

ITEM 15 A
FINAL STAFF ANALYSIS
PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 961
Statutes 1991, Chapter 1213

Collective Bargaining

and

Collective Bargaining Agreement Disclosure

05-PGA-48 (97-TC-08, 98-4425-PGA-12)

State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Collective Bargaining/Collective Bargaining Agreement Disclosure* program (97-TC-08, 98-4425-PGA-12) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission on State Mandates (Commission) approves the SCO's request, the amendments would be effective for costs incurred beginning on July 1, 2005.

Test Claim Decisions and Background

In 1975, the Board of Control determined that the *Collective Bargaining* program constitutes a reimbursable state mandate, and in 1998, the Commission determined that the *Collective Bargaining Agreement Disclosure* program constitutes a reimbursable state mandate, and consolidated the parameters and guidelines for both programs.

In 2003, upon recommendation from the Bureau of State Audits, direction from the Legislature, and an SCO request, the Commission adopted amendments to parameters and guidelines in the *School Bus Safety II* program that clarified the source documentation claimants are required to retain to support their reimbursement claims, and the language regarding records retention that identifies the records that must be retained to support an audit initiated by the SCO. The adopted language, commonly referred to as "boilerplate language," has been included in all parameters and guidelines adopted since 2003. In addition, section 1183 of the Commission's regulations require parameters and guidelines to include instruction on claim preparation, notice of the SCO's authority to audit claims, and the amount of time documentation must be retained during the audit period.

The SCO is now requesting that the 49 sets of parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language.

The SCO's request was issued for comment. Department of Finance and the petitioners in *Clovis Unified School District et. al. v. Westly et al.*, (Third District Court of Appeal, Case No. C061696), a case challenging the use of the contemporaneous source document rule, each filed comments on the SCO's proposal. The comments will be discussed below.

This analysis pertains only to the request to amend the *Collective Bargaining/Collective Bargaining Agreement Disclosure* program. The staff analyses for the other 48 programs will be presented separately.

There is one issue for the Commission's consideration:

- **Should the parameters and guidelines be amended to add the current "boilerplate language"?**

After consideration of the comments from Department of Finance, and the comments from the petitioners in the *Clovis* case, staff recommends that the Commission adopt the proposed amendments to the parameters and guidelines.

The Department of Finance filed comments stating it was neutral on the SCO's request.

The petitioners in the *Clovis* case object to the SCO request on the following grounds:

- The contemporaneous source document rule and its requirement of "contemporaneous" source document records to support costs claimed is unrealistic and inconsistent with the day-to-day operations of school and community college districts.
- The Commission should not take action on the request until the court fully resolves the issue.
- If the Commission does take action on this request, the amendments should affect reimbursement claims filed prospectively and should in no way validate the SCO's prior application of the contemporaneous source document rule.

On October 30, 2009, in connection with the 2009 BSA Audit, the Commission adopted an implementation plan to complete the State Controller's Office Request for Amendment of 49 sets of parameters and guidelines to include the proposed "boilerplate language." Included in this agenda item was a copy of the Clovis petitioners' letter requesting that the matter be delayed until the court fully resolves the issue.

The implementation plan scheduled the proposed amendment to the *Collective Bargaining and Collective Bargaining Agreement Disclosure* parameters and guidelines on the January 29, 2010 agenda. Commission staff issued the draft staff analysis on December 10, 2009. No comments were filed, and no changes were made to the proposed amendments to the parameters and guidelines. Therefore, staff is issuing this final staff analysis and noticing it for hearing on January 29, 2010, at which time, the Clovis petitioners may request that the Commission continue the matter.

Regarding the substantive issues raised by the Clovis petitioners, the contemporaneous source document and records retention language is consistent with section 1183.1, subdivision (a) (5) and (6), of the Commission's regulations, which require that the parameters and guidelines contain the following information:

- Claim preparation. Instruction on claim preparation, including instruction for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.
- Record retention. Notice of the Office of the State Controller's authority to audit claims and the amount of time supporting documents must be retained during period subject to audit.

Moreover, the proposed language for source documentation and records retention is the same as the language in parameters and guidelines adopted by the Commission since 2003 for other state-mandated programs.

Finally, the Commission has no discretion regarding the period of reimbursement of amendments made to the parameters and guidelines, as suggested by the *Clovis* petitioners. Government Code section 17557, subdivision (d), as it existed when the SCO request was filed on April 7, 2006, establishes the period of reimbursement for the proposed amendments to these parameters and guidelines as follows:

A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before January 15 following a fiscal year, *shall establish* reimbursement eligibility for that fiscal year. (Emphasis added.)

Although the Commission has the authority to adopt amendments to the parameters and guidelines, once an amendment is adopted, the period of reimbursement is established by law in Government Code section 17557. In this case, if the Commission amends the parameters and guidelines for this program, the amendments would be effective beginning in the 2005-2006 fiscal year.

