

**COMMISSION ON STATE MANDATES**

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May 16, 2011

Ms. Juliana Gmur  
MAXIMUS  
2380 Houston Ave  
Clovis, CA 93611

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

**RE: Final Staff Analysis, Proposed Parameters and Guidelines, and Hearing Date**

*Mandate Reimbursement Process II, 05-TC-05*

And Proposed Consolidation of *Mandate Reimbursement Process I and II,*

CSM-4204, 4485 and 05-TC-05

Government Code Section 17553

Statutes 2004, Chapter 890 (AB 2856)

City of Newport Beach, Claimant

Dear Ms. Gmur:

The final staff analysis and proposed parameters and guidelines for this matter are enclosed.

**Hearing**

This matter is set for hearing on Thursday, **May 26, 2011** at 9:30 a.m. **The hearing will be conducted at the offices of Department of Finance, 915 L Street, Redwood Room, Sacramento, California, 95814.** This matter is proposed for the Consent Calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan".

Drew Bohan  
Executive Director

**ITEM 9**  
**FINAL STAFF ANALYSIS**  
**PROPOSED PARAMETERS AND GUIDELINES**  
**AS MODIFIED BY STAFF**

Government Code Section 17553, Subdivision (b)(1)(C) through (G) and (b)(2)  
Statutes 2004, Chapter 890 (AB 2856)

California Code of Regulations, Title 2, Sections 1183, Subdivision (d)  
(Register 2005, No. 36, Effective September 6, 2005)

*Mandate Reimbursement Process II*  
05-TC-05

And

**PROPOSED CONSOLIDATED PARAMETERS AND GUIDELINES**

Statutes 1975, Chapter 486  
Statutes 1984, Chapter 1459  
Statutes 1995, Chapter 303 (Budget Act of 1995)  
Statutes 1996, Chapter 162 (Budget Act of 1996)  
Statutes 1997, Chapter 282 (Budget Act of 1997)  
Statutes 1998, Chapter 324 (Budget Act of 1998)  
Statutes 1999, Chapter 50 (Budget Act of 1999)  
Statutes 2000, Chapter 52 (Budget Act of 2000)  
Statutes 2001, Chapter 106 (Budget Act of 2001)  
Statutes 2002, Chapter 379 (Budget Act of 2002)  
Statutes 2003, Chapter 157 (Budget Act of 2003)  
Statutes 2004, Chapter 208 (Budget Act of 2004)  
Statutes 2005, Chapter 38 (Budget Act of 2005)  
Statutes 2006, Chapter 47 (Budget Act of 2006)  
Statutes 2007, Chapter 171 (Budget Act of 2007)  
Statutes 2008, Chapter 268 (Budget Act of 2008)  
Statutes 2009, Chapter 1, Third Extraordinary Session (Budget Act of 2009)  
Statutes 2010, Chapter 712 (Budget Act of 2010)  
Government Code Section 17553, Subdivision (b)(1)(C) through (G) and (b)(2)  
Statutes 2004, Chapter 890 (AB 2856)  
California Code of Regulations, Title 2, Sections 1183, Subdivision (d)  
(Register 2005, No. 36, Effective September 6, 2005)

*Mandate Reimbursement Process I and II*  
CSM-4204, 4485, and 05-TC-05

City of Newport Beach, Claimant

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# Executive Summary

## Background and Summary of the Mandates

### Mandate Reimbursement Process I

On April 24, 1986, the Commission adopted the *Mandate Reimbursement Process I* Statement of Decision, determining that Statutes 1975, chapter 486 and Statutes 1984, chapter 1459, which established the reimbursement process for state-mandated programs in Government Code sections 17500 et seq., was a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution. On November 20, 1986, the Commission adopted parameters and guidelines, authorizing reimbursement for filing successful test claims, reimbursement claims, and incorrect reduction claims.

### Mandate Reimbursement Process II

On September 27, 2005, a test claim was filed on Statutes 2004, chapter 890, which amended Government Code section 17553 to increase the requirements for filing test claims. The Commission subsequently adopted regulations to implement Statutes 2004, chapter 890 (Cal. Code Regs, tit. 2, § 1183, subd. (d)).

On January 29, 2010, the Commission adopted a statement of decision finding that Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission's regulations, as adopted in 2005, impose a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the additional filing requirements for approved test claims.

## Discussion

Staff is proposing to adopt new parameters and guidelines for the *Mandate Reimbursement Process II* program that would be effective from January 1, 2005 until June 30, 2011. Staff is also proposing to consolidate the parameters and guidelines for *Mandate Reimbursement Process I and II* by amending the existing parameters and guidelines for *Mandate Reimbursement Process I* to clarify that reimbursement under those parameters and guidelines is only effective through June 30, 2011, and adopting new consolidated parameters and guidelines that would be effective beginning July 1, 2011. The three sets of proposed parameters and guidelines are included as Attachment 1, Attachment 2, and Attachment 3.

## Staff Analysis

### Mandate Reimbursement Process II (Attachment 1)

Staff made the following substantive changes to Section IV, Reimbursable Activities:

- Added the list of approved activities from the statement of decision to the proposed parameters and guidelines.
- Added the following activities proposed by the claimant:

All costs incurred by local agencies and school districts in drafting the test claim written narrative and written narrative declarations, including but not limited to, gathering and reviewing information, obtaining statements, calculating costs,

investigating other funding sources, reviewing prior mandates cases, drafting the written narrative, drafting the declarations, reviewing with declarants, obtaining signatures and filing declarations.

The Commission's regulations authorize the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program." There is evidence in the record that these activities are reasonably necessary to carry out the mandated program. There are declarations filed with the test claim, signed under penalty of perjury, that these activities were necessary to complete the information required in the written narrative and declarations.

#### *Consolidation of Mandate Reimbursement Process I and Mandate Reimbursement Process II*

Staff added language to the existing parameters and guidelines for *Mandate Reimbursement I* clarifying that claimants shall use the existing parameters and guidelines until June 30, 2011, and after that date, claimants shall claim reimbursement using the consolidated parameters and guidelines. (Attachment 2.)

Staff also drafted the proposed consolidated parameters and guidelines to combine the summaries and reimbursable activities for both programs, and clarify that the consolidated parameters and guidelines are effective beginning July 1, 2011. (Attachment 3.)

#### *Comments From the State Controller's Office*

##### Boilerplate Language

The SCO filed comments on the draft staff analysis and proposed parameters and guidelines, recommending changes to the three sets of parameters and guidelines that would clarify citations, conform language regarding contracted services for school districts, community college districts, and local agencies, and update obsolete indirect cost language.

Staff included the SCO's proposed language in the three sets of parameters and guidelines because it will add clarity to the parameters and guidelines, and conform the parameters and guidelines to each other and to parameters and guidelines previously adopted by the Commission. These proposed technical changes are to the "boilerplate" sections of the parameters and guidelines, which is language that is used in all parameters and guidelines. If the Commission adopts these parameters and guidelines, staff will add the new language to all future parameters and guidelines. (The SCO's amendments are shown in the proposed parameters and guidelines in double underline and strikeout.)

#### Appendix A

Since 1995, each annual Budget Act directs the Commission to include language in applicable parameters and guidelines that states if a claimant contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of: (1) 10 % of the amount of the claims prepared and submitted by the independent contractor; or (2) the actual costs that would have been incurred for that purpose if performed by the claimants' employees.

This language is included in Appendix A to the *Mandate Reimbursement Process I* parameters and guidelines. Each year, once the new Budget Act is adopted, the Commission amends the *Mandate Reimbursement Process I* parameters and guidelines to include this language from the new Budget Act.

In comments filed on the draft staff analysis, the SCO requested that the language from Appendix A be moved into the body of the parameters and guidelines (Section IV, Reimbursable Activities). Moving additional language from Appendix A into Section IV will make an already complex document harder to read. Therefore, staff did not make this proposed revision.

Finally, the SCO also stated that they have discussed with the Department of Finance removing this independent contractor language from the Budget Act and leaving the language in the parameters and guidelines, so there would be no need to annually amend the parameters and guidelines to include the most recent Budget Act language. The language in Appendix A has not changed. However, the Legislature can change the requirements annually. If the Appendix A language is removed from the annual Budget Acts, the Commission would have no legal authority to include the language in the parameters and guidelines.

However, the SCO could request that the Commission amend these parameters and guidelines to include the language as a reasonable reimbursement methodology. Under Government Code section 17518.5, the SCO is authorized to propose an RRM.

### **Staff Recommendation**

Staff recommends that the Commission:

- Adopt this analysis as its decision along with the claimant's proposed parameters and guidelines, as modified by staff, for *Mandate Reimbursement Process II* that would be effective from January 1, 2005 through June 30, 2011 (Attachment 1).
- Adopt the proposed amendments to the existing parameters and guidelines for *Mandate Reimbursement Process I* that would end reimbursement under these parameters and guidelines on June 30, 2011 (Attachment 2).
- Adopt the proposed consolidated parameters and guidelines for *Mandate Reimbursement Process I and II* that would be effective on July 1, 2011 (Attachment 3).
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

# STAFF ANALYSIS

## Claimant

City of Newport Beach

## Chronology

- 01/29/2010 Commission adopts statement of decision for *Mandate Reimbursement Process II* (Exhibit A)
- 03/03/2010 Claimant submits proposed parameters and guidelines (Exhibit B)
- 07/29/2010 Department of Finance (Finance) submits comments (Exhibit C)
- 04/12/2011 Commission staff issues draft staff analysis and proposed parameters and guidelines (Exhibit D)
- 05/03/2011 Finance and State Controller's Office (SCO) submit comments on the draft staff analysis and proposed parameters and guidelines (Exhibits E and F)

## I. Background and Summary of the Mandate

### *Mandate Reimbursement Process I*

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the SCO to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On April 24, 1986, the Commission adopted the *Mandate Reimbursement Process I* Statement of Decision, determining that Statutes 1975, chapter 486 and Statutes 1984, chapter 1459, which established the reimbursement process for state-mandated programs in Government Code sections 17500 et seq., was a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution. On November 20, 1986, the Commission adopted parameters and guidelines, authorizing reimbursement for filing successful test claims, reimbursement claims, and incorrect reduction claims.

Mandate Reimbursement Process II

Statutes 2004, chapter 890 amended Government Code section 17553 to increase the requirements for filing test claims. The Commission subsequently adopted regulations to implement Statutes 2004, chapter 890 (Cal. Code Regs, tit. 2, § 1183, subd. (d)).

On January 29, 2010, the Commission adopted a statement of decision finding that the test claim statute and regulations impose a partially reimbursable state-mandated program upon local agencies and school 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:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  - e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; 4 Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
  - b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

- c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

## **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. 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.<sup>1</sup>

As of January 1, 2011, the hearing on the adoption of proposed parameters and guidelines is conducted under Article 7 of the Commission’s regulations.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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 SCO 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 SCO based on the parameters and guidelines.

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<sup>1</sup> Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

<sup>2</sup> California Code of Regulations, Title 2, section 1187.

<sup>3</sup> Government Code section 17559, subdivision (b); California Code of Regulations, Title 2, section 1187.5.

<sup>4</sup> California Code of Regulations, Title 2, section 1187.5.



### **III. Discussion**

#### **A. Positions of State Agencies**

Finance filed comments on the claimant's proposed parameters and guidelines and on the draft staff analysis stating they had no objections to the proposed parameters and guidelines. The SCO filed comments on the draft staff analysis that will be discussed below.

#### **B. Staff Analysis**

##### *Mandate Reimbursement Process II*

Staff reviewed the claimants' proposed parameters and guidelines and the comments received from the Department of Finance and the SCO.

Non-substantive changes were made to the following sections of the proposed parameters and guidelines:

- The title of the parameters and guidelines was modified to include only those statutes and regulations that the Commission determined to be mandated.
- Section II, Eligible Claimants, Section III, Period of Reimbursement, and Section VII, Offsetting Revenues and Reimbursements, were amended to conform the parameters and guidelines to other parameters and guidelines previously approved by the Commission.

