

ITEM 17 D
FINAL STAFF ANALYSIS
PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Elections Code Sections 6490.3, 6490.4, 14205.5, and 14005.4

Statutes 1988, Chapter 391

Brendon Maguire Act
05-PGA-25 (CSM 4357)

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 *Brendon Maguire Act* program (CSM-4357) 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.

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 that clarified what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language 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 parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language.

This analysis pertains only to the request to amend the *Brendon Maguire Act* 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"?**

Staff finds that it is appropriate to approve the SCO's request to insert the source documentation and records retention language because it would conform the parameters and guidelines for the *Brendon Maguire Act* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulation. 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 *Brendon Maguire Act* program, beginning on page 9.
- 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

09/27/1997	Commission on State Mandates (Commission) adopts Statement of Decision
08/20/1998	Commission adopts parameters and guidelines
03/25/1999	Commission adopts statewide cost estimate
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>Brendon Maguire Act</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
10/13/2009	Commission issues draft staff analysis

Background

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Brendon Maguire Act* program (CSM-4357) 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 Decision and Parameters and Guidelines

This is a legislatively determined mandate. Section 9 of Statutes 1988, chapter 391 contains a legislative acknowledgement that the *Brendon Maguire Act* imposes a state-mandated local program by requiring that a special election be called and conducted within a certain timeline to fill the vacancy caused by the death of either the challenger or the candidate-incumbent.

The Commission adopted parameters and guidelines for this program on January 25, 1990, and amended the parameters and guidelines on August 23, 1990.¹

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,

¹ Exhibit A.

insufficient documentation was being submitted to support claims.² 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.

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:³

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, 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.

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 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*

² Exhibit B.

³ 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.

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.

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 2003.⁴

The parameters and guidelines for the *Brendon Maguire Act* program is one of the 49 programs the SCO is requesting be amended.

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.⁵

In its comments, 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.

Commission staff issued the draft staff analysis on October 13, 2009.⁶ No comments were filed.

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

This case 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.⁷ 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.

⁴ Exhibit C.

⁵ Exhibit D.

⁶ Exhibit E.

⁷ The Commission is not a party to this action.

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.

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 that clarify what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language that identifies the records that must be retained to support an audit initiated by the SCO.

The adopted language, as detailed on pages 4 and 5 of this analysis, has been included in all parameters and guidelines adopted since 2003.

In addition, section 1183.1, subdivision (a) (5) and (6) require that the parameters and guidelines contain, among other things, 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.

The SCO is now requesting that parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language. This analysis pertains to the parameters and guidelines for the *Brendon Maguire Act* program.⁸

Inserting the source documentation and records retention boilerplate language would conform the parameters and guidelines for the *Brendon Maguire Act* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulations.

⁸ 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.

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

III. Period of Reimbursement

Government Code section 17557, subdivision (d) states that a parameters and guidelines amendment filed on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. This amendment was filed on April 7, 2006, (after the claiming deadline) establishing reimbursement for fiscal year 2005-2006. Therefore, reimbursement for this amendment shall begin on July 1, 2005.

Staff clarified that the proposed amendments would be effective on July 1, 2005.

IV. Reimbursable Activities

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

VI. D. Records Retention

At the request of the SCO, staff removed the existing language regarding records retention, and replaced it with the following boilerplate language regarding 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 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*

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

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 *Brendon Maguire Act* program, beginning on page 9.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Adopted: 1/25/90

Amended: 8/23/90

[Proposed Amendment: 1/29/10](#)

[J:mandates/05pga17/05pga25/hearing docs/draftpga](#)

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

Elections Code Sections 6490.3, 6490.4, 14205.5, and 14005.4

~~Statutes 1988, Chapter 391, Statutes of 1988~~

Brendon Maguire Act

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

I. SUMMARY OF MANDATE

~~Statutes 1988, c~~Chapter 391, ~~Statutes of 1988~~ added section 6490.3 to the Elections Code requiring for the first time that a special election be held if a candidate or incumbent dies after the hour of 12:01 a.m. of the 68th day before the election.

~~Statutes 1988, c~~Chapter 391, ~~Statutes of 1988~~ added section 6490.4 to the Elections Code requiring that the filing of the nomination papers shall be reopened when the candidate or incumbent dies after the 88th day but before the 68th day before the election.

