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FINAL STAFF ANALYSIS
PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Penal Code Section 1417.3

Statutes 1985, Chapter 875

Statutes 1986, Chapter 734

Chapter 1990, Chapter 382

Photographic Record of Evidence

05-PGA-59 (04-PGA-09, 04-RL-9807-09)

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 *Photographic Record of Evidence* program, 05-PGA-39 (04-PGA-09, 04-RL-9807-09) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit.

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 *Photographic Record of Evidence* 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"?**

The SCO requested amendment to these parameters and guidelines on April 7, 2006. Statutes 2004, chapter 316, section 3, subdivision (d) (AB 2851) directed the Commission to reconsider the prior final decision for the *Photographic Record of Evidence* program. On February 28, 2002, the Commission adopted parameters and guidelines for this program. On November 8, 2004, the State Controller's Office

requested that the parameters and guidelines for the *Photographic Record of Evidence* program be amended once the Commission completed reconsideration of the program. On December 9, 2005, the Commission amended the parameters and guidelines. The 2005 amendments also included adding the boilerplate language. Therefore, the SCO's request to amend the *Photographic Record of Evidence* parameters and guidelines is now unnecessary.

Staff Recommendation

Staff recommends that the Commission deny the SCO's request to add proposed amendments to the parameters and guidelines for the *Photographic Record of Evidence* since these amendments were adopted on December 9, 2005.

STAFF ANALYSIS

Requestor

State Controller's Office

Chronology

10/26/2000	Commission on State Mandates (Commission) adopts Statement of Decision
02/28/2002	Commission adopts parameters and guidelines
10/24/2002	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
12/31/2003	Legislative Analyst's Office (LAO) issues report, <i>New Mandates: Analysis of Measures Requiring Reimbursement</i> recommending reconsideration of the <i>Photographic Record of Evidence</i> test claim
08/25/2004	Legislature enacts Assembly Bill 2851, an urgency statute requiring the Commission to reconsider <i>Photographic Record of Evidence</i>
12/09/2005	Commission amends parameters and guidelines
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>Photographic Record of Evidence</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 *Photographic Record of Evidence* program, 05-PGA-39 (04-PGA-09, 04-RL-9807-09) 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

On October 26, 2000, the Commission on State Mandates (Commission) adopted a Statement of Decision determining that the test claim statute imposes a reimbursable mandate on local law enforcement agencies.¹

On February 28, 2002, the Commission adopted parameters and guidelines for this program. On December 9, 2005, the Commission amended the parameters and guidelines.²

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.

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

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

¹ Exhibit A.

² Exhibit B.

³ Exhibit C.

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

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 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 2003.⁵

The parameters and guidelines for the *Photographic Record of Evidence* program is one of the 49 programs the SCO is requesting be amended.

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

⁵ Exhibit D.

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.⁶

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, 2009.⁷ No comments were filed.

Since the Commission amended the parameters and guidelines in 2005 to include the boilerplate language, the SCO's request to amend the *Photographic Record of Evidence* parameters and guidelines adding the boilerplate language is now unnecessary.

Staff Recommendation

Staff recommends that the Commission deny the SCO's request to add proposed amendments to the parameters and guidelines for the *Photographic Record of Evidence* since these amendments were adopted on December 9, 2005.

⁶ Exhibit E.

⁷ Exhibit F.