Substantive changes were made to Section IV, Reimbursable Activities. These changes are discussed below.

##### *Section IV. Reimbursable Activities*

The Commission found the following activities to be reimbursable in the statement of decision:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  - e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate. (Gov. Code, § 17553, subd.

(b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
  - b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
  - c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order. (Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

Staff added the list of approved activities from the statement of decision to the proposed parameters and guidelines.

The claimant proposed the following activities, in addition to the activities explicitly approved in the statement of decision, as being reasonably necessary to carry out the mandated program:

All costs incurred by local agencies and school districts in drafting the test claim written narrative and written narrative declarations, including but not limited to, gathering and reviewing information, obtaining statements, calculating costs, investigating other funding sources, reviewing prior mandates cases, drafting the written narrative, drafting the declarations, reviewing with declarants, obtaining signatures and filing declarations.

Section 1183.1, subdivision (a)(4), of the Commission's regulations authorizes the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program."

Regarding the proposed activities of: (1) gathering and reviewing information; (2) calculating costs; (3) investigating other funding sources; (4) reviewing prior mandates cases; (5) obtaining statements; (6) drafting the declarations; (7) reviewing the declarations with declarants; (8) obtaining signatures; and (9) filing declarations; there is evidence in the record that these activities are reasonably necessary to carry out the mandated program. There are declarations filed with the test claim, signed under penalty of perjury, that these activities were necessary to complete the information required in the written narrative and declarations.

Therefore, staff retained these activities in the proposed parameters and guidelines.

Consolidation of Mandate Reimbursement Process I and Mandate Reimbursement Process II

On February 22, 2010, Mr. Keith Petersen, SixTen and Associates, filed a letter recommending that the parameters and guidelines for *Mandate Reimbursement Process I and Mandate Reimbursement Process II* be consolidated.

Staff is proposing to consolidate these parameters and guidelines for future years. Therefore, staff added language to the existing parameters and guidelines for *Mandate Reimbursement I* clarifying that claimants shall use the existing parameters and guidelines until June 30, 2011, and after that date, claimants shall claim for reimbursement using the consolidated parameters and guidelines.

The proposed consolidated parameters and guidelines:

- Combine summaries of both programs under Section I, Summary of the Mandate.
- Clarify in Section II, Period of Reimbursement, that the consolidated parameters and guidelines are effective beginning July 1, 2011.
- Combine the reimbursable activities for both programs under Section IV, Reimbursable Activities.
- Update Section VII, Offsetting Revenues and Reimbursements, to conform to other parameters and guidelines adopted by the Commission.

Comments Submitted by the State Controller's Office

Boilerplate Language

On May 3, 2011, the SCO filed comments on the draft staff analysis and proposed parameters and guidelines. The SCO recommended the following changes to the three sets of parameters and guidelines:

1. Section III, Period of Reimbursement – adding language to the citations to make this section more clear.
2. Section V, Claim Preparation and Submission
  - Conforming the language regarding contracted services for all claimants, including local agencies, school districts, and community college districts.
  - Revising the language regarding fixed assets to remove the term “equipment” because the definition of fixed assets includes equipment.
  - Revising the language regarding indirect cost rates. The current language is obsolete. The SCO provided current language.

Staff included the SCO's proposed language because it will add clarity to the parameters and guidelines, and conform the parameters and guidelines to each other and to parameters and guidelines previously adopted by the Commission. These proposed technical changes are to the “boilerplate” sections of the parameters and guidelines, which is language that is used in all parameters and guidelines. If the Commission adopts these parameters and guidelines, staff will

add the new language to all future parameters and guidelines. (The SCO's amendments are shown in the proposed parameters and guidelines in double underline and strikeout.)

#### Appendix A

Since 1995, each annual Budget Act directs the Commission to include the following language in applicable parameters and guidelines:

- (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.
- (b) The maximum amount of reimbursement provided in subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

This language is included in Appendix A to the *Mandate Reimbursement Process I* parameters and guidelines.<sup>5</sup> Each year, once the new Budget Act is adopted, the Commission amends Appendix A in the *Mandate Reimbursement Process I* parameters and guidelines to include this language from the new Budget Act.<sup>6</sup>

In comments filed on the draft staff analysis, the SCO requested that the language from Appendix A be moved into the body of the parameters and guidelines (Section IV, Reimbursable Activities). If this matter is adopted, the parameters and guidelines for *Mandate Reimbursement Process I* and *II* will be consolidated. Moving additional language from Appendix A into Section IV will make an already complex document harder to read. Therefore, staff did not make this proposed revision.

Finally, the SCO also stated that they have discussed with Finance removing this independent contractor language from the Budget Act and leaving the language in the parameters and guidelines. The SCO believes that if the language is only provided in the parameters and guidelines, there would be no need to annually amend the parameters and guidelines to include the most recent Budget Act language. The language in Appendix A has not changed. However, the Legislature can change the requirements annually. If the Appendix A language is removed from the annual Budget Acts, the Commission would have no legal authority to include the language in the parameters and guidelines.

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<sup>5</sup> Staff also included Appendix A in the proposed consolidated parameters and guidelines for *Mandate Reimbursement Process I and II*.

<sup>6</sup> Staff updated Appendix A in the *Mandate Reimbursement Process I* parameters and guidelines and the proposed consolidated parameters and guidelines for *Mandate Reimbursement Process I and II* to include the Budget Act language for 2010-2011.

However, the SCO could request that the Commission amend these parameters and guidelines to include the language as a reasonable reimbursement methodology. Under Government Code section 17518.5, the SCO is authorized to propose an RRM.

#### **IV. Staff Recommendation**

Staff recommends that the Commission:

- Adopt this analysis as its decision along with the claimant's proposed parameters and guidelines, as modified by staff, for *Mandate Reimbursement Process II* that would be effective from January 1, 2005 through June 30, 2011 (Attachment 1).
- Adopt the proposed amendments to the existing parameters and guidelines for *Mandate Reimbursement Process I* that would end reimbursement under these parameters and guidelines on June 30, 2011 (Attachment 2).
- Adopt the proposed consolidated parameters and guidelines for *Mandate Reimbursement Process I and II* that would be effective on July 1, 2011 (Attachment 3).
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Proposed for Adoption: May 26, 2011  
Hearing Date: \_\_\_\_\_  
J://mandates/05-TC-05/psgs/draftpsgs2

**PROPOSED PARAMETERS AND GUIDELINES**  
**AS MODIFIED BY STAFF**

Government Code ~~S~~section 17553, ~~S~~subdivision (b)(1)(C) through (G) and (b)(2)  
California Code of Regulations, Title 2, Sections 1183, Subdivision (d)  
(Register 2005, No. 36, Effective September 6, 2005)

~~and section 1183, subdivision (d), of the Commission's regulations~~

Statutes 2004, chapter 890 (AB 2856)

*Mandate Reimbursement Process II*

05-TC-05

**Effective January 1, 2005 through June 30, 2011**

**I. SUMMARY OF THE MANDATE**

On September 27, 2005, a test claim was filed on Statutes 2004, chapter 890, which amended Government Code section 17553 to increase the requirements for filing test claims. The Commission subsequently adopted regulations to implement Statutes 2004, chapter 890 (Cal. Code Regs, tit. 2, § 1183, subd. (d)).

On January 29, 2010, the Commission on State Mandates (Commission) adopted a statement of decision finding that the Government Code section 17553, subdivision (b)(1)(C) rhough (G) and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission's regulations, as adopted in 2005, constituted a reimbursable state-mandated program ~~test claim statute and regulations impose a partially reimbursable state-mandated program upon local agencies and school 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:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the

fiscal year immediately following the fiscal year for which the claim is filed.

- d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
- e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; 4 Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

- 2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:

- a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

## **II. ELIGIBLE CLAIMANTS**

Any "local agency" as defined in Government Code section 17518 that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

Any "school district" as defined in Government Code section 17519, including community college districts, which incurs increased costs as a result of this mandate is eligible to claim reimbursement. Charter schools are not eligible claimants.

~~Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.~~

### **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557, subdivision (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 City of Newport Beach filed the test claim on September 27, 2005. Therefore, costs incurred pursuant to Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission's regulations, as adopted in 2005 are reimbursable on or after, establishing eligibility for reimbursement beginning in fiscal year 2004-2005. The test claim statute became effective on January 1, 2005. Therefore, costs incurred for compliance with this mandate are reimbursable on or after January 1, 2005, the effective date of the mandate statute.

Reimbursement claims filed from January 1, 2005 through June 30, 2011 should be filed under these parameters and guidelines. Claims filed beginning July 1, 2011, should be filed under the consolidated parameters and guidelines for *Mandate Reimbursement Process I and Mandate Reimbursement Process II*.

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, subdivision (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, subdivision (a), a local agency or 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. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560, subd. (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, subdivision (a).
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 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 (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:

On-going Activities – Successful Test Claims Only:

All test claims and test claim amendments shall include a written narrative, as described below.

A. Draft the written narrative that identifies the specific statutes or executive orders alleged to contain a mandate. Complete the following reimbursable activities to include in the written narrative:

1. Gather and review information to complete the test claim narrative.
2. Calculate the actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
3. Calculate the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
4. Calculate a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
5. Investigate other funding sources to identify dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
6. Review and identify prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, eff. September 6, 2005.)

B. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so. The following activities to complete the declarations are reimbursable:

1. Draft and file the following declarations:

- a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, eff. September 6, 2005).

2. Review the declarations with declarants, and obtain the declarants' signatures.

Test Claims

All costs incurred by local agencies and school districts in drafting the test claim written narrative and written narrative declarations, including but not limited to, gathering and reviewing information, obtaining statements, calculating costs, investigating other funding sources, reviewing prior mandates cases, drafting the written narrative, drafting the declarations, reviewing with declarants, obtaining signatures and filing declarations.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; 4 Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

## **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 during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets ~~and Equipment~~

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 point, 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.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program

without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## 2. School Districts

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 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.

School districts and county offices of education must use the ~~J-380 (or subsequent replacement)~~ Restrictive Indirect Cost Rates for K-12 Local Educational Agencies (LEAs) Five Year Listing issued ~~non-restrictive indirect cost rate provisionally approved~~ by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year of costs.

~~3. County Offices of Education~~

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

34. Community College Districts

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, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> 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 offsettings revenues 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.