Staff finds that the parameters and guidelines for the *Collective Bargaining/Collective Bargaining Agreement Disclosure* program should be amended to insert the source documentation and records retention language requested by the SCO because it would conform the parameters and guidelines for this program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulations. Therefore, staff included the language requested by the SCO.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the SCO's proposed amendments to the parameters and guidelines for the *Collective Bargaining/Collective Bargaining Agreement Disclosure* program, beginning on page 13.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Requestor

State Controller's Office

Chronology

01/19/1978	Board of Control determines that Statutes 1975, Chapter 961 contains a reimbursable mandate for the <i>Collective Bargaining</i> program
10/22/1980	Board of Control adopts parameters and guidelines
08/19/1981	Board of Control amends parameters and guidelines
03/17/1983	Board of Control amends parameters and guidelines
09/29/1983	Board of Control amends parameters and guidelines
12/15/1983	Board of Control amends parameters and guidelines
06/27/1985	Commission on State Mandates (Commission) amends parameters and guidelines
10/20/1988	Commission amends parameters and guidelines
07/22/1993	Commission amends parameters and guidelines
03/26/1998	Commission adopts Statement of Decision for the <i>Collective Bargaining Agreement Disclosure</i> program
08/20/1998	Commission amends and consolidates parameters and guidelines for the <i>Collective Bargaining</i> and the <i>Collective Bargaining Agreement Disclosure</i> programs
01/27/2000	Commission amends parameters and guidelines
01/23/2003	The Commission, upon the recommendation of the Bureau of State Audits, direction from the Legislature, and upon request from the State Controller's Office (SCO), adopts amendments to the <i>School Bus Safety II</i> parameters and guidelines to include "boilerplate language" that details the documentation necessary to support reimbursement claims. After this date, all adopted parameters and guidelines contain this language
04/07/2006	SCO requests the parameters and guidelines for 49 mandated programs adopted prior to 2003 also be amended to include boilerplate language, including the <i>Collective Bargaining/Collective Bargaining Agreement Disclosure</i> program analyzed here
04/27/2006	Commission deems SCO's request for amendment of parameters and guidelines complete and issues for comment
07/23/2009	Commission reissues SCO's request for amendment of parameters and guidelines for comment
08/18/2009	Department of Finance files comments
10/15/2009	Petitioners in <i>Clovis Unified School District et al. v. Westly et al. case</i> (Clovis, Fremont, Norwalk-La Mirada, Newport Mesa, San Juan, and Riverside Unified School Districts, Sweetwater Union High School District, and San Mateo County, El Camino, Santa Monica, and State Center Community College Districts) file comments

- 10/15/09 Bureau of State Audits (BSA) releases a follow-up audit report (“State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities”), which recommends that the Commission implement its work plan to address the Controller’s request to amend the boilerplate language.
- 10/30/09 Commission approves plan for implementing BSA’s recommendations, setting this matter for the January 29, 2010 hearing.
- 12/09/09 Commission staff issues draft staff analysis
- 12/10/09 Commission staff issues corrected draft staff analysis

Background

This is a request filed by the SCO to amend the parameters and guidelines for the *Collective Bargaining/Collective Bargaining Agreement Disclosure* program (97-TC-08, 98-4425-PGA-12) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission approves the SCO’s request, the amendments would be effective for costs incurred beginning on July 1, 2005.

Test Claim Decision and Parameters and Guidelines

In 1978, the State Board of Control determined that Statutes 1975, Chapter 961, also known as the Rodda Act, constitutes a state-mandated program for *Collective Bargaining*. This statute required school districts to negotiate in good faith with employee organizations to reach and execute a written agreement. In 1980, the State Board of Control adopted parameters and guidelines.

On March 26, 1998, the Commission adopted a Statement of Decision for the *Collective Bargaining Agreement Disclosure* program.¹ This program required school districts to publicly disclose major provisions of a collective bargaining effort before the agreement becomes binding. On August 20, 1998, the Commission amended and consolidated the parameters and guidelines for the *Collective Bargaining/Collective Bargaining Agreement Disclosure* program.² Over the course of twenty-five years, the parameters and guidelines were amended ten times.

Boilerplate Language

On March 28, 2002, the Bureau of State Audits (BSA) issued an audit report on the *School Bus Safety II* program, stating that the parameters and guidelines do not impose sufficient requirements regarding the documentation required to support reimbursement claims, and thus, insufficient documentation was being submitted to support claims.³ The report recommended, among other things, that the Commission work with the SCO, other affected state agencies, and interested parties to make sure the language in the parameters and guidelines and the claiming instructions for the *School Bus Safety II* program reflects the Commission’s intentions as well as the SCO’s expectations regarding supporting documentation. On June 10, 2002, the SCO proposed that parameters and guidelines be amended to clarify what documentation is necessary to support reimbursement claims and what records must be retained to support audits initiated by the SCO.