~~Statutes 1988, c~~Chapter 391, ~~Statutes of 1988~~ added section 14005.4 to the Elections Code requiring that the clerk provide signs or materials to make signs, advising voters that an election has been cancelled pursuant to section 6490.3 due to the death of the candidate-incumbent and that a special election will be held to fill the vacancy. ~~Statutes 1988, c~~Chapter 391, ~~Statutes of 1988~~ added section 14205.5 to the Elections Code requiring that the precinct officers shall post signs required by section 14005.4 of the Elections Code in plain view of each voting booth or compartment whenever an election has been cancelled pursuant to Elections Code section 6490.3.

II. COMMISSION ON STATE MANDATE DECISION

The Commission on State Mandates did not hear a test claim on ~~Statutes 1988, c~~Chapter 391, ~~Statutes of 1988~~, known as the Brendon Maguire Act, because Section 9 of the chaptered legislation contained a legislative acknowledgment that the Brendon Maguire Act imposes a state mandated local program by requiring that a special election be called and conducted to fill the vacancy caused by the death of either the challenger or the candidate-incumbent and would specify certain timelines applicable to that election. It further requires that the filing of nomination papers be reopened when either the challenger or incumbent dies after the 88th day but before the 68th day before the election. It also requires the County Clerk to provide Notification that the election has been cancelled and that a special election shall be held.

III. ELIGIBLE CLAIMANTS

All Local agencies that conduct elections, and which incur costs mandated by the Brendon Maguire Act are eligible for reimbursement.

IV. PERIOD OF CLAIM

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

Statutes 1988, cChapter 391, ~~Statutes of 1988~~ became effective August 11, 1988. Section 17557 of the Government Code States that a test claim shall be submitted on or before December 31 following 2 fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claim for this mandate was filed with the Commission on March 10, 1989. Therefore, all costs directly related to the mandated requirements, incurred on or after August 11, 1988, are reimbursable.

V. 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.

ALL LOCAL AGENCIES SHALL BE REIMBURSED FOR THE INCREASED COSTS ASSOCIATED WITH COMPLYING WITH THE MANDATE IN THE FOLLOWING CATEGORIES:

- A. Notification of Cancellation of Election
 - 1. Preparation and posting of signs advising voters that an election has been cancelled.
 - 2. Voter notification of cancellation of election
 - a. printing costs
 - b. postage costs, if a separate mailing was needed.
- B. Reopening of Nomination Period

1. Increased costs resulting from the filing of nomination papers due to a reopening of the nomination period.

IF THE REGULARLY SCHEDULED ELECTION WAS HELD AND, THE RESULTS THEREOF WERE SUBSEQUENTLY NULLIFIED DUE TO THE PROVISIONS OF SECTION 6490.3 OF THE ELECTIONS CODE, THE FOLLOWING COSTS ASSOCIATED WITH ANY SUBSEQUENT SPECIAL ELECTION WILL BE REIMBURSABLE.

NOTE: Under the provisions of Elections Code section 6490.3, special elections costs are only reimbursable when a candidate or incumbent dies and there is only one other candidate on the ballot.

- C. Staff time expended on activities of preparation and planning for the special elections.
 1. Consultation with the Secretary of State, county counsel, vendors and others.
 2. Calendar preparation
 3. Mapping, setting up precincts and consolidating.
 4. Planning for staff and space.
 5. Other staff time directly attributable to the special election.
- D. Non-reusable supplies purchased for the election.
 1. Stationary
 2. Postage
 3. Customized precinct envelopes
 4. Form letters
 5. Precinct maps
 6. Computer costs
 7. Other non-reusable supplies

VI. CLAIM PREPARATION

Reimbursement Claim

Attach a statement showing the actual costs incurred to comply with the mandate. Monies received by the claimant from federal, state or other non-local sources must be applied toward the reimbursement claim.

- A. Employee Salaries and Benefits
Show the classification of the employee involved, mandated functions performed, number of hours devoted to the function, productive hourly rate and benefits.
- B. Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials acquired which have been consumed or expended specifically for the purposes of this mandate.

C. Allowable Overhead Costs

Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions.

D. Supporting Data

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 V, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audits findings.

~~For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file and made available at the request of the State Controller.~~

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g. federal,, state, etc., shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant will be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.

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