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

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 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, subdivision (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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

## **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.

**AMENDMENT TO PARAMETERS AND GUIDELINES**

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes 1995, Chapter 303 (Budget Act of 1995)

Statutes 1996, Chapter 162 (Budget Act of 1996)

Statutes 1997, Chapter 282 (Budget Act of 1997)

Statutes 1998, Chapter 324 (Budget Act of 1998)

Statutes 1999, Chapter 50 (Budget Act of 1999)

Statutes 2000, Chapter 52 (Budget Act of 2000)

Statutes 2001, Chapter 106 (Budget Act of 2001)

Statutes 2002, Chapter 379 (Budget Act of 2002)

Statutes 2003, Chapter 157 (Budget Act of 2003)

Statutes 2004, Chapter 208 (Budget Act of 2004)

Statutes 2005, Chapter 38 (Budget Act of 2005)

Statutes 2006, Chapter 47 (Budget Act of 2006)

Statutes 2007, Chapter 171 (Budget Act of 2007)

Statutes 2008, Chapter 268 (Budget Act of 2008)

Statutes 2009, Chapter 1, Third Extraordinary Session (Budget Act of 2009)

Statutes 2010, Chapter 712 (Budget Act of 2010)

*Mandate Reimbursement Process*

*CSM-4204 and 4485*

**(Effective until June 30, 2011. Reimbursement claims filed beginning July 1, 2011, shall use consolidated parameters and guidelines for Mandate Reimbursement Process I and II.)**

Adopted: November 20, 1986

First Amendment Adopted: March 26, 1987

Second Amendment Adopted: October 26, 1995

Third Amendment Adopted: January 30, 1997

Fourth Amendment Adopted: September 25, 1997

Fifth Amendment Adopted: October 29, 1998

Sixth Amendment Adopted: September 30, 1999

Seventh Amendment Adopted: September 28, 2000

Eighth Amendment Adopted: October 25, 2001

Ninth Amendment Adopted: February 27, 2003

Tenth Amendment Adopted: September 25, 2003

Eleventh Amendment Adopted: December 9, 2004

Twelfth Amendment Adopted: September 27, 2005

Thirteenth Amendment Adopted: March 26, 2010

Fourteenth Amendment Proposed for Adoption: May 26, 2011

~~[For fiscal year 2006-2007, these parameters and guidelines are amended pursuant to the requirements of provision 7 of Item 0840-001-0001 of the Budget Act of 2006 to include Appendix A.]~~

~~[For fiscal year 2007-2008, these parameters and guidelines are amended pursuant to the requirements of provision 7 of Item 0840-001-0001, of the Budget Act of 2007 to include Appendix A.]~~

~~[For fiscal year 2008-2009, these parameters and guidelines are amended pursuant to the requirements of provision 6 of Item 0840-001-0001 of the Budget Act of 2008 to include appendix A.]~~

~~[For fiscal year 2009-2010, these parameters and guidelines are amended pursuant to the requirements of provision 6 of Item 0840-001-0001, of the Budget Act of 2009 to include Appendix A.]~~

~~[For fiscal year 2010-2011, these parameters and guidelines are amended pursuant to the requirements of provision 5 of Item 0840-001-0001 of the Budget Act of 2010 to include Appendix A.]~~

## **I. SUMMARY OF THE MANDATE**

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On April 24, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs.

## **II. ELIGIBLE CLAIMANTS**

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.



### III. PERIOD OF REIMBURSEMENT

These parameters and guidelines are effective until June 30, 2011. Effective July 1, 2011, claimants shall use the consolidated parameters and guidelines for Mandate Reimbursement Process I and Mandate Reimbursement Process II.

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, subdivision (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, subdivision (a), local agency or 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. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560, subd. (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.<sup>1</sup>

### 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 (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.

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<sup>1</sup>-Statutes 2006, Chapter 47, Item 8885-295-0001, Schedule (3)(y); Statutes 2007, chapter 171, Item 8885-295-0001, Schedule (3)(y); Statutes 2008, chapter 268, Item 8885-295-0001, Schedule (3)(y).

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:

#### A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state-mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

#### B. Reimbursable Activities

##### 1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

##### 2. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts, unless the Legislature has suspended the operation of mandate pursuant to state law. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

##### 3. Training

###### a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee.)

###### b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

## 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. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

#### 4. Fixed Assets ~~and Equipment~~

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 point, 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.

#### 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

### B. Indirect Cost Reporting

#### 1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be

expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## 2. School Districts

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 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.

School districts and county offices of education must use the Restrictive Indirect Cost Rates for K-12 Local Educational Agencies (LEAs) Five Year Listing issued J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year of costs.

## ~~3. County Offices of Education~~

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

## 3 4. Community College Districts

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, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> 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 revenues the claimant experiences in the same program as a direct 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, services 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, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 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 statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (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, and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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<sup>2</sup>This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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.

**(Continue to Appendix A)**

## PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486  
Statutes 1984, Chapter 1459

### *Mandate Reimbursement Process* *CSM-4204 and 4485*

#### APPENDIX A

##### Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years

2006-2007  
2007-2008  
2008-2009  
2009-2010<sup>3</sup>

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (A) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under subdivision A above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local

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<sup>3</sup> The limitation added by Statutes 2006, Chapter 47 (Budget Act of 2006); Statutes 2007, Chapter 171 (Budget Act of 2007); Statutes 2008, Chapter 268 (Budget Act of 2008); Budget Act of 2009, Statutes 2009, Third Extraordinary Session, chapter 1, in Item 0840-001-0001, Provision 6, is shown as part A of this Appendix.



agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

Proposed for Adoption: May 26, 2011

**PROPOSED CONSOLIDATED PARAMETERS AND GUIDELINES**

Statutes 1975, Chapter 486  
 Statutes 1984, Chapter 1459  
 Statutes 1995, Chapter 303 (Budget Act of 1995)  
 Statutes 1996, Chapter 162 (Budget Act of 1996)  
 Statutes 1997, Chapter 282 (Budget Act of 1997)  
 Statutes 1998, Chapter 324 (Budget Act of 1998)  
 Statutes 1999, Chapter 50 (Budget Act of 1999)  
 Statutes 2000, Chapter 52 (Budget Act of 2000)  
 Statutes 2001, Chapter 106 (Budget Act of 2001)  
 Statutes 2002, Chapter 379 (Budget Act of 2002)  
 Statutes 2003, Chapter 157 (Budget Act of 2003)  
 Statutes 2004, Chapter 208 (Budget Act of 2004)  
 Statutes 2005, Chapter 38 (Budget Act of 2005)  
 Statutes 2006, Chapter 47 (Budget Act of 2006)  
 Statutes 2007, Chapter 171 (Budget Act of 2007)  
 Statutes 2008, Chapter 268 (Budget Act of 2008)  
 Statutes 2009, Chapter 1, Third Extraordinary Session (Budget Act of 2009)  
Statutes 2010, Chapter 712 (Budget Act of 2010)

*Mandate Reimbursement Process I*  
 CSM-4204 and 4485

And

Government Code Section 17553, Subdivision (b)(1)(C) through (G) and (b)(2)  
Statutes 2004, Chapter 890 (AB 2856)  
California Code of Regulations, Title 2, Sections 1183, Subdivision (d)  
(Register 2005, No. 36, Effective September 6, 2005)

*Mandate Reimbursement Process II*  
05-TC-05

**(Effective Beginning July 1, 2011)**

[For fiscal year 2010-2011, these parameters and guidelines are amended pursuant to the requirements of provision 5 of Item 0840-001-0001 of the Budget Act of 2010 to include Appendix A.]

**I. SUMMARY OF THE MANDATE**

*Mandate Reimbursement Process I*

~~Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's~~

~~Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.~~

~~Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.~~

~~Together these laws establish the process by which local agencies receive reimbursement for state mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.~~

~~On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs.~~

~~On April 24, 1986, the Commission adopted the *Mandate Reimbursement Process I* statement of decision determining that Statutes 1875, chapter 486 and Statutes 1984, chapter 1459, which established the reimbursement process for state-mandated programs in Government Code section 17500 et seq., was a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution. On November 20, 1986, the Commission adopted parameters and guidelines, authorizing reimbursement for filing successful test claims, reimbursement claims, and incorrect reduction claims.~~

#### *Mandate Reimbursement Process II*

~~On September 27, 2005, a test claim was filed on Statutes 2004, chapter 890, which amended Government Code section 17553 to increase the requirements for filing test claims. The Commission subsequently adopted regulations to implement Statutes 2004, chapter 890 (Cal. Code Regs, tit. 2, § 1183, subd. (d)).~~

~~On January 29, 2010, the Commission adopted a statement of decision finding that Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission's regulations, as adopted in 2005, constitute a reimbursable state-mandated program 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:~~

- ~~1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:~~
  - ~~a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.~~

- b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
- c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
- d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
- e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:

- a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

## **II. ELIGIBLE CLAIMANTS**

Any "local agency" as defined in Government Code section 17518 that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

Any "school district" as defined in Government Code section 17519, including community college districts, which incurs increased costs as a result of this mandate is eligible to claim reimbursement. Charter schools are not eligible claimants.

~~Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.~~

### **III. PERIOD OF REIMBURSEMENT**

These consolidated parameters and guidelines are effective beginning July 1, 2011.

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, subdivision (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, subdivision (a), a local agency or 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. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560, subd. (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.<sup>1</sup>

### **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 (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.

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<sup>1</sup>Statutes 2010, chapter 712, Item 0840-001-0001, Provision 5.

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:

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state-mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

~~A.~~ B. One-Time Activities (One-Time Per Employee) – Successful Test Claims Only

~~B.1.~~ Training

a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

C. On-Going Activities – Successful Test Claims Only

1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The following activities are eligible for reimbursement when preparing a test claim or test claim amendment. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

a. Written Narrative

All test claims and test claim amendments shall include a written narrative as described below.

Draft the written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate. Complete the following reimbursable activities to include in the written narrative:

- Gather and review information to complete the test claim narrative.
- Calculate the actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
- Calculate the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
- Calculate a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
- Investigate other funding sources to identify dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
- Review and identify prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, eff. September 6, 2005.)

b. Declarations

The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so. The following activities to complete the declarations are reimbursable:

Draft and file the following declarations:

- Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 177553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, eff. September 6, 2005).

Review the declarations with declarants, and obtain the declarants' signatures.

#### D. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts, unless the Legislature has suspended the operation of mandate pursuant to state law. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

#### ~~C. Training~~

##### ~~a. Classes~~

~~Include the costs of classes designed to assist the claimant in identifying and correctly preparing state required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee.)~~

##### ~~b. Commission Workshops~~

~~Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.~~

#### 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 during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

### 4. Fixed Assets ~~and Equipment~~

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 point, 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.

### 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

## B. Indirect Cost Reporting

### 1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without

efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## 2. School Districts

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 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.

School districts and county offices of education must use the ~~J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved~~ Restrictive Indirect Cost Rates for K-12 Local Educational Agencies (LEAs) Five Year Listing issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year of costs.

### ~~3. County Offices of Education~~

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

### 3. Community College Districts

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, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> 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 SAVINGS~~ AND REIMBURSEMENTS

Any offsetting ~~revenues savings~~ the claimant experiences in the same program as a direct 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, services 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, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after

<sup>2</sup>This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (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, and California Code of Regulations, title 2, section 1183.2.

#### **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.

**(Continue to Appendix A)**

## PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486  
Statutes 1984, Chapter 1459

### *Mandate Reimbursement Process* *CSM-4204 and 4485*

#### APPENDIX A

#### Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years

2006-2007  
2007-2008  
2008-2009  
2009-2010  
2010-2011<sup>3</sup>

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (A) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission or presentation of claims are recoverable within the limitations imposed under subdivision A above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and

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<sup>3</sup>The limitation added by Statutes 2010, chapter 712 (Budget Act of 2010) is shown as part A of this Appendix.

time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 17553, 17557, and 17564, as Amended by Statutes 2004, Chapter 890 (AB 2856);

California Code of Regulations, Title 2, Sections 1183 and 1183.13 (Register 2005, No. 36, effective September 6, 2005)

On Remand from *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183; Judgment and Peremptory Writ of Mandate Issued by Sacramento County Superior Court, Case No. 06CS01335

Filed on September 27, 2005, by City of Newport Beach, Claimant.

Case No.: 05-TC-05

*Mandate Reimbursement Process II*

STATEMENT OF DECISION  
PURSUANT TO GOVERNMENT CODE  
SECTION 17500 ET SEQ.; TITLE 2,  
CALIFORNIA CODE OF  
REGULATIONS, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

(Adopted on January 29, 2010)

**STATEMENT OF DECISION**

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on January 29, 2010. Juliana Gmur and Glen Everroad appeared for the claimant, City of Newport Beach. Jeff Carosone, Lorena Romero, and Donna Ferebee appeared for the Department of Finance.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to approve the test claim at the hearing by a vote of 7 to 0.

**SUMMARY OF FINDINGS**

This test claim is on remand from the court following the Third District Court of Appeal’s decision in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183. The test claim statute, Assembly Bill (AB) 2856 amended the Government Code statutes that establish the process for seeking reimbursement for state-mandated costs under article XIII B, section 6. The statutes and regulations that are pled in the claim address the test claim filing requirements, the development of a reasonable reimbursement methodology as part of the parameters and guidelines, and the filing of reimbursement claims that comply with the State Controller’s claiming instructions for direct and indirect costs.