¹ Exhibit A.

² Exhibit B.

³ Exhibit C.

Based on BSA's audit findings and recommendations, the Legislature enacted Statutes 2002, chapter 1167 (AB 2781) to direct the Commission to amend the parameters and guidelines in *School Bus Safety II*, to detail the documentation necessary to support reimbursement claims.

On January 23, 2003, upon recommendation from BSA, direction from the Legislature, and the SCO's request, the Commission adopted the following language regarding source documentation and records retention to the *School Bus Safety II* parameters and guidelines:⁴

Reimbursable Activities

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." 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.

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 chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. 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.*

The Commission has included this language, commonly referred to as "boilerplate language," in all parameters and guidelines adopted on or after January 23, 2003.

⁴ The Commission also adopted other boilerplate language that is not relevant to this request.

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

SCO Request to Amend Parameters and Guidelines

On April 7, 2006, the SCO requested that the parameters and guidelines for 49 mandated programs that were adopted prior to 2003 be amended to also include the boilerplate language regarding source documentation and records retention that was adopted by the Commission in 2003.⁵

The parameters and guidelines for the *Collective Bargaining/Collective Bargaining Agreement Disclosure* program is one of the 49 programs the SCO is requesting be amended.

October 15, 2009 BSA Audit Report

Commission staff initially delayed recommendations on the SCO request to amend the parameters and guidelines until related litigation, which is described below, was completed. On October 15, 2009, the BSA released its follow-up audit report (“State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities”) recommending that the Commission address the Controller’s request to amend the boilerplate language and implement its work plan. On October 30, 2009, the Commission adopted the work plan for implementing the BSA recommendations, including the plan to hear the SCO requests to amend the parameters and guidelines.

Related Litigation (*Clovis Unified School Dist., et al. v. State Controller*)

Clovis Unified School Dist., et al. v. State Controller involves a challenge by school districts and community college districts on reductions made by the State Controller’s Office to reimbursement claims for several mandated programs.⁶ The school districts argue that reductions made on the ground that school districts do not have contemporaneous source documents are invalid.

Trial Court Ruling. On January 2, 2009, the Sacramento County Superior Court (Case No. 06CS00748) issued a clarification of ruling and on February 19, 2009, issued a Judgment and Writ, finding that reductions made by the Controller on the ground that claimants did not have contemporaneous source documents supporting their reimbursement claims were invalid as an underground regulation *if* the contemporaneous source document requirement was not in the Commission’s parameters and guidelines. The court held that the Controller has no authority to reduce a claim on the ground that a claimant did not maintain contemporaneous source documents to support their claim, absent statutory or regulatory authority to require contemporaneous source documents, or language in the parameters and guidelines requiring it. Pursuant to Government Code section 17558, the Controller’s claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines. Thus, the court granted declaratory relief and a writ of mandate requiring the Controller to set aside the reduction and pay the school district plaintiffs the amounts reduced on two mandated programs that did not have parameters and guidelines language requiring claimants to maintain contemporaneous source documents.

Court of Appeal Filings (Third District Court of Appeal, Case No. C061696). Notices of appeal and cross-appeal have been filed by the SCO, the community college districts, and the school districts, and opening briefs have been filed. The appeal on the issue of the validity of the contemporaneous source documentation requirement remains pending.

⁵ Exhibit D.

⁶ The Commission is not a party to this action.

Comments on the Proposal

On April 27, 2006, the Commission issued the SCO's request to amend the parameters and guidelines for comment. No comments were filed.

On July 23, 2009, the Commission reissued the proposal for comment. On August 18, 2009, Department of Finance submitted comments.⁷ Finance stated it was neutral on the proposal, because the request to include boilerplate language in the parameters and guidelines for the 49 programs would allow the Controller to complete audit related tasks more efficiently, and provide the claimant with more information and record retention requirements, as well as the statute of limitations for audits.

On October 15, 2009, petitioners in the *Clovis Unified School District*⁸ case submitted comments.⁹ Petitioners state that the SCO's request to amend the parameters and guidelines is actually a request to add the contemporaneous source document language to parameters and guidelines that are the subject of the *Clovis* case, specifically the *Collective Bargaining* and *Intradistrict Attendance* programs. Petitioners argue that the SCO's efforts should be rejected, or at the very least, deferred until completion of the appellate proceedings. Petitioners state:

As the Commission is aware, the Sacramento Superior Court issued a Judgment in the above-reference litigation in February of this year, in which the Court ruled that SCO's utilization of the contemporaneous source document rule and requirement ("CSDR") to impose reimbursement claim audit reductions in the Collective Bargaining and Intradistrict Attendance Programs, was an unlawful practice, i.e., an invalid underground regulation violative of the Administrative Procedure Act ("APA"). The Court's Judgment is based on the fact that the SCP applied the CSDR to reduce reimbursable costs claimed by school and community college district claimants, where although the SCO first added the CSDR to its general claiming instructions in the fall of 2003, the Collective Bargaining and Intradistrict Programs' Ps & Gs did not and still do not contain a *contemporaneous* source document requirement to support costs claimed. As such, the Judgment decrees that the CSDR, as applied by the SCO in Collective Bargaining and Intradistrict Attendance Program reimbursement claim audits, violates the APA as an underground regulation, and audit reductions based on same are invalid, void and unenforceable. The Court's Judgment and accompanying Peremptory Writ prohibits the SCO from utilizing the CSDR in audits of Collective Bargaining and Intradistrict Attendance Program reimbursement unless and until the CSDR is adopted pursuant to the APA, added to the programs' Ps & Gs, or otherwise made lawful under the statutes and laws governing the SCO's auditing authority, and orders the SCO to reverse the improper CSDR-based audit reductions imposed in Collective Bargaining and Intradistrict Attendance Program audits for all affected audits that did not become final prior to the three year limitations period before the filing of the related petitions in the litigation. The SCO's challenge to the Court's ruling, as well as related appeals by the Petitioners, are now pending before the Court of Appeal, Case No. C061696.

[¶]

⁷ Exhibit E.

⁸ Clovis, Fremont, Norwalk-La Mirada, Newport Mesa, San Juan, and Riverside Unified School Districts, Sweetwater Union High School District, and San Mateo County, El Camino, Santa Monica, and State Center Community College Districts.

⁹ Exhibit F.

The SCO's surreptitious efforts should be rejected or at the very least, deferred until completion of appellate proceedings. First, it is the Petitioners' position the CSDR [contemporaneous source document rule] and its requirement of *contemporaneous* source document records to support costs claimed, is unrealistic and inconsistent with the day-to-day operations of school and community college districts, and will severely impact the districts' rightful entitlement to reimbursement for the costs of mandated activities. Second, the Commission should not address or take action on the SCO's request to amend program Ps&Gs to include the CSDR until the pending appeals in *Clovis Unified School District et al. v. Westly et al.*, Sacramento County Superior Court Case No. 06CS00748, and Court of Appeal case No. C061696, are fully resolved in the judicial process. Third, if the Commission does in fact address and take action on the SCO's requested CSDR-amendments, such amendments will affect *costs claimed and reimbursement claims filed* prospectively *only* and in no way validates or makes lawful the SCO's prior unlawful application of the CSDR to costs claimed and reimbursement claims filed where the CSDR was not included in the relevant state mandate programs' Ps&Gs. This final conclusion is based on fundamental legal principles of due process, notice, and fairness, as well as the practical recognition that it is metaphysically impossible to go back in time and create "contemporaneous" documentation to support costs claimed and reimbursement claims filed, where no such requirement existed when such reimbursable events and activities took place.

Commission staff issued the corrected draft staff analysis on December 10, 2009.¹⁰ No comments were filed.

Discussion

The proposed amendments to the parameters and guidelines raise the following issue for determination by the Commission:

Issue: Should the parameters and guidelines be amended to add the Commission's current "boilerplate language"?

In 2003, following recommendation from the BSA and direction from the Legislature, the SCO requested, and the Commission adopted amendments to parameters and guidelines to the *School Bus Safety II* program that clarify the source documentation claimants are required to retain to support their reimbursement claims, and the language regarding records retention that identifies the records that must be retained to support an audit initiated by the SCO. The adopted language, as detailed on pages 6 and 7 of this analysis, has been included in all parameters and guidelines adopted since 2003.

On April 7, 2006, the SCO requested that the parameters and guidelines for 49 mandated programs approved before 2003, including the program at issue here, also be amended to include the source documentation and record retention language that has been included in all parameters and guidelines adopted since 2003.¹¹

¹⁰ Exhibit G

¹¹ The SCO only requested that the portions of the boilerplate language regarding source documentation and records retention be added to the parameters and guidelines for the 49 programs. There are other sections of the boilerplate language regarding the remedies available before the Commission, and the legal and factual basis for the parameters and guidelines. Staff did not include these sections because the SCO did not request that they be included.

The school district petitioners in the *Clovis Unified School District* lawsuit object to the request on the following grounds:

- The contemporaneous source document rule and its requirement of “contemporaneous” source document records to support costs claimed is unrealistic and inconsistent with the day-to-day operations of school and community college districts.
- The Commission should not take action on the request until the court fully resolves the issue.
- If the Commission does take action on this request, the amendments should affect reimbursement claims filed prospectively and should in no way validate the SCO’s prior application of the contemporaneous source document rule.

