

Item 4
FINAL STAFF ANALYSIS
and
PROPOSED PARAMETERS AND GUIDELINES

Education Code Sections 81820, 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910, Statutes 1981, Chapter 470,
Statutes 1981, Chapter 891, Statutes 1995, Chapter 758

Community College Construction
02-TC-47

Santa Monica Community College District, Claimant

This item addresses the proposed parameters and guidelines for the test claim on *Community College Construction* (02-TC-47) and is proposed on the Commission's consent calendar for adoption.

I. Summary of the Mandate

On October 27, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. For the reimbursement period beginning July 1, 2001, the Commission approved this test claim for the following reimbursable activities:

For community college districts to include in their five-year capital construction plans:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)¹
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)

Community college districts are also eligible for reimbursement to continually review the information bulleted above and to report by February 1 of each year any required modifications or changes with respect to the information to the Board of Governors.

¹ All references are to the Education Code unless otherwise indicated.

The Commission found that all other statutes and regulations in the test claim did not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

II. Commission's Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. Alternatively, the Commission's regulations authorize Commission staff to expedite the parameters and guidelines process by drafting proposed parameters and guidelines within ten days following the adoption of the statement of decision. The test claimant may then file modifications and comments on the staff's draft proposed parameters and guidelines to clarify the reimbursable activities, propose new activities that are considered reasonably necessary to comply with the mandate, propose a reasonable reimbursement methodology (RRM) when appropriate, and identify any offsetting savings or revenues.² The alternate process was used here.

The parameters and guidelines shall include the following information: a summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.³

As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under Article 7 of the Commission's regulations.⁴ Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.⁵ Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.⁶

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's

² California Code of Regulations, Title 2, section 1183.12.

³ Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

⁴ California Code of Regulations, Title 2, section 1187.

⁵ Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

⁶ California Code of Regulations, Title 2, section 1187.5.

Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

III. Procedural History

The statement of decision was adopted on October 27, 2011.⁷ On November 2, 2011, staff's draft proposed parameters and guidelines were issued for comment.⁸ On November 21, 2011, the claimant filed comments proposing clarifying language to Section IV, Reimbursable Activities.⁹ On November 23, 2011, the State Controller's Office filed comments agreeing with the proposed parameters and guidelines.¹⁰

IV. Staff Analysis

The claimant requests that the language in Section IV, Reimbursable Activities, clarify that the reimbursable activities apply to initial capital construction plans prepared by new community college districts and to the annual updates of the plans prepared by all community college districts. The claimant states the following:

The mandate to prepare the five-year plan dates back to Statutes of 1980, Chapter 910. Therefore, *except for districts newly established after July 1, 2001 (the commencement date for reimbursement)* the reimbursable activities would be only applicable to the annual extension of the five-year plan, review and update of modifications or changes, submitted to the state Board of Governors by February 1, as they relate to the four (of six) subsections of Education Code Section 81821 approved for reimbursement. The changes proposed below clarify that the reimbursable activities apply both to the *initial* plan (for districts established after July 1, 2001) as well as the annual update (for all districts).

Staff agrees with the claimant's request for clarification. In addition, staff has added a sentence to state that reimbursement is not required for any other content required to be included in the capital construction plan by Education Code section 81821.

The proposed reimbursable activities in Section IV of the parameters and guidelines state the following:

For each eligible claimant, the following activities are reimbursable:

Include the following information in the initial five-year plan for capital construction (for community college districts established on or after July 1, 2001), and continually review and report any required modifications or changes with respect to the following information in the subsequent annual update submitted to the Board of Governors by February 1 of each succeeding year:

⁷ Exhibit A.

⁸ Exhibit B.

⁹ Exhibit C.

¹⁰ Exhibit D.

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
- An annual inventory of all land of the district using standard definitions, forms, and instructions adopted by the Board of Governors. (§ 81821(e).)
- An estimate of district funds which shall be made available for capital outlay matching purposes pursuant to regulations adopted by the Board of Governors. (§ 81821(f).)

~~Community college districts are also eligible for reimbursement to continually review the information bulleted above and to report by February 1 of each year any required modifications or changes with respect to the information to the Board of Governors.~~

~~All other statutes and regulations pled in the test claim do not impose a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution.~~

In addition, minor changes have been made to Sections VII (Offsetting Revenue and Reimbursements) and VIII (State Controller's Claiming Instructions) to conform the boilerplate language to other parameters and guidelines adopted by the Commission and to current statutory language.

Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the attached proposed parameters and guidelines beginning on page 5; and
- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

Proposed Parameters and Guidelines

Education Code Sections 81820, 81821(a), (b), (e), and (f)

Statutes 1980, Chapter 910, Statutes 1981, Chapter 470, Statutes 1981, Chapter 891,
Statutes 1995, Chapter 758;

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Santa Monica Community College District, Claimant

I. SUMMARY OF THE MANDATE

On October 27, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

For community college districts to include in their five-year capital construction plans:

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- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
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Community college districts are also eligible for reimbursement to continually review the information bulleted above and to report by February 1 of each year any required modifications or changes with respect to the information to the Board of Governors.

¹¹ All references are to the Education Code unless otherwise indicated.

The Commission found that all other statutes and regulations in the test claim did not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

II. ELIGIBLE CLAIMANTS

Any community college district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The Santa Monica Community College District filed the test claim on June 27, 2003, establishing eligibility for reimbursement on or after July 1, 2001. Therefore, costs incurred for the activities in these parameters and guidelines are reimbursable on or after July 1, 2001.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

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 to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under

penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant, the following activities are reimbursable:

Include the following information in the initial five-year plan for capital construction (for community college districts established on or after July 1, 2001), and continually review and report any required modifications or changes with respect to the following information in the subsequent annual update submitted to the Board of Governors by February 1 of each succeeding year:

- The plans of the district concerning its future student services programs, and the effect on estimated construction needs that may arise because of particular student services to be emphasized. (§ 81821(a).)
- The enrollment projections for each educational center within a community college district, made cooperatively by the Department of Finance and the district. (§ 81821(b).)
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~~Community college districts are also eligible for reimbursement to continually review the information bulleted above and to report by February 1 of each year any required modifications or changes with respect to the information to the Board of Governors.~~

~~All other statutes and regulations pled in the test claim do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.~~

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by

productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets

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

5. Travel

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

B. Indirect Cost Rate

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

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

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹² 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 IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60-90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

¹² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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