This test claim was originally denied by the Commission in 2006 on the ground that the statutes and regulations were necessary to implement and/or reasonably within the scope of the ballot measure (Proposition 4) that added article XIII B, section 6 to the California Constitution pursuant to Government Code section 17556, subdivision (f), as amended by AB 138 (Stats. 2005, ch. 72). The court found that portions of section 17556, subdivision (f), were unconstitutional and, thus, directed the Commission to set aside the Statement of Decision and to rehear the claim pursuant to the court's ruling and analysis. The 2006 Statement of Decision was set aside by the Commission on September 25, 2009.

The Commission finds that:

- Local agencies and school districts are practically compelled and, thus, mandated by the state to comply with the new filing requirements for test claims and test claim amendments imposed by Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2) and section 1183, subdivision (d), of the Commission's regulations, when a test claim is approved and determined to be a reimbursable state-mandated program. This finding is made pursuant to the *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, on the ground that the filing of a test claim that complies with the new filing requirements is the only means to enforce the constitutional right to reimbursement for costs incurred in complying with a reimbursable state-mandated program. Moreover, when the state mandates a new program or higher level of service, but does not fund the program, the cost to perform the new mandated activities *and* the cost to prove and enforce the constitutional right to reimbursement for the costs of the program are shifted to local agencies and school districts, which are "ill-equipped" to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. Thus, the purpose of article XIII B, section 6 supports the conclusion that the new test claim filing requirements are mandated by the state when the state imposes a reimbursable state-mandated program on local agencies and school districts.
- Government Code sections 17557 and 17564, as amended by AB 2856, and section 1183.13 of the Commission's regulations, as added in 2005, do not mandate a new program or higher level of service.
- Government Code section 17556, subdivision (f), as interpreted by the court in the *CSBA* case does not apply to this claim. On page 1217 of the *CSBA* case, the court directed the Commission to apply the holding in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 to interpret the "necessary to implement a ballot measure" language in Government Code section 17556, subdivision (f). Using the rule articulated by the court in the *San Diego Unified* case, duties imposed by a test claim statute or executive order are necessary to implement a ballot measure approved by the voters in a statewide or local election pursuant to Government Code section 17556, subdivision (f), when (1) local agencies and/or school districts are mandated by a ballot measure to perform a duty; (2) the Legislature or any state agency enacts a statute or executive order intended to implement the ballot measure mandate and also



requires additional duties that are not expressly included in the ballot measure; (3) absent the statute or executive order enacted by the Legislature or any state agency, local agencies and/or school districts are still required to comply with the duty mandated by the ballot measure; and (4) the requirements imposed by the statute or executive order that exceed the ballot measure mandate are not reimbursable, but are considered part and parcel to the underlying ballot measure mandate, when the excess requirements are intended to implement (i.e., are incidental to) the ballot measure mandate, and whose costs are, in context, de minimis.

Here, there is no underlying ballot measure mandate imposed on local agencies or school districts. The ballot measure initiatives that added and amended article XIII B, section 6, do not impose any duties on local agencies or school districts. Article XIII B, section 6 imposes a duty solely on the state to provide a subvention of funds “whenever the Legislature or any state agency mandates a new program or higher level of service on any local government.” Therefore, the duties imposed by Government Code section 17553, and section 1183 of the Commission’s regulations are not incidental or part and parcel to a ballot measure mandate.

The Commission concludes that Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission’s regulations, as adopted in 2005, constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities only:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency’s general purpose funds for the program; and fee authority to offset the costs of the program.
  - e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate. (Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890;

Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
  - b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
  - c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order. (Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

The Commission further concludes that Government Code sections 17557 and 17564, as amended by Statutes 2004, chapter 890; section 1183.13 of the Commission's regulations (Register 2005, No. 36, effective September 6, 2005); and all other allegations raised by the claimant do not constitute a reimbursable state-mandated program.

## **BACKGROUND**

### Test Claim Statutes and Regulations

Government Code section 17553, subdivision (b), was amended by the test claim statute to require that the test claim filing contain the following elements and documents:

1. A written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. A detailed description of the new activities and costs that arise from the mandate.
  - b. A detailed description of existing activities and costs that are modified by the mandate.
  - c. The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
  - d. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
  - e. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
  - f. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds



reasonable reimbursement methodology, commission staff shall immediately schedule an informal conference to discuss the methodology.

- (b) Proposed reasonable reimbursement methodologies, as described in Government Code section 17518.5, shall include any documentation or assumptions relied upon to develop the proposed methodology. Proposals shall be submitted to the commission within sixty (60) days following the informal conference.
- (c) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of a proposed reasonable reimbursement methodology, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.
- (d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed reasonable reimbursement methodology within fifteen (15) days of service.
- (e) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.
- (f) Within fifteen (15) days of service of the written comments prepared by other parties and interested parties, the party that proposed the reasonable reimbursement methodology may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.<sup>1</sup>

The test claim statute also amended Government Code section 17564 to add the underlined text as follows:

- (b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines and claiming instructions.

#### Statement of Decision Adopted October 4, 2006

On October 4, 2006, the Commission denied this test claim pursuant to Government Code section 17556, subdivision (f), as amended by AB 138, on the ground that the test claim statutes and regulations were necessary to implement and/or reasonably within the

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<sup>1</sup> In 2007, the Commission amended section 1183.13 of the regulations to implement Statutes 2007, chapter 329 (AB 1222). (Reg. 2007, No. 37.) Section 1183.13, as amended in 2007 has not been pled in this test claim.

scope of article XIII B, section 6, which was adopted by the voters through Proposition 4. The Statement of Decision states the following:

Government Code section 17500 et seq. was enacted to implement article XIII B, section 6. Government Code section 17500 expressly states that the legislative intent “in enacting this part [is] to provide for the implementation of Section 6 of Article XIII B of the California Constitution.” Thus the test claim statutes and executive orders, as part of that statutory scheme, meet the standard of section 17556, subdivision (f), in that they are “necessary to implement [or] reasonably within the scope of” article XIII B, section 6.

Since the Legislature has made this express declaration regarding Government Code section 17500 et seq., an analysis regarding whether these statutes and executive orders are “necessary to implement” or “reasonably within the scope of” article XIII B, section 6, is unnecessary.

[¶¶]

Since the test claim statutes and executive orders do not impose costs mandated by the state, there is no need to analyze whether they constitute a new program or higher level of service within the meaning of article XIII B, section 6.

The Commission did not make any findings on the issue of whether the test claim statutes and executive orders mandate a new program or higher level of service.

Court’s Decision in *California School Board’s Association v. State of California* and Direction on Remand

The California School Boards Association, school districts, and local agencies challenged the Commission’s decision on this test claim in *California School Boards Assoc. v. State of California (CSBA)* (2009) 171 Cal.App.4th 1183.<sup>2</sup> On page 1203 of the court’s opinion, the court concluded that the Commission’s legal analysis of Government Code section 17556, subdivision (f), was wrong because it relied on the Legislature’s declaration of intent in Government Code section 17500 to determine that the test claim statutes and executive orders were necessary to implement and/or reasonably with the scope of a ballot measure, rather than determining for itself whether a reimbursable state-mandated program exists. On remand, the Commission is directed to ignore the Legislature’s declaration in Government Code section 17500 as follows:

In finding that the duties imposed by the State did not give rise to reimbursable costs in the *Mandate Reimbursement Process II* test claim decision, the Commission did not decide for itself whether those duties were expressly included in or necessary to implement a ballot measure.

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<sup>2</sup> The plaintiffs in the *CSBA* case also challenged the decisions on reconsideration of the *Mandate Reimbursement Process I*, *School Accountability Report Cards*, and *Brown Act/Open Meetings Act* test claims, arguing that the reconsideration statutes and Government Code section 17556, subdivision (f), as amended by AB 138 were unconstitutional.

Instead, the Commission simply cited the Legislature's declaration in Government Code section 17500 that the Legislature's intent in enacting the statutes was "to provide for the implementation of [Proposition 4]." "Thus," concluded the Commission, "the test claim statutes and executive orders, as part of that statutory scheme, meet the standard of section 17556, subdivision (f), in that they are 'necessary to implement [or] reasonably within the scope of' article XIII B, section 6."

The Commission's conclusion that the Legislature's statement of intent resolved the matter was unjustified because legislative declarations concerning whether a state mandate exists are irrelevant to the Commission's determination of whether a state mandate exists. [Citations omitted.]

[¶]

...On remand, the Commission must disregard any declarations of legislative intent and, instead, decide for itself whether a reimbursable state mandate exists.

The court also held that Government Code section 17556, subdivision (f), as amended by AB 138, is unconstitutional with respect to the language that excludes from reimbursement duties that are "reasonably within the scope" of a ballot measure.<sup>3</sup> The language in Government Code section 17556, subdivision (f), which excludes reimbursement for duties that are "expressly included in" or "necessary to implement" a ballot measure, however, is constitutional and does not violate article XIII B, section 6 of the California Constitution.<sup>4</sup> The court severed the unconstitutional language from the remaining language in Government Code section 17556, subdivision (f), which leaves subdivision (f) to provide as follows:<sup>5</sup>

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(f) The statute or executive order imposes duties that are necessary to implement, ~~reasonably within the scope of,~~ or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

Pursuant to the court's writ of mandate, the Commission is to

Set aside as null and void the Statement of Decision adopted October 4, 2006 in Proceeding 05-TC-05 (*Mandate Reimbursement Process II*) in its entirety; you are further directed to commence new

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<sup>3</sup> *CSBA, supra*, 171 Cal.App.4th 1183, 1215-1216.

<sup>4</sup> *Id.* at pages 1205-1210 and 1214-1215.

<sup>5</sup> *Id.* at page 1216.

proceedings in that matter which are consistent with the ruling of this court, and which do not take into consideration any legislative determinations which refer to duties imposed which are “reasonably within the scope of ... a ballot measure” contained in Government Code section 17556, subdivision (f), as amended by section 7, Statutes 2005, chapter 72 (AB 138).

On September 25, 2009, the Commission set aside as null and void the Statement of Decision adopted on October 4, 2006.

Prior Commission Decision in *Mandate Reimbursement Process I*

On April 24, 1986, the Commission adopted the *Mandate Reimbursement Process I* Statement of Decision, determining that Statutes 1975, chapter 486 and Statutes 1984, chapter 1459, which established the reimbursement process for state-mandated programs, was a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution. On November 20, 1986, the Commission adopted parameters and guidelines, determining that the following activities are reimbursable:

A. Scope of the Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs—both direct and indirect—are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities—Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including court responses, if an adverse Commission ruling is later reversed. [Note: the phrase, “including court responses, if an adverse Commission ruling is later reversed” was amended out in March 1987 and replaced with “including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order.”] These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities –Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are

recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

The parameters and guidelines have been amended 11 times between 1995 and 2005. The 1995 amendment was the result of a provision in the state budget act that limited reimbursement for independent contractor costs for preparation and submission of reimbursement claims. Identical amendments were required by the Budget Acts of 1996 (amended Jan 1997), 1997 (amended Sept. 1997), 1998 (amended Oct. 1998), 1999 (amended Sept. 1999), 2000 (amended Sept. 2000), 2001 (amended Oct. 2001), 2002 (amended Feb. 2003), 2003 (amended Sept. 2003), 2004 (amended Dec. 2004), and 2005 (amended Sept. 2005). In addition to technical amendments, the language in the parameters and guidelines was updated as necessary for consistency with other recently adopted parameters and guidelines.