For the reasons below, staff recommends that the Commission adopt the proposed amendments to the parameters and guidelines.

On October 30, 2009, in connection with the BSA Audit, the Commission adopted an implementation plan to complete the State Controller’s Office Request for Amendment of 49 sets of parameters and guidelines to include the proposed “boilerplate language.” Included in this agenda item was a copy of the Clovis petitioners’ letter requesting that the matter be delayed until the court fully resolves the issue.

The implementation plan scheduled the proposed amendment to the *Collective Bargaining and Collective Bargaining Agreement Disclosure* parameters and guidelines on the January 29, 2010 agenda. Therefore, staff is issuing this final staff analysis and noticing it for hearing on January 29, 2010, at which time, the Clovis petitioners may request that the Commission continue the matter.

Regarding the substantive issues raised by the Clovis petitioners, staff finds that the contemporaneous source document and records retention language is consistent with section 1183.1, subdivision (a) (5) and (6), of the Commission’s regulations, which require that the parameters and guidelines contain the following:

- Claim preparation. Instruction on claim preparation, including instruction for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.
- Record retention. Notice of the Office of the State Controller’s authority to audit claims and the amount of time supporting documents must be retained during period subject to audit.

Moreover, the proposed language for source documentation and records retention is the same as the language in parameters and guidelines adopted by the Commission since 2003 for other state-mandated programs.

Finally, the Commission has no discretion regarding the period of reimbursement of amendments made to the parameters and guidelines, as suggested by the *Clovis* petitioners. Government Code section 17557, subdivision (d), as it existed when the SCO request was filed on April 7, 2006, establishes the period of reimbursement for the proposed amendments to these parameters and guidelines as follows:

A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions

pursuant to Section 17561, and on or before January 15 following a fiscal year, *shall establish* reimbursement eligibility for that fiscal year. (Emphasis added.)

Today, Government Code section 17557, subdivision (d), similarly states that “[a] parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year.”

Although the Commission has the authority to adopt amendments to the parameters and guidelines, once an amendment is adopted, the period of reimbursement is established by law in Government Code section 17557. The Commission does not have discretion with respect to the period of reimbursement. In this case, if the Commission amends the parameters and guidelines for this program, the amendments would be effective beginning in the 2005-2006 fiscal year.

Therefore, staff finds that it is appropriate to approve the SCO’s request, and has made the following proposed modifications to the parameters and guidelines:

G. Claim Components (Reimbursable Costs)

Staff inserted the following boilerplate language regarding source documentation, as requested by the SCO:

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, “I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge.” 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.

At the request of the SCO, staff inserted the following boilerplate language regarding records retention.

I. Records 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 chapter is subject to the initiation of an audit by the Controller no later than three years after the*

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

date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. 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.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed amendments to parameters and guidelines for the *Collective Bargaining/Collective Bargaining Agreement Disclosure* program, beginning on page 13.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Adopted: 10/22/80
Amended: 8/19/81
Amended: 3/17/83
Amended: 9/29/83
Amended: 12/15/83
Amended: 6/27/85
Amended: 10/20/88
Amended: 7/22/93
Amended: 8/20/98
Amended: 1/27/00

[Proposed Amendment: January 29, 2010](#)

PROPOSED AMENDMENT TO ~~CONSOLIDATED~~ PARAMETERS AND GUIDELINES

[Statutes 1975](#), Chapter 961, ~~[Statutes of 1975](#)~~
[Statutes 1991](#), Chapter 1213, ~~[Statutes of 1991](#)~~

Collective Bargaining and Collective Bargaining Agreement Disclosure

[05-PGA 48 \(CSM 97-TC-08, 98-4425-PGA-12\)](#)

[This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement](#)

An act to repeal Article 5 (commencing with Section 13080) of Chapter 1 of Division 10 of the Education Code, and to add Chapter 10.7 (commencing with Section 3540) to Division 4 of Title 1 of the Government Code, relating to public educational employment relations, and making an appropriation. This bill, which was operative July 1, 1976, repealed the Winton Act and enacted provisions to meet and negotiate, thereby creating a collective bargaining atmosphere for public school employers. Chapter 1213, Statutes of 1991 added section 3547.5 to the Government Code. Government Code section 3547.5 requires school districts to publicly disclose major provisions of a collective bargaining agreement after negotiations, but before the agreement becomes binding.

A. Operative Date of Mandate

The provisions relating to the creation, certain duties of, and appropriations for the Public Employment Relations Board were operative on January 1, 1976. The provisions relating to the organizational rights of employees, the representational rights of employee organizations, the recognition of exclusive representatives, and related procedures were operative on April 1, 1976. The balance of the added provisions were operative on July 1, 1976.

