

ITEM 11
FINAL STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE
\$4,925,403

Government Code Sections 3502.5 and 3508.5

Statutes 2000, Chapter 901

California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160,
32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310,
32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070

Register 2001, Number 49

Local Government Employee Relations
01-TC-30

City of Sacramento and County of Sacramento, Claimants

STAFF ANALYSIS

Background and Summary of the Mandate

The test claim statute amended the Meyers-Milias-Brown Act (MMBA) regarding employer-employee relations between local public agencies and their employees. The test claim statute and its attendant regulations created an additional method for creating an agency shop arrangement, and expanded the jurisdiction of the Public Employment Relations Board (PERB) to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Local Government Employee Relations* program (01-TC-30). The Commission found that the test claim statute and regulations constitute a new program or higher level of service and impose a state-mandated program on local agencies within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514.

The claimant filed the test claim on August 1, 2002. The Commission adopted a Statement of Decision on December 4, 2006. The Commission adopted the parameters and guidelines on May 29, 2009, and issued corrected parameters and guidelines on June 16, 2009.¹ Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by December 1, 2009, and late claims by December 1, 2010.

Eligible Claimants and Period of Reimbursement

Any county, city, or city and county, special district or other local agency subject to the jurisdiction of PERB that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. However, the City of Los Angeles

¹ Exhibit A.

and the County of Los Angeles are not eligible claimants because they are specifically excluded from PERB jurisdiction pursuant to Government Code section 3507.

The period of reimbursement for this program begins on July 1, 2001.

Reimbursable Activities

The Commission approved the following activities for reimbursement:

1. Deduct from an employees' wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code § 3508.5, subd. (b)).
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5. (Gov. Code, § 3502.5, subd. (c)).
3. Follow PERB procedures in responding to charges and appeals filed with PERB, by an entity other than the local public agency employer, concerning an unfair labor practice, a unit determination, representation by an employee organization, recognition of an employee organization, or election. Mandated activities are:
 - a. procedures for filing documents or extensions for filing documents with PERB (Cal. Code Reg., tit. 8, §§ 32132, 32135 (Register 2001, No. 49));
 - b. proof of service (Cal. Code Regs., tit. 8, § 32140 (Register 2001, No. 49));
 - c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150 (Register 2001, No. 49));
 - d. conducting depositions (Cal. Code Regs., tit. 8, § 32160 (Register 2001, No. 49));
 - e. participating in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050 and 60070 (Register 2001, No. 49)); and
 - f. filing and responding to written motions in the course of the hearing. (Cal. Code Regs. tit. 8, § 32190. (Register 2001, No. 49.)

Statewide Cost Estimate

Staff reviewed the claims data submitted by 50 cities, 17 counties, and 6 special districts, and compiled by the SCO. The actual claims data showed that 258 claims were filed between fiscal years 2000-2001 and 2008-2009 for a total of \$4,925,403.² Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

1. *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*

² Claims data reported as of September 22, 2010.

There are 481 cities, 58 counties, and over 4,000 special districts in California. Of those, only 73 filed reimbursement claims for this program between 2001 and 2009. However, other eligible claimants could file reimbursement claims if they must participate in PERB hearings, which could increase the cost of the program.

2. *There is a wide variation in costs among claimants that is dependent on such circumstances as the number of PERB hearings, whether locals must attend informal conferences prior to the PERB hearings, and the amount of preparation required for the PERB hearing. These costs appear to be reimbursable.*

Staff reviewed the claims data and found a wide variation in costs among claimants.

Under the *Local Government Employee Relations* program, local agencies are reimbursed for participating in PERB hearings concerning unfair labor practices, and other circumstances. Therefore, the costs of this program will fluctuate depending on the number of entities that must participate in the PERB hearings each year, and the amount of preparation for the hearings.

The PERB decision-making process is quasi-judicial, and requires local agency representatives to be prepared for any hearing as required by any PERB agent, Administrative Law Judge, General Counsel, or the five-member PERB. Preparation may include drafting briefs, assembling documentation, evidence and exhibits, preparing witnesses, and attendance at the hearings.

The SCO conducted a preliminary desk review of these claims and approved them for reimbursement.

3. *The total amount of reimbursement for this program may be lower than the statewide cost estimate, because the SCO may reduce any reimbursement claim for this program.*

As stated above, the SCO conducted a preliminary desk review of these claims. They reduced claims for various reasons, such as deducting penalties for late filings. They also rejected claims that were filed for amounts under the \$1,000 minimum threshold. The SCO may also conduct full field audits on this program, and reduce any claim it deems to be excessive or unreasonable.

4. *There may be several reasons that non-claiming local agencies did not file reimbursement claims, including but not limited to: (1) they did not incur more than \$1000 in increased costs for this program; (2) they did not have supporting documentation to file a reimbursement claim; and (3) they missed the deadline for filing reimbursement claims.*

Methodology

Fiscal Years 2000-2001 through 2008-2009

The statewide cost estimate for fiscal years 2000-2001 through 2008-2009 was developed by totaling the 258 actual reimbursement claims filed with the SCO for these years.

The statewide cost estimate includes eight fiscal years for a total of \$4,925,403. This averages to \$615,675 annually in costs for the state for this eight-year period. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2001-2002	18	\$ 123,130

2002-2003	27	\$ 184,753
2003-2004	35	\$ 253,199
2004-2005	30	\$ 525,115
2005-2006	28	\$ 546,881
2006-2007	36	\$1,191,655
2007-2008	43	\$1,408,892
2008-2009	41	\$691,778
TOTAL	258	\$4,925,403

Comments on the Draft Staff Analysis and Proposed Statewide Cost Estimate

On January 21, 2011, Commission staff issued the draft staff analysis and proposed statewide estimate for comment.³ On February 10, 2011, Department of Finance submitted comments stating it had no significant concerns with the proposed statewide cost estimate.⁴

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$4,925,403** for costs incurred in complying with the *Local Government Employee Relations* program.

³ Exhibit B.

⁴ Exhibit C.