In 2005, section 17, subdivision (a), of AB 138 directed the Commission to reconsider the Statement of Decision and parameters and guidelines “in light of federal and state statutes enacted and state court decisions rendered since [the test claim statutes] were enacted.” On May 25, 2006, the Commission adopted a Statement of Decision on reconsideration finding that the test claim statutes were necessary to implement and/or reasonably within the scope of article XIII B, section 6, which was adopted by the voters through Proposition 4. The Commission also amended the parameters and guidelines to allow local agencies and school districts to be reimbursed for the costs to prepare successful test claims and reimbursement claims that were filed before July 1, 2006, but denied reimbursement for the costs incurred to prepare successful test claims and reimbursement claims after July 1, 2006. The court in *CSBA* found the reconsideration statute was unconstitutional and, thus, the Commission’s decision on reconsideration was void. On September 25, 2009, the Commission reinstated the original Statement of Decision and amended the parameters and guidelines pursuant to the court’s writ of mandate in *CSBA*.

The *Mandate Reimbursement Process I* mandate was suspended for local agencies in the 2006 through 2008 Budget Acts,<sup>6</sup> but has been deferred for school districts with an appropriation of \$1000.<sup>7</sup>

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<sup>6</sup> Statutes 2006, chapter 48; Statutes 2007, chapter 171; Statutes 2008, chapter 268 (Item 8885-295-0001, Schedule (3)(y)).

<sup>7</sup> Statutes 2005, chapter 38; Statutes 2006, chapter 48; Statutes 2007, chapter 171; Statutes 2008, chapter 268; Statutes 2009, chapter 1 (Item 6110-295-0001, Schedule (4)).



## **Claimant's Position**

The claimant contends that the test claim statutes and regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The claimant argues that the test claim filing pursuant to Government Code section 17553 and section 1183 of the Commission's regulations can no longer be drafted with general pleading language, but must now be drafted with detail showing actual costs incurred by the claimant and an estimate of statewide costs.

With respect to Government Code section 17557 and section 1183.13 of the Commission's regulations, the claimant argues that local agencies and school districts are now required to participate on the issue of a reasonable reimbursement methodology when proposing parameters and guidelines. The claimant is requesting reimbursement for the process of developing and adopting a reasonable reimbursement methodology.

Finally, Government Code section 17564 addresses reimbursement claims for direct and indirect costs and was amended to require that reimbursement claims be filed in the manner prescribed in the claiming instructions (as well as in the parameters and guidelines). Claimant states the following:

Although claiming instructions are to be "derived from the test claim decision and the parameters and guidelines adopted by the commission" [fn. Omitted], such [claiming] instructions can require specificity not otherwise addressed in the parameters and guidelines or envisioned in the test claim process. Compliance with this section will now increase accounting requirements making claiming a laborious process through the additional research and compilation of materials not otherwise required under prior law.<sup>8</sup>

The claimant also contends that the test claim statutes and regulations result in increased costs mandated by the state and has submitted declarations to that effect from Glen Everroad, Revenue Manager for the claimant, Leonard Kaye of Los Angeles County, and Keith Petersen of SixTen and Associates representing local educational agencies. The claimant states the following:

[T]his test claimant and other test claimants similarly situated have incurred costs ranging from \$1,500 to \$38,600 to comply with the new test claim filing requirements. An additional cost of \$2,000 to \$5,000 may be also incurred per test claim and a one-percent increase over total program costs may also be incurred should the claiming instructions deviate in specificity from the parameters and guidelines as adopted. The average new test claim filings for years prior to 2004 numbered 19, however, under the current shorter statute of limitations, 4 new test claims were filed last year. Based on an expected average between 4 and 19 and at an increased cost of \$3,500 to \$44,000 per test claim, Test Claimant estimates an annual statewide cost in the range of \$14,000 to \$836,000. Due to the

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<sup>8</sup> Test claim, page 6.

highly speculative nature of compliance with the claiming instructions, no estimate can be made at this time.<sup>9</sup>

The claimant has also submitted comments with respect to the court's decision in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183 and contends that Government Code section 17556, subdivision (f), does not apply to deny this claim.

### **Position of the Department of Finance**

The Department of Finance contends that the test claim statutes and regulations do not constitute a reimbursable state-mandated program. The Department argues that the activities claimed to be new were required by prior law and, thus, do not constitute a new program or higher level of service. Moreover, the Department argues that local agencies and school districts are not required to participate in the reasonable reimbursement methodology process. Rather the statute requires the Commission to consult with affected agencies to consider the benefit of the process.

Finally, the Department contends that Government Code section 17556, subdivision (f), applies to deny this claim, arguing that the test claim statutes and regulations are necessary for the implementation of Proposition 4, the ballot initiative that added article XIII B, section 6 to the California Constitution.

Implicit in the phrases, "to provide a subvention of funds" and "to reimburse," is the directive that the state make payment to local government in the correct amount – no more and no less than the amount necessary to subvene or reimburse – and only when legally required. Therefore under GC Section 17556(f) the test claim regulations and statutes, which ensure test claims are accurate and complete when submitted, are necessary for the implementation of Proposition 4 and are not reimbursable.<sup>10</sup>

The Department of Finance filed comments disagreeing with the draft staff analysis with respect to the analysis of Government Code section 17556, subdivision (f), as follows:

The draft staff analysis attempts to apply the CSBA ruling and the federal mandate analysis of the San Diego Unified School District holding to construct a test for determining when a statute is necessary to implement a ballot measure. The analysis, however, gives those cases a too-narrow reading and interpretation. The conclusion in the analysis that Section 17556 (f) is inapplicable, hinges on there being no specifically required activities of local governments in the express wording of the ballot measure (Proposition 4). The analysis reasons that because federal law required certain duties of the locals under the facts of the San Diego Unified School District case, there must also be specific requirements of the locals in the ballot measure in order for any state statute to be found necessary to implement that ballot measure. Nothing in the CSBA ruling

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<sup>9</sup> Test claim, page 10.

<sup>10</sup> Department of Finance comments dated October 1, 2009, page 2.

required or suggested that the ballot measure mandate must share the same attributes as a federal mandate. In fact, the CSBA court found the difference in wording of Section 17556 (c) (federal mandates) and (f) ballot measure mandate to be inconsequential. The court's focus was on the way a ballot measure mandate "corresponds" to a federal mandate, and "by the same reasoning" found it necessary to implement language consistent with Article XIII B, section 6 (CSBA case at p. 1213.) [Footnote omitted.]

Furthermore, absent any process established by the Legislature, there is no voter approved process for a local government to receive reimbursement. The only process by which a claimant could enforce this right at the time the test claim statutes were enacted was by way of filing a test claim. The statutory process is necessary to implement the voter approved measure to reimburse local governments for reimbursable state mandates.

Finance continues to believe that the activities recommended for approval in the draft staff analysis are not reimbursable. Finance maintains that the written narratives requiring specified information supported by declarations under penalty of perjury are necessary to implement Proposition 4. This is further supported by the Bureau of State Audit's review of the mandate process in 2003. The audit report issued, 2003-106, identified areas to improve the process and minimize confusion in response to significant errors that had occurred in the claim filing process. The report suggested regulatory and statutory changes may be necessary to improve the process.<sup>11</sup>

Finance further asserts that the claimant's cost estimates are de minimis and includes costs for activities that are recommended for denial.

#### **Comments of Interested Party, the California School Boards Association (CSBA)**

CSBA contends that the test claim statutes and regulations are not necessary to implement article XIII B, section 6 and, thus, Government Code section 17556, subdivision (f), as interpreted by the court in the *CSBA* case, does not apply to deny this claim. CSBA argues the following points:

- "The phrase 'necessary to implement' [in Government Code section 17556, subdivision (f),] must be construed narrowly to apply only to legal requirements that are so clear from the language of the ballot measure that they can reasonably be said to be the act of the voters rather than the act of the Legislature, i.e., those requirements must be the legal and practical equivalent of duties 'expressly included in' the ballot measure... If the required acts reflect Legislative discretion or preference rather than being 'inescapable,' 'compulsory' or 'required' by the language of the ballot measure, they may be 'adopted to implement' that measure, but are not 'necessary' to implement that measure. As a consequence, any new program or higher level of service required by the Legislature that does not meet

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<sup>11</sup> Department of Finance comments on draft staff analysis dated January 8, 2010.

this standard is properly attributable to “the Legislature” rather than the voters and must be reimbursed under article XIII B, section 6.”<sup>12</sup>

- The requirements of the test claim statutes and regulations cannot be considered “necessary to implement” article XIII B, section 6, within the meaning of Government Code section 17556, subdivision (f), since article XIII B, section 6 has been implemented for almost 30 years without the need for the new requirements.<sup>13</sup>
- Pursuant to Evidence Code section 500, the burden of producing sufficient evidence in the record as to whether the duties at issue are “necessary to implement” a ballot measure cannot be placed on the claimant, but should be placed on any person or entity challenging the test claim.<sup>14</sup>
- Since the Commission’s decisions must be supported by substantial evidence in the record pursuant to Government Code section 17559, any finding that the test claim duties are “necessary to implement” the ballot measure that added article XIII B, section 6 to the California Constitution must be supported by evidence that demonstrates why these duties are necessary.
- CSBA believes that the analysis of the 17556, subdivision (f), issue is analogous to the analysis for impairment of contracts; i.e., that the state may impair an existing contract when the impairment “is reasonable and necessary to serve an important public purpose.” Under this standard, the courts have not deferred to a legislative assessment of reasonableness and necessity because of the state’s self-interest in the conclusion. “If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.” In addition, the impairment cases have made clear that the government has the burden of demonstrating necessity and that mere conclusory statements of necessity are insufficient.<sup>15</sup>

### COMMISSION FINDINGS

The courts have found that article XIII B, section 6, of the California Constitution<sup>16</sup> recognizes the state constitutional restrictions on the powers of local government to tax

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<sup>12</sup> CSBA comments dated August 10, 2009, page 3.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Id.* at page 4.

<sup>15</sup> *Id.* at page 5.

<sup>16</sup> Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates

and spend.<sup>17</sup> “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>18</sup>

A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>19</sup> In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.<sup>20</sup>

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>21</sup> To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.<sup>22</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>23</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>24</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>25</sup>

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enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>17</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>18</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>19</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>20</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

<sup>21</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835).

<sup>22</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

<sup>23</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

<sup>24</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>26</sup>

**Issue 1: Do the test claim statutes and regulations mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution?**

**A. Test Claim Filings (Gov. Code, § 17553; Tit. 2, Cal. Code Regs., § 1183)**

The test claim statute, AB 2856, amended Government Code section 17553, subdivision (b), to add the following to the test claim filing requirements, effective January 1, 2005:

- (b) All test claims shall be filed on a form prescribed by the commission and shall contain at least the following elements and documents:
  - (1) A written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
    - (A) A detailed description of the new activities and costs that arise from the mandate.
    - (B) A detailed description of existing activities and costs that are modified by the mandate.
    - (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
    - (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
    - (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
    - (F) Identification of all of the following:
      - (i) Dedicated state funds appropriated for this program.
      - (ii) Dedicated federal funds appropriated for this program.
      - (iii) Other nonlocal funds dedicated for this program.
      - (iv) The local agency’s general purpose funds for this program.
      - (v) Fee authority to offset the costs of this program.

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<sup>25</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>26</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

- (G) Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.
- (2) The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - (A) Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
  - (B) Declarations identifying all local, state, or federal funds, or fee authority that may be sued to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
  - (C) Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.
- (3)(A) The written narrative shall be supported with copies of all of the following:
  - (i) The test claim statute that includes the bill number or executive order alleged to impose or impact a mandate.
  - (ii) Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate.
  - (iii) Administrative decisions and court decisions cited in the narrative.
- (B) State mandate determinations made by the Board of Control and the Commission on State Mandates and published court decisions on state mandate determinations made by the Commission on State Mandates are exempt from this requirement.