The provisions relating to Collective Bargaining Agreement Disclosure added by Chapter 1213, Statutes of 1991 were operative on January 1, 1992. The California Department of

Education issued Management Advisory 92-01 dated May 15, 1992, to establish the public disclosure format for school district compliance with the test claim statute.

B. Period of Claim

Only costs incurred after January 1, 1978 may be claimed. The initial claim should have included all costs incurred for that portion of the fiscal year from January 1, 1978, to June 30, 1978.

Pursuant to language included in the 1980-81 budget, claims shall no longer be accepted for this period. All subsequent fiscal year claims should be filed with the State Controller's Office for processing.

The test claim on Chapter 1213, Statutes of 1991 was filed with the Commission on December 29, 1997. Accordingly, the period of reimbursement for the provisions relating to disclosure begins July 1, 1996. Only disclosure costs incurred after July 1, 1996 may be claimed.

[This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.](#)

C. Mandated Cost

Public school employers have incurred costs by complying with the requirements of Section 3540 through 3549.1 established by Chapter 961, Statutes of 1975. In addition, some costs have been incurred as a result of compliance with regulations promulgated by the Public Employment Relations Board (PERB). Since these activity costs (referred to collectively as "Rodda Act" activities and costs in this document), in many respects, simply implement the original legislation, it is intended that these parameters and guidelines have embodied those regulations or actions taken by PERB prior to December 31, 1978.

D. County Superintendent of Schools Filing

If the County Superintendent of Schools files a claim on behalf of more than one school district, the costs of the individual school district must be shown separately.

E. Governing Authority

The costs for salaries and expenses of the governing authority, for example the School Superintendent and Governing Board, are not reimbursable. These are costs of general government as described by the federal guideline entitled "Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government," ASMB C-10.

F. Certification

The following certification must accompany all claims:

I DO HEREBY CERTIFY:

THAT Section 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claim for funds with the State of California.

Date Signature of Authorized Representative

Number Title Telephone

G. Claim Components (Reimbursable Costs)

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge."
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.

Reimbursable activities mandated by Chapter 961, Statutes of 1975 and Chapter 1213, Statutes of 1991 are grouped into seven components, G1 through G7. The cost of activities grouped in components G1, G2, and G3 are subject to offset by the historic cost of similar Winton Act activities as described in H2.

1. Determination of appropriate bargaining units for representation and determination of the exclusive representatives.
 - a. Unit Determination: Explain the process for determining the composition of the certificated employee council under the Winton Act, and the process for determining appropriate bargaining units including the determination of management, supervisory and confidential employees, under Chapter 961, Statutes of 1975, if such activities were performed during the fiscal year being claimed.
 - b. Determination of the Exclusive Representative: Costs may include receipt and posting of the representation and decertification notices and, if necessary, adjudication of such matters before the PERB.
 - c. Show the actual increased costs including salaries and benefits for employer representatives and/or necessary costs for contracted services for the following functions:
 - (1) Development of proposed lists for unit determination hearings if done during the fiscal year being claimed. Salaries and benefits must be shown as described in Item H3.
 - (2) Representation of the public school employer at PERB hearings to determine bargaining units and the exclusive representative. Actual preparation time will be reimbursed. Salaries and benefits must be shown as described in Item H3.
 - (3) If contracted services are used for either (a) or (b) above, contract invoices must be submitted with the claim. Contract costs must be shown as described in Item H5.
 - (4) Indicate the cost of substitutes for release time for employer and exclusive bargaining unit witnesses who testify at PERB hearings. The job classification of the witnesses and the date they were absent must also be submitted. Release time for employee witnesses asked to attend the PERB hearing by bargaining units will not be reimbursed.
 - (5) Identify the travel costs for employer representatives to any PERB hearing. Reimbursement shall reflect the rate specified by the regulations governing employees of the local public school employer.
 - (6) Cost of preparation for one transcript per PERB hearing will be reimbursed.

2. Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot.
 - a. Submit with your claim any Public Employment Relations Board agreements or orders which state how the election must be held.
 - b. If a precinct voting list was required by PERB, indicate the cost of its development. Salaries and benefits must be shown as described in Item H3.
 - c. The salary and benefits of a school employer representative, if required by PERB for time spent observing the counting of ballots, will be reimbursed. The representatives' salary must be shown as described in Item H3.
3. Negotiations: Reimbursable functions include -- receipt of exclusive representative's initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer's proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement.
 - a. Show the costs of salaries and benefits for employer representatives participating in negotiations. Contracted services will be reimbursed. Costs for maximum of five public school employer representatives per unit, per negotiation session will be reimbursed. Salaries and benefits must be shown as described on Page 7, Item H3.
 - b. Show the costs of salaries and benefits for employer representatives and employees participating in negotiation planning sessions. Contracted services for employer representatives will be reimbursed. Salaries and benefits must be shown as described in Item H3.
 - c. Indicate the cost of substitutes for release time of exclusive bargaining unit representatives during negotiations. Give the job classification of the bargaining unit representative that required a substitute and dates the substitute worked. Substitute costs for a maximum of five representatives per unit, per negotiation session will be reimbursed. The salaries of union representatives are not reimbursable.
 - d. Reasonable costs of reproduction for a copy of the initial contract proposal and final contract, which is applicable and distributed to each employer representative (i.e. supervisory, management, confidential) and a reasonable number of copies for public information will be reimbursed. Provide detail of costs and/or include invoices. Costs for copies of a final contract provided to collective bargaining unit members are not reimbursable.
 - e. If contract services are used for a. and/or b. above, contract invoices must be submitted. Contract costs must be shown as described in Item H5.

