summary of the Mandate

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

Reimbursable Activities

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

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board, set forth in California Code of Regulations, title 2, sections 56 – 57.4. This includes serving the employee or applicant for employment and the State Personnel Board with a written response to the applicant for employment's complaint addressing the allegations, and responding to investigations or attending hearings, and producing documents during investigations or hearings (Ed. Code, § 87164, subd. (c)(1), as added and amended by Stats. 2002, ch. 81).
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² Exhibit A, parameters and guidelines.

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

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

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

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

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

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

3. *The total costs of this program may increase in future years if there are increases in the number of reports of improper governmental activities filed against community college district employees, officers or administrators.*
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If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced.

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

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Comments on the Draft Staff Analysis

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

Staff Recommendation

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

⁴ Exhibit C.

ITEM 8

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Santa Monica Community College District, Claimant

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Adopted: September 26, 2008

PARAMETERS AND GUIDELINES

Education Code Section 87164

Statutes 2001, Chapter 416

Statutes 2002, Chapter 81

Reporting Improper Governmental Activities

02-TC-24

Santa Monica Community College District, Claimant

I. SUMMARY OF THE MANDATE

On September 27, 2007, the Commission on State Mandates (Commission) adopted a Statement of Decision on this test claim filed by Santa Monica Community College District on Education Code sections 87160 – 87164. These statutes address the procedures used to protect community college employees and applicants for employment from employees, officers, or administrators who intentionally engage in acts of reprisal, or coercion against an employee or applicant for employment who has disclosed improper governmental activity of the employer.

If a community college employee or applicant for employment is subject to acts of reprisal for disclosing improper governmental activities, the test claim statutes allow the employee or applicant for employment to file a complaint with local law enforcement agencies. People that have been found to have engaged in retaliatory or coercive activities are subject to civil and criminal liabilities, and punitive damages. In addition, community college employees and applicants for employment are allowed to file their complaint with the State Personnel Board, which then must conduct a hearing or investigation to investigate and remedy these complaints.

The Commission found that Education Code section 87164, subdivision (f) as added by Statutes 2001, chapter 416, and subdivisions (c)(1) and (c)(2), as added and amended by Statutes 2002, chapter 81, impose the following reimbursable state-mandated activities upon community college districts when an employee or applicant for employment files a complaint with the State Personnel Board alleging retaliation, acts of reprisal, or similar improper acts prohibited by Education Code section 87163.

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board, set forth in California Code of Regulations, title 2, sections 56 – 57.4. This includes serving the employee or applicant for employment and the State Personnel Board with a written response to the applicant for employment's complaint addressing the allegations, and responding to investigations or attending hearings, and producing documents during investigations or hearings (Ed. Code, § 87164, subd. (c)(1), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by an employee or applicant for employment (Ed. Code, § 87164, subd. (c)(2), as added and amended by Stats. 2002, ch. 81).

- Beginning January 1, 2002, if the State Personnel Board finds that a supervisor, community college administrator, or public school employer has violated Education Code section 87163, to make an entry into that individual's official personnel file by placing a copy of the State Personnel Board's decision in that individual's official personnel file (Ed. Code, § 87164, subd. (f), as added by Stats. 2001, ch. 416).

II. ELIGIBLE CLAIMANTS

Any community college district, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on June 5, 2003, establishing eligibility for reimbursement on or after July 1, 2001. However, Education Code section 87164, subdivisions (c)(1) and (c)(2) (Stats. 2002, ch. 81), became effective on January 1, 2003. Therefore costs incurred for compliance with the mandated activities found in subdivisions (c)(1) and (c)(2) are reimbursable on or after January 1, 2003. Education Code section 87164, subdivision (f) (Stats. 2001, ch. 416), became effective on January 1, 2002. Therefore, costs incurred for compliance with the mandated activities found in subdivision (f) are reimbursable on or after January 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

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

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board, set forth in California Code of Regulations, title 2, sections 56 – 57.4. This includes serving the employee or applicant for employment and the State Personnel Board with a written response to the applicant for employment's complaint addressing the allegations, and responding to investigations or attending hearings, and producing documents during investigations or hearings (Ed. Code, § 87164, subd. (c)(1), as added and amended by Stats. 2002, ch. 81).
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V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

State Controller's Office Claiming Data
August 18, 2009

Exhibit B

PROGRAM NAME	FISCAL YEAR	PAYEE NAME	CLAIMED AMOUNT
294 REPORTING IMPROPER GOV ACTIV	20072008	CC19250 LONG BEACH COMM COLL DIST	17,211
294 REPORTING IMPROPER GOV ACTIV	20072008	CC21007 MARIN COMM COLL DIST	12,597
294 REPORTING IMPROPER GOV ACTIV	20062007	CC19250 LONG BEACH COMM COLL DIST	11,708

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