As indicated in the background, at the time Government Code section 17553 was amended by AB 2856, local agencies and school districts were already required by section 1183 of the Commission's regulations to comply with some of the test claim filing requirements listed above. For example, section 1183, subdivision (c)(3)(A),(B) and (C), of the Commission's regulations provided that the test claim include a written narrative that included a "detailed description" of the activities required under prior law or executive order, the new program or higher level of service required under the statute or executive order alleged to impose a mandate, and the increased costs mandated by the state as defined in Government Code sections 17514 and 17556. Thus, the language in Government Code section 17553, subdivision (b)(1)(A) and (B), that requires the written narrative in the test claim to include "a detailed description of the new activities and costs that arise from the mandate" and "a detailed description of existing activities and costs that are modified by the mandate" are not new. Additionally, the requirement in Government Code section 17553, subdivision (b)(3)(A) and (B) - that the written narrative be supported with copies of the test claim statute or executive order, relevant portions of state constitutional provisions, federal statutes, and executive orders that may

impact the alleged mandate, and administrative decisions and court decisions - was already required by the Commission's regulations, in section 1183, former subdivision (d)(1) and (2).

However, the remaining elements of a test claim filing in Government Code section 17553, subdivision (b)(1)(C) through (G), and (b)(2), are new.

Subdivision (b)(1)(C) through (G) requires that the test claim narrative include:

- The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
- The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
- A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
- Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
- Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

Under prior law, former section 1183, subdivision (c)(5), of the Commission's regulations required only that written narrative include a statement that the actual or estimated costs of the alleged mandate exceeded \$1,000. The other bulleted elements in Government Code section 17553, subdivision (b)(1)(C) through (G), were not required.

In addition, Government Code section 17553, subdivision (b)(2) requires that the narrative be supported with the following declarations:

- Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

Under prior law, former section 1183, subdivision (c)(4) of the Commission regulations required a test claimant to file a declaration only "if the narrative describing the alleged mandate involves more than discussion of statutes, regulations, or legal argument and utilizes assertions or representations of fact" and to authenticate any documentary evidence filed by the claimant. Thus, the declarations in Government Code section 17553, subdivision (b)(2), are new required elements of a test claim filing.



The claimant also pled section 1183 of the Commission's regulations, which was amended in September 2005 to implement AB 2856 to remove the test claim filing requirements and to add language to subdivision (d) of section 1183 to state, "All test claims, or amendments thereto, shall be filed on a form developed by the executive director and shall contain all of the elements and supplemental documents required by the form and statute." Test claims and test claim amendments have always been required to be filed on a form developed by the Commission and, thus, that provision is not new. The requirement that the test claim and any test claim amendment contain all of the elements and documents required by statute refers to the test claim filing requirements in Government Code section 17553.

Thus, the issue is whether Government Code section 17553, subdivision (b)(1)(C) through (G), and (b)(2), and section 1183, subdivision (d) of the Commission's regulations, which identify the following new elements of a test claim filing and a test claim amendment filing, mandate a new program or higher level of service:<sup>27</sup>

- A written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  - Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.
- The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

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<sup>27</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816; *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835; *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 735; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189-1190.

- Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

As described below, the Commission finds that Government Code section 17553, subdivision (b)(1)(C) through (G), and (b)(2), and section 1183, subdivision (d) of the Commission’s regulations mandate a new program or higher level of service.

**1. Local agencies and school districts are not legally compelled by the state to file test claims and comply with the new test claim and test claim amendment filing requirements.**

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term “state mandate” as it appears in article XIII B, section 6 of the California Constitution.<sup>28</sup> In *Kern High School Dist.*, school districts participated in various education-related programs that were funded by the state and federal government. Each of the underlying funded programs required school districts to establish and utilize school site councils and advisory committees. State open meeting laws later enacted in the mid-1990s required the school site councils and advisory bodies to post a notice and an agenda of their meetings. The school districts requested reimbursement for the notice and agenda costs pursuant to article XIII B, section 6.<sup>29</sup>

When analyzing the term “state mandate,” the court reviewed the ballot materials for article XIII B, which provided that “a state mandate comprises something that a local government entity is required or forced to do.”<sup>30</sup> The ballot summary by the Legislative Analyst further defined “state mandates” as “requirements imposed on local governments by legislation or executive orders.”<sup>31</sup> The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the underlying program must be reviewed to determine if the claimant’s participation in the underlying program is voluntary or legally compelled.<sup>32</sup> The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary*

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<sup>28</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

<sup>29</sup> *Id.* at page 730.

<sup>30</sup> *Id.* at page 737.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Id.* at page 743.

education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)<sup>33</sup>

Thus, the Supreme Court held as follows:

[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.]<sup>34</sup>

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws. Rather, the districts elected to participate in the school site council programs to receive funding associated with the programs.<sup>35</sup>

Similarly in this case, state law does not legally compel local agencies or school districts to file test claims. Rather, Government Code sections 17550 et seq., which implement the mandate reimbursement process, provide local agencies and school districts the authority to file test claims to seek reimbursement from the state under article XIII B, section 6. Local agencies and school districts may file claims with the Commission for reimbursement of state-mandated costs. (Gov. Code, §§ 17551, 17552, and 17560.)<sup>36</sup> The first claim filed by a local agency or school district alleging that a statute or an executive order imposes a reimbursable state-mandated program is a "test claim." (Gov. Code, § 17521.) Government Code section 17564 provides that "no claim shall be made pursuant to Sections 17551 ..., unless these claims exceed one thousand dollars (\$1,000). However, a county superintendent of schools or county may submit a combined claim on behalf of school districts, direct service districts, or special districts within their county if the combined claim exceeds one thousand dollars (\$1,000) even if the individual school district's, direct service district's or special district's claims do not each exceed one thousand dollars (\$1,000)."

Thus, the decision to file a test claim or a test claim amendment, and to comply with the new downstream test claim filing requirements, is made at the local level and is not legally compelled by the state.

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Id.* at page 731.

<sup>35</sup> *Id.* at pages 744-745.

<sup>36</sup> See also, *California School Boards Association, supra*, 171 Cal.App.4th 1183, 1190, where the court stated that "Local governments *may* file test claims, which the Commission adjudicates." (Emphasis added.)

**2. However, the filing of a test claim or test claim amendment in accordance with the new filing requirements is practically compelled and, thus, mandated by the state when a test claim is approved in order for local agencies and school districts to receive their constitutional right to reimbursement under article XIII B, section 6.**

For the reasons below, the Commission finds that local agencies and school districts are practically compelled by the state to file test claims and to comply with the new test claim filing requirements in order to obtain mandate reimbursement under article XIII B, section 6 of the California Constitution for reimbursable state-mandated programs.

In *Kern High School Dist.*, the school districts urged the court to define “state mandate” broadly to include situations where participation in the program is practically compelled; where the absence of a reasonable alternative to participation creates a “de facto” mandate.<sup>37</sup> The court previously applied such a construction to the definition of a federal mandate in the case of *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74, where the court considered whether state statutes enacted as a result of various federal “incentives” for states to extend unemployment insurance coverage to public employees constituted a reimbursable state-mandated program under article XIII B, section 6. The court in *City of Sacramento* concluded that the costs resulted from a federal mandate because the financial consequences to the state and its residents of failing to participate in the federal plan (full, double unemployment taxation by both state and federal governments) were so onerous and punitive; amounting to “certain and severe federal penalties” including “double taxation” and “other “draconian” measures.”<sup>38</sup>

The court in *Kern High School Dist.* declined to apply the reasoning in *City of Sacramento* that a state mandate may be found in the absence of strict legal compulsion, after reflecting on the purpose of article XIII B, section 6 – to preclude the state from shifting financial responsibilities onto local agencies. The court stated, however, that “[i]n light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.”<sup>39</sup>

In 2009, the Third District Court of Appeal in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 analyzed practical compulsion with respect to the Peace Officers Procedural Bill of Rights (POBOR) test claim. The issue there was whether school districts, which had the statutory authority to hire peace officers, were mandated by the state to comply with the POBOR statutes. The court clarified that the *Kern* practical compulsion standard means “facing ‘certain and severe ... penalties’ such as ‘double taxation or other draconian consequences’ and not merely having to ‘adjust to

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<sup>37</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 748.

<sup>38</sup> *City of Sacramento*, *supra*, 50 Cal.3d 51, 74; *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 750.

<sup>39</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 752.

the withdrawal of grant money along with the lifting of program obligations.”<sup>40</sup> The court recognized that practical compulsion could be found under this standard if exercising the authority to hire peace officers was *the only reasonable means* to carry out their core mandatory functions. The court stated the following:

Similarly, we do not see the bearing on a necessity or practical compulsion of the districts to hire peace officers, of any or all the various rights to public safety and duties of peace officers to which the Commission points. *If affording those rights or complying with those duties as a practical matter could be accomplished only by exercising the authority given to hire peace officers, the Commission’s argument would be forceful.* However, it is not manifest on the face of the statutes cited nor is there any showing in the record that hiring its own peace officers, rather than relying upon the county or city in which it is embedded, is the only way as a practical matter to comply. (Emphasis added.)<sup>41</sup>

The court concluded by stating the following:

However, the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. *It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.* (Emphasis added.)<sup>42</sup>

In *Grossmont Union High School District v. California Department of Education*, the court held that the filing of a test claim that complies with the new filing requirements is the *only* means to enforce the constitutional right to reimbursement for costs incurred in complying with a reimbursable state-mandated program. Government Code section 17552 states that “This chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement by the state as required by Section 6 of Article XIII B of the California Constitution.” At the time the test claim statute was enacted in 2004, the filing of a test claim was the only procedure established by state law to obtain reimbursement from the state. Test claims that do not comply with the filing requirements are deemed incomplete and returned to the claimant.<sup>43</sup> In such cases, the Commission does not have jurisdiction to determine the reimbursement issue. Without a determination by the Commission on a test claim, there is no exhaustion of administrative remedies and, under such circumstances, local agencies and school districts are barred from seeking relief from the court.<sup>44</sup> The court stated:

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<sup>40</sup> *Department of Finance, supra*, 170 Cal.App.4th 1355, 1366.

<sup>41</sup> *Id.* at page 1367.

<sup>42</sup> *Id.* at page 1368.

<sup>43</sup> California Code of Regulations, title 2, section 1183, subdivision (g).

<sup>44</sup> *Grossmont Union High School District v. California Department of Education* (2009) 169 Cal.App.4th 869, 877 and 885.

The Legislature enacted procedures to determine if reimbursable state-mandated costs have been imposed: the local agency files a test claim. If the Commission approves it, it determines the amount to be reimbursed; if the Commission denies it, the agency can seek review by means of a petition for writ of administrative mandate. [Citations omitted.] Generally, test claims must be filed within a year of the effective date of the mandate or of the incursion of costs. (Gov. Code, § 17551, subd. (c); See Cal. Code Regs., tit. 2, § 1183, subd. (c); but see Gov. Code, § 17573 [tolled while procedures for referring the issue to the Legislature is employed].) The failure to exhaust these administrative remedies bars a party from seeking court relief. [Citation omitted.]

A Commission determination that a cost results from an unfunded state mandate does not necessarily mean the Legislature will pay for it. If the Legislature does not pay, with a favorable Commission determination in hand, an entity may seek a court order that it no longer has to obey the mandate: “If the Legislature refuses to appropriate money to satisfy a mandate found to be reimbursable by the commission, a claimant may bring an action for declaratory relief to enjoin enforcement of the mandate. (Gov. Code, § 17612, subd. (b).)” [Citations omitted.]<sup>45</sup>

In *County of Contra Costa*, the court further explained that even if article XIII B, section 6 is self-executing, it does not relieve a party from complying with the procedures established by the Legislature for assertion of the right to reimbursement:

Counties emphasize that they consider article XIII B, section 6 to be self executing and consequently they may disregard the statutory scheme for claiming reimbursement for state mandated costs. But the fact that a constitutional provision is self executing does not relieve a party from complying with reasonable procedures for assertion of the right. While the Legislature may not unreasonably curtail or impair a right granted by a self executing constitutional provision, it may adopt reasonable procedural requirements for assertion of the right. [Citation omitted.]...Although the Constitution grants the right to compensation, it does not specify the procedure by which the right may be enforced. Such procedure may be set up by statutory or charter provisions, and when so established, a failure to comply with it is deemed to be a waiver of the right to compel the payment of damages. [Citations omitted.]<sup>46</sup>

In 2008, the Legislature added sections 17573 et seq. to the Government Code to provide a process for the Department of Finance and local government to jointly request the

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<sup>45</sup> *Id.* at page 877-878. See also, *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335-336, where the court held the following: “The remedy for the failure to fund a program is a declaration that the mandate is unenforceable. That relief is available only after the Commission has determined that a mandate exists and the Legislature has failed to include the cost in a local government claims bill, and only on petition by the county.”