- f. A list showing the dates of all negotiation sessions held during the fiscal year being claimed must be submitted.

4. Impasse Proceedings

a. Mediation

- (1) Costs for salaries and benefits for employer representative personnel are reimbursable. Contracted services will be reimbursed. Costs for a maximum of five public school employer representatives per mediation session will be reimbursed. Salaries and benefits must be shown as described in Item H3.
- (2) Indicate the costs of substitutes for the release time of exclusive bargaining unit representatives during impasse proceedings. The job classification of the employee witnesses and the date they were absent shall be indicated. Costs for a maximum of five representatives per mediation session will be reimbursed.
- (3) Renting of facilities will be reimbursed.
- (4) Costs of the mediator will not be reimbursed.
- (5) If contract services are used under 1, contract invoices must be submitted with the claim. Contract costs must be shown as described in Item H5.

b. Fact-finding publication of the findings of the fact-finding panel. (To the extent fact-finding was required under the Winton Act during the 1974-75 fiscal year, costs are not reimbursable.)

- (1) All costs of the school employer panel representative shall be reimbursed. Salaries and benefits must be shown as described in Item H3.
- (2) Fifty percent of the costs mutually incurred by the fact-finding panel shall be reimbursed. This may include substitutes for release time of witnesses during fact-finding proceedings, and the rental of facilities required by the panel.
- (3) Special costs imposed on the public school employer for the development of unique data required by a fact-finding panel will be reimbursed. Describe the special costs and explain why this data would not have been required by a fact-finding panel under the Winton Act. Salaries and benefits must be shown as described in Item H3.

5. Collective Bargaining Agreement Disclosure

Disclosure of collective bargaining agreement *after* negotiation and *before* adoption by governing body, as required by Government Code section 3547.5 and California State Department of Education Management Advisory 92-01 (or subsequent replacement),

attached to the amended Parameters and Guidelines. Procedures or formats which exceed those or which duplicate activities required under any other statute or executive order are not reimbursable under this item.

- a. Prepare the disclosure forms and documents, as specified.
- b. Distribute a copy of the disclosure forms and documents, to board members, along with a copy of the proposed agreement, as specified.
- c. Make a copy of the disclosure forms and documents and of the proposed agreement available to the public, prior to the day of the public meeting, as specified.
- d. Training employer's personnel on preparation of the disclosure forms and documents, as specified.
- e. Supplies and materials necessary to prepare the disclosure forms and documents, as specified.

For 5. a., b., and c., list the date(s) of the public hearing(s) at which the major provisions of the agreement were disclosed in accordance with the requirements of Government Code section 3547.5 and Department of Education Advisory 92-01 (or subsequent replacement).

6. Contract administration and adjudication of contract disputes either by arbitration or litigation. Reimbursable functions include grievances and administration and enforcement of the contract.
 - a. Salaries and benefits of employer personnel involved in adjudication of contract disputes. Contracted services will be reimbursed. Salaries and benefits must be shown as described in Item H3.
 - b. Indicate substitutes necessary for release time of the representatives of an exclusive bargaining unit during adjudication of contract disputes. The job classification of the employee witnesses and the dates they were absent shall also be indicated.
 - c. Reasonable costs incurred for a reasonable number of training sessions held for supervisory and management personnel on contract administration/interpretation of the negotiated contract are reimbursable. Contract interpretations at staff meetings are not reimbursable. Personal development and informational programs, i.e., classes, conferences, seminars, workshops, and time spent by employees attending such meetings are not reimbursable. Similarly, purchases of books and subscriptions for personal development and information purposes are not reimbursable. Salaries and benefits must be shown as described in Item H3.
 - d. The cost of one transcript per hearing will be reimbursed.
 - e. Reasonable public school employer costs associated with a contract dispute which is litigated are reimbursable, as follows:

1. Reasonable public school employer costs associated with issues of contract disputes which are presented before PERB are reimbursable.
2. Reasonable public school employer cost of litigation as a defendant in the court suit involving contract disputes may be reimbursable.
3. Where the public school employer is the plaintiff in a court suit to appeal a PERB ruling, costs are reimbursable only if the public school employer is the prevailing party (after all appeals, final judgment).
4. No reimbursement is allowed where the public school employer has filed action directly with the courts without first submitting the dispute to PERB, if required.
5. No reimbursement shall be provided for filing of amicus curiae briefs.
- f. Expert witness fees will be reimbursed if the witness is called by the public school employer.
- g. Reasonable reproduction costs for copies of a new contract which is required as a result of a dispute will be reimbursed.
- h. If contract services are used under "a" above, copies of contract invoices must be submitted with your claim. Contract costs must be shown as described in Item H5.
- i. Public school employer's portion of arbitrators' fees for adjudicating grievances, representing 50% of costs, will be reimbursed.
7. Unfair labor practice adjudication process and public notice complaints.
 - a. Show the actual costs for salaries and benefits of employer representatives. Services contracted by the public school employer are reimbursable. Salaries and benefits must be shown as described in Item H3.
 - b. Indicate cost of substitutes for release time for representatives of exclusive bargaining units during adjudication of unfair practice charges.
 - c. The cost of one transcript per PERB hearing will be reimbursed.
 - d. Reasonable reproduction costs will be reimbursed.
 - e. Expert witness fees will be reimbursed if the witness is called by the public school employer.
 - f. If contract services are used under "a" above, contract invoices must be submitted. Contract costs must be shown as described in Item H5.
 - g. No reimbursement for an appeal of an unfair labor practice decision shall

be allowed where the Public Employee Relations Board is the prevailing party.

- h. No reimbursement for filing of amicus curiae briefs shall be allowed.

H. Supporting Data for Claims--Report Format for Submission of Claim.

- 1. Description of the Activity: Follow the outline of the claim components. Cost must be shown separately by component activity. Supply workload data requested as part of the description to support the level of costs claimed. The selection of appropriate statistics is the responsibility of the claimant.
- 2. Quantify "Increased" Costs: Public school employers will be reimbursed for the "increased costs" incurred as a result of compliance with the mandate.

- a. For component activities G1, G2, and G3:

- 1. Determination of the "increased costs" for each of these three components requires the costs of current year Rodda Act activities to be offset [reduced] by the cost of the base-year Winton Act activities. The Winton Act base-year is generally fiscal year 1974-75.

Winton Act base-year costs are adjusted by the Implicit Price Deflator prior to offset against the current year Rodda Act costs for these three components. The Implicit Price Deflator shall be listed in the annual claiming instructions of the State Controller.

- 2. The cost of a claimant's current year Rodda Act activities are offset [reduced] by the cost of the base-year Winton Act activities either: by matching each component, when claimants can provide sufficient documentation to segregate each component of the Winton Act base-year activity costs; or, by combining all three components when claimants cannot satisfactorily segregate each component of Winton Act base-year costs.

- b. For component activities G4, G6, and G7:

All allowable activity costs for these three Rodda Act components are "increased costs" since there were no similar activities required by the Winton Act; therefore, there is no Winton Act base-year offset to be calculated.

<u>BASE YEAR</u>	<u>ADJUSTMENT</u>
1974-1975	1.490 1979-80 FY
"	1.560 1980-81 FY
"	1.697 1981-82 FY
"	1.777 1982-83 FY
"	1.884 1983-84 FY

- 3. Salary and Employees' Benefits: Show the classification of the employees

involved, amount of time spent, and their hourly rate. The worksheet used to compute the hourly salary rate must be submitted with your claim. Benefits are reimbursable. Actual benefit percent must be itemized. If no itemization is submitted, 21 percent must be used for computation of claim costs. Identify the classification of employees committed to functions required under the Winton Act and those required by Chapter 961, Statutes of 1975.

4. Services and Supplies: Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed.
5. Professional and Consultant Services: Separately show the name of professionals or consultants, specify the functions the consultants performed relative to the mandate, length of appointment, and the itemized costs for such services. Invoices must be submitted as supporting documentation with your claim. The maximum reimbursable fee for contracted services is \$135 per hour. Annual retainer fees shall be no greater than \$135 per hour. Reasonable expenses will also be paid as identified on the monthly billings of consultants. However, travel expenses for consultants and experts (including attorneys) hired by the claimant shall not be reimbursed in an amount higher than that received by State employees, as established under Title 2, Div. 2, Section 700ff, CAC.
6. Allowable Overhead Cost: School districts must use the Form J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County Offices of Education must use the Form J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

Community College Districts must use one of the following three alternatives:

- A Federally-approved rate based on OMB Circular A-21;
- The State Controller's FAM-29C which uses the CCFS-311; or
- Seven percent (7%).

I. 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 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 G, must be retained during the period subject to audit. If the Controller has

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

initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.