<sup>46</sup> *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75-76.

Legislature to determine that a statute or executive order imposes a reimbursable state-mandated program and to appropriate funds for the reimbursement of the costs for a set term. The legislatively determined mandate process is *not* a quasi-judicial process, but in effect, a negotiated settlement agreement between the Legislature, the Department of Finance, and a local entity. (See, Gov. Code, § 17574.) A local entity can reject the reimbursement deal, and can file a test claim or take over a withdrawn test claim. In addition, if the Legislature amends the reimbursement methodology or the term of the legislatively determined mandate expires, a test claim can be filed. Under this process, the determination of a legislatively determined mandate is *not* binding on the Commission when making its determination of the reimbursement issue on the test claim pursuant to Government Code section 17551. (See, Gov. Code, § 17574.5.) If the negotiation fails or the term of the previous agreement expires, and a test claim statute is not suspended or repealed, a test claim has to be filed and determined by the Commission as a party's exhaustion of its administrative remedies in order to enforce the right to reimbursement.

Thus, the filing of a test claim that complies with the new filing requirements is the *only* means to enforce the constitutional right to reimbursement for costs incurred in complying with a reimbursable state-mandated program.

This required procedure to enforce the right to reimbursement, coupled with the purpose of article XIII B, section 6, supports the conclusion that local agencies and school districts are practically compelled by the state to comply with the new filing requirements for test claims and test claim amendments. The California Supreme Court has stated that the purpose of article XIII B, section 6 is to preclude the state from shifting to local agencies and school districts the financial responsibility for carrying out governmental functions because of the "severe" restrictions in articles XIII A and XIII B to raise and spend tax revenue:

Through the adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which "imposes a limit on the power of state and local governments to adopt and levy taxes..." [Citations omitted.] The next year, the voters added article XIII B to the Constitution, which "impose[s] a complementary limit on the rate of growth in governmental spending." [Citations omitted.] These two constitutional articles "work in tandem, together restricting California governments' power to both levy and to spend for public purposes." [Citation omitted.] Their goals are "to protect residents from excessive taxation and government spending ..." [Citation omitted.]

California Constitution, article XIII B includes section 6, which is the constitutional provision at issue here... Section 6 recognizes that articles XIII A and XIII B *severely* restrict the taxing and spending powers of local governments. [Citation omitted.] Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill-equipped" to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. [Citations omitted.] With certain exceptions, section 6 "essentially" requires the state "to pay for any new governmental programs, or for higher levels of service under

existing programs, that it imposes upon local governmental agencies.” [Citations omitted.]<sup>47</sup>

When the state enacts a reimbursable state-mandated program, but does not fund the program, Government Code sections 17500 et seq. place the burden on local agencies and school districts to initiate the mandate reimbursement process by filing a test claim with the Commission. Under the process, the local agency or school district claimant has the burden of proof to establish a reimbursable state-mandated program.<sup>48</sup> Thus, even though local agencies and school districts have the constitutional right to reimbursement from the state when the state mandates a new program or higher level of service, the cost to perform the new mandated activities *and* the cost to prove and enforce the constitutional right to reimbursement for the costs of the program have been shifted to local agencies and school districts, which are “ill-equipped” to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. Absent an exception to article XIII B, section 6, the intent of the voters is to require the state to provide a subvention of funds “whenever the Legislature or any state agency mandates a new program or higher level of service on any local government” that results in a shift of costs to the local agencies and school districts.

Accordingly, the Commission finds that complying with the new test claim and test claim amendment filing requirements in Government Code section 17553, subdivision (b)(1)(C) through (G), and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d) of the Commission’s regulations as adopted in 2005, imposes a state-mandated program on local agencies and school districts when the test claim is approved.<sup>49</sup>

### **3. The new test claim and test claim amendment filing requirements constitute a new program or higher level of service.**

The courts have defined the type of “program” subject to article XIII B, section 6 of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy and does not apply generally to all residents and entities in the state.<sup>50</sup> Only one of these findings is necessary to trigger reimbursement.<sup>51</sup>

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<sup>47</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 80-81. (Emphasis added.)

<sup>48</sup> By statute, only the local agency or school district may bring a claim, and the local entity must present and prove its claim that it is entitled to reimbursement. (Gov. Code, §§ 17521, 17561.)

<sup>49</sup> The intent of the voters is not contravened in cases where test claims are denied because the statutes or executive orders pled do not constitute a reimbursable state-mandated program. Under these circumstances, the state has not shifted the financial responsibility to local government to perform a governmental program and seek the costs for reimbursement. Rather, the filing of a test claim under these circumstances is truly a choice of local government and is not mandated by the state.

<sup>50</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test



To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.<sup>52</sup>

As indicated above, Government Code section 17553, subdivision (b)(1)(C) through (G), and (b)(2), and section 1183, subdivision (d) of the Commission's regulations, impose the following new test claim and test claim amendment filing requirements when compared to prior law:

- A written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  - Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.
- The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
  - Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

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set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

<sup>51</sup> *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

<sup>52</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

- Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

These requirements are uniquely imposed on local agencies and school districts and do not generally apply to all residents and entities in the state.<sup>53</sup> The requirements also provide a service to the public to implement article XIII B, section 6 and ensure that the tax and spend provisions of the Constitution, which were adopted by the voters, are properly carried out.

Accordingly, the Commission finds that the test claim and test claim amendment filing requirements imposed by Government Code section 17553, subdivision (b)(1)(C) through (G), and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d) of the Commission's regulations, as adopted in 2005, mandate a new program or higher level of service.

**B. Reasonable Reimbursement Methodology (Gov. Code, § 17557; Cal. Code Regs., tit. 2, § 1183.13)**

The claimant is also requesting reimbursement for the process of developing and adopting a reasonable reimbursement methodology when submitting parameters and guidelines. The claimant pled Government Code section 17557, as amended by AB 2856, which added subdivision (f) as follows:

In adopting parameters and guidelines, the commission shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that balances accuracy with simplicity.

The claimant also pled section 1183.13 of the Commission's regulations, which was added effective September 6, 2005, to address the reasonable reimbursement methodology as follows:

- (a) If the claimant indicates in the proposed parameters and guidelines or comments that a reasonable reimbursable methodology, as defined in Government Code section 17518.5, should be considered; or if the Department of Finance, Office of the State Controller, any affected state agency, claimant, or interested party proposes consideration of a reasonable reimbursement methodology, commission staff shall immediately schedule an informal conference to discuss the methodology.
- (b) Proposed reasonable reimbursement methodologies, as described in Government Code section 17518.5, shall include any documentation or assumptions relied upon to develop the proposed methodology.

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<sup>53</sup> See, *Kinlaw, supra*, 54 Cal.3d 326, 334, where the court held as follows: "The right involved [in article XIII B, section 6], however, is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services." See also, Government Code sections 17518, 17519, and 17520, which define "local agency," "school district," and "special district" claimants.

Proposals shall be submitted to the commission within sixty (60) days following the informal conference.

- (c) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of a proposed reasonable reimbursement methodology, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.
- (d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed reasonable reimbursement methodology within fifteen (15) days of service.
- (e) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.
- (f) Within fifteen (15) days of service of the written comments prepared by other parties and interested parties, the party that proposed the reasonable reimbursement methodology may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.<sup>54</sup>

Although not pled in this claim, AB 2856 also added Government Code section 17518.5 to define the elements of a “reasonable reimbursement methodology” and to specify that the claimant, the state, or any interested party may develop a reasonable reimbursement methodology. From January 1, 2005 (the effective date of AB 2856) until December 31, 2008, Government Code section 17518.5 stated the following:

- (a) “Reasonable reimbursement methodology” means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
  - (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-effective manner.
  - (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

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<sup>54</sup> In 2007, the Commission amended section 1183.13 of the regulations to implement Statutes 2007, chapter 329 (AB 1222). (Reg. 2007, No. 37.) Section 1183.13, as amended in 2007 has not been pled in this test claim.

- (b) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.
- (c) A reasonable reimbursement methodology may be developed by any of the following:
  - (1) The Department of Finance.
  - (2) The Controller.
  - (3) An affected state agency.
  - (4) A claimant.
  - (5) An interested party.

Effective January 1, 2008, Government Code section 17518.5 was amended by Statutes 2007, chapter 329 (AB 1222) to make it easier to satisfy the elements of a reasonable reimbursement methodology. Instead of having to show that the proposed reasonable reimbursement methodology fully offsets projected costs to implement the mandate in a cost-efficient manner for 50 percent or more of the eligible local agency and school district claimants, Government Code section 17518.5, subdivisions (b) and (c), now provide that the reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs, and shall consider the variation of costs among local agencies and school districts to implement the mandate in a cost-efficient manner.

The Commission finds that Government Code section 17557, as amended by AB 2856, and section 1183.13 of the Commission's regulations, as added in 2005, do not mandate a new program or higher level of service. Although the successful test claimant has been required by Government Code section 17557, subdivision (a), to submit parameters and guidelines since 1984 ("the successful test claimants shall submit proposed parameters and guidelines within 30 days of adoption of a statement of decision on a test claim ..."), the test claimant is not legally compelled by the state to develop and propose a reasonable reimbursement methodology as part of the submittal.

Moreover, local agencies and school districts are not practically compelled by the state to develop and submit a proposed reasonable reimbursement methodology in the parameters and guidelines. A reasonable reimbursement methodology is *not* the only means to enforce the constitutional right to reimbursement for costs incurred in complying with a reimbursable state-mandated program.<sup>55</sup> Rather, reimbursement can be obtained by

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<sup>55</sup> See, *Department of Finance, supra*, 170 Cal.App.4th at pages 1367-1368.

developing and submitting parameters and guideline based on actual costs. The courts have recognized the right to reimbursement for “increased actual expenditures.”<sup>56</sup>

In addition, the costs for developing parameters and guidelines are already reimbursable in *Mandate Reimbursement Process I*. The parameters and guidelines for *Mandate Reimbursement Process I* state the following:

A. Reimbursable Activities—Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including court responses, if an adverse Commission ruling is later reversed. [Note: the phrase, “including court responses, if an adverse Commission ruling is later reversed” was amended out in March 1987 and replaced with “including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order.”] These activities include, but are not limited to, the following: preparing and presenting test claims, *developing parameters and guidelines*, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead. (Emphasis added.)

When *Mandate Reimbursement Process I* was adopted, the Commission had the authority to adopt parameters and guidelines with an allocation formula or uniform cost allowance. Former Government Code section 17557 stated the following:

In adopting parameters and guidelines, the commission may adopt an allocation formula or uniform allowance which would provide for reimbursement of each local agency or school district of a specified amount each year.

Thus, the Commission finds that Government Code section 17557, as amended by AB 2856, and section 1183.13 of the Commission’s regulations, as added in 2005, do not mandate a new program or higher level of service.

**C. Filing of reimbursement claims that comply with the State Controller’s claiming instructions for direct and indirect costs**

The test claim statute (Stats. 2004, ch. 890, AB 2856) also amended Government Code section 17564 to add the underlined text as follows:

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines and claiming instructions.

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<sup>56</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284.

With respect to Government Code section 17564, the claimant states the following:

Although claiming instructions are to be “derived from the test claim decision and the parameters and guidelines adopted by the commission” [fn. Omitted], such [claiming] instructions can require specificity not otherwise addressed in the parameters and guidelines or envisioned in the test claim process. Compliance with this section will now increase accounting requirements making claiming a laborious process through the additional research and compilation of materials not otherwise required under prior law.<sup>57</sup>

The Commission finds that the language added to Government Code section 17564 does not mandate a new program or higher level of service. Local agencies and school districts had to file reimbursement claims pursuant to the claiming instructions before the enactment of the test claim statute in 2005.

The enactment of new statutory language does not always mean that the Legislature intended to change the law, or to increase the level of service provided by local agencies and school districts. The courts have recognized that changes in statutory language can be intended to clarify the law, rather than to change it.

We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made ... changes in statutory language in an effort only to clarify a statute's true meaning. [Citations omitted.]<sup>58</sup>

The law as it existed in 2004 required the State Controller's Office to issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines “to assist local agencies and school districts in claiming costs to be reimbursed.”<sup>59</sup> Issuance of the claiming instructions provided notice of the right of local agencies and school districts to file reimbursement claims. Local agencies and school districts had 120 days from the issuance date of the claiming instructions to file reimbursement claims for the initial fiscal year costs. When the Commission was requested to review claiming instructions, “each local agency or school district to which the mandate is applicable shall submit a claim for reimbursement within 120 days after the commission reviews the claiming instructions for reimbursement issued by the Controller.”<sup>60</sup> If the Commission amended parameters and guidelines, the Controller was required to issue revised claiming instructions. If the revised claiming instructions were issued by the Controller's Office at the time annual reimbursement claims were due, a local agency or school district filing an annual

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<sup>57</sup> Test claim, page 6.

<sup>58</sup> *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

<sup>59</sup> Government Code section 17558, subdivision (a), as last amended before 2004 by Statutes 1996, chapter 45.

<sup>60</sup> Government Codes section 17561, subdivision (d)(1)(A) and (B), as last amended before 2004 by Statutes 2002, chapter 1124.

reimbursement claim had 120 days following the issuance date of the revised claiming instructions to file a claim.<sup>61</sup>

Thus, under prior law, reimbursement claims had to be filed pursuant to the instructions provided in the claiming instructions. Any other interpretation of prior law would make the language in Government Code sections 17558, 17560, and 17561 (that claiming instructions must be issued 120 days before reimbursement claims are to be filed to assist local agencies and school districts in filing their claims) meaningless and unnecessary. "Courts must avoid statutory constructions that render provisions unnecessary."<sup>62</sup> Thus, prior law imposed the same requirement as the test claim statute.

Accordingly, the amendment to Government Code section 17564 does not mandate a new program or higher level of service, but merely clarifies existing law.

**Issue 2 Do Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2), and section 1183, subdivision (d), of the Commission's regulations impose costs mandated by the state within the meaning of Government Code section 17514 and 17556?**

As indicated above, Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2), and section 1183, subdivision (d), of the Commission's regulations mandate a new program or higher level of service on local agencies and school districts as follows:

1. A written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  - e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

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<sup>61</sup> Government Code section 17560, subdivision (c), as last amended before 2004 by Statutes 1998, chapter 681.

<sup>62</sup> *Stone v. Davis* (2007) 148 Cal.App.4th 596, 602.

2. The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
  - b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
  - c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

*These activities are mandated only when a test claim is approved.*

In order for these activities to be reimbursable, they must result in costs mandated by the state. Government Code section 17514 defines "costs mandated by the state" as any increased costs a local agency or school district is required to incur as a result of any statute or executive order that mandates a new program or higher level of service. In this case, the claimant has alleged actual increased costs ranging from \$1,500 to \$38,600 to comply with the new test claim filing requirements, and estimates annual increased costs between \$3,500 and \$44,000 per test claim.<sup>63</sup>

Pursuant to Government Code section 17556, subdivision (f), however, the Commission shall not find costs mandated by the state if the duties are expressly included or necessary to implement a ballot measure approved by the voters. In this case, Government Code section 17553, and section 1183 of the Commission's regulations were enacted to implement article XIII B, section 6.<sup>64</sup> Article XIII B, section 6 of the California Constitution was adopted by the voters through Proposition 4 on November 6, 1979, to provide as follows:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) Legislative mandates requested by the local agency affected;
- (b) Legislation defining a new crime or changing an existing definition of a crime; or

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<sup>63</sup> Government Code section 17564 provides that no test claim or reimbursement claim shall be made unless the claim exceeds \$1,000.

<sup>64</sup> See Government Code section 17552, which states that "This chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement by the state as required by Section 6 of Article XIII B of the California Constitution."



- (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Article XIII B, section 6 was amended by the voters on November 3, 2004, through Proposition 1A to designate the original language as subdivision (a) and to add subdivisions (b) and (c) as follows:

(b)(1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004-05 fiscal year that have not been paid prior to the 2005-06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

Based on the plain language of article XIII B, section 6, the duties imposed in Government Code section 17553 and section 1183, subdivision (d), of the Commission's regulations are not expressly included in the ballot measures adopted by the voters.

Thus, the issue is whether the duties imposed by Government Code section 17553 and section 1183, subdivision (d), of the Commission's regulations are necessary to implement the ballot measures adopted by the voters in Propositions 4 and 1A within the meaning of Government Code section 17556, subdivision (f). For the reasons below, staff finds that Government Code section 17556, subdivision (f), does not apply to deny this claim.

**A. The court's interpretation of Government Code section 17556, subdivision (f)**

Government Code section 17556, subdivision (f), requires the Commission to not find costs mandated by the state if the test claim statute or executive order imposes duties that are necessary to implement a ballot measure approved by the voters in a statewide or local election. The comments filed by the claimant, CSBA, and the Department of

Finance want the Commission to focus on the word “necessary” when interpreting this provision. Using their definitions, however, they come to different conclusions. The claimant urges the Commission to define “necessary to implement” as “indispensable or an absolute physical necessity,” thus arguing that the duties imposed by the test claim statutes and regulations are not indispensable to article XIII B, section 6.<sup>65</sup> CSBA similarly argues that:

The phrase ‘necessary to implement’ [in Government Code section 17556, subdivision (f),] must be construed narrowly to apply only to legal requirements that are so clear from the language of the ballot measure that they can reasonably be said to be the act of the voters rather than the act of the Legislature, i.e., those requirements must be the legal and practical equivalent of duties ‘expressly included in’ the ballot measure... If the required acts reflect Legislative discretion or preference rather than being ‘inescapable,’ ‘compulsory’ or ‘required’ by the language of the ballot measure, they may be ‘adopted to implement’ that measure, but are not ‘necessary’ to implement that measure.<sup>66</sup>

CSBA urges the Commission to find that the duties imposed by the test claim statutes and regulations are not necessary to implement article XIII B, section 6.

The Department of Finance argues that the test claim statutes and regulations are necessary for the implementation of Proposition 4, the ballot initiative that added article XIII B, section 6 to the California Constitution in order to ensure accurate test claims and reimbursement in the correct amount and, thus, the claim should be denied:

Implicit in the phrases, “to provide a subvention of funds” and “to reimburse,” is the directive that the state make payment to local government in the correct amount – no more and no less than the amount necessary to subvene or reimburse – and only when legally required. Therefore under GC Section 17556(f) the test claim regulations and statutes, which ensure test claims are accurate and complete when submitted, are necessary for the implementation of Proposition 4 and are not reimbursable.<sup>67</sup>

The parties, however, are ignoring the court’s interpretation of Government Code section 17556, subdivision (f), and direction to the Commission in the *CSBA* case. On page 1217 of the *CSBA* case, the court held that the Commission is required to consider the holding in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859 to determine whether costs are reimbursable for ballot measure mandates.

In *San Diego Unified*, the court considered whether costs resulting from statutes that were not adopted to implement federal due process requirements were reimbursable under article XIII B, section 6, and Government Code

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<sup>65</sup> Claimant’s comments on remand filed August 6, 2009, page 5.

<sup>66</sup> Comments filed by CSBA filed August 10, 2009, page 3.

<sup>67</sup> Department of Finance comments dated October 1, 2009, page 2; see also Department of Finance comments filed January 8, 2010.

section 17556, subdivision (c). The court determined that “the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections.” (*San Diego Unified, supra*, 33 Cal.4th at p. 889, ...) It also determined that the statutes, “viewed singly or cumulatively, did not significantly increase the cost of compliance with the federal mandate.” (*Ibid.*) The court concluded that, “for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law – and whose costs are, in context, de minimis- should be treated as part and parcel of the underlying federal mandate.” (*Id.* at p. 890 ...)

There is no reason not to apply this practical holding similarly to ballot measure mandates. Thus, the Commission **must consider** the holding in *San Diego Unified* in determining whether costs are reimbursable for ballot measure mandates. (Emphasis added.)

The issue in *San Diego Unified School Dist.* was whether procedural due process activities imposed by the test claim statute were reimbursable when a school district sought to expel a student. The court recognized that federal due process law requires school districts to comply with federal procedural steps, such as notice and a hearing, to safeguard the rights of a student when the student is subject to an expulsion from school. The Education Code statute pled in the test claim mandated procedures on school districts that complied with federal due process requirements. The test claim statute also required school districts to comply with additional procedures that were not expressly required by federal law; i.e. “primarily various notice, right of inspection, and recording rules.”<sup>68</sup> With respect to expulsions that are not required by state law, but are undertaken at the discretion of the school district, the claimant was seeking reimbursement, not for the procedures mandated by federal law, but for the procedures imposed by the test claim statute that exceeded federal law.<sup>69</sup> The court held that all procedures set forth in the test claim statute, including those that exceed federal law, are considered to have been adopted to implement a federal due process mandate and, thus, the costs were not reimbursable under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (c).<sup>70</sup> The court held that for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law – and whose costs are, in context, de minimis – should be treated as part and parcel of the underlying federal mandate.”<sup>71</sup>

In reaching this conclusion, the court relied on the holding in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 and applied the reasoning in that case as follows:

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<sup>68</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th at pages 873, footnote 11, and 890.

<sup>69</sup> *Id.* at page 885.

<sup>70</sup> *Id.* at page 888.

<sup>71</sup> *Id.* at page 890.

In this regard, we find the decision in *County of Los Angeles II, supra*, ... to be instructive. That case concerned Penal Code section 987.9, which requires counties to provide indigent criminal defendants with defense funds for ancillary investigation services related to capital trials and certain other trials, and further provides related procedural protections – namely, the confidentiality of a request for funds, the right to have the request ruled upon by a judge other than the trial judge, and the right to an in camera hearing on the request. The county in that case asserted that funds expended under the statute constituted reimbursable state mandates. The Court of Appeal disagreed, finding instead that the Penal Code section merely implements the requirements of federal constitutional law, and that “even in the absence of section 987.9, ... counties would be responsible for providing ancillary services under the constitutional guarantees of due process ... and under the Sixth Amendment.” (32 Cal.App.4th at p. 815 ...) Moreover, the Court of Appeal concluded, the procedural protections that the Legislature had built into the statute – requirements of confidentiality of a request for funds, the right to have the request ruled upon by a judge other than the trial judge, and the right to an in camera hearing on the request – were merely incidental to the federal rights codified by the statute, and their “financial impact” was de minimis. (*Id.* at p. 817 ...) Accordingly, the Court of Appeal concluded, the Penal Code section, in its entirety – that is, even those incidental aspects of the statute that articulated specific procedures, not expressly set forth in federal law, for the filing and resolution of requests for funds – constituted an implementation of federal law, and hence those costs were nonreimbursable under article XIII B, section 6.

We conclude that the same reasoning applies in the present setting, concerning the District’s request for reimbursement for procedural hearing costs triggered by its discretionary decision to seek expulsion. As in *County of Los Angeles II*, ..., the initial discretionary decision ... in turn triggers a federal constitutional mandate ... In both circumstances, the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they did not significantly increase the cost of compliance with the federal mandate. The Court of Appeal in *County of Los Angeles II* concluded, that for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added costs, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under Government Code section 17556, subdivision (c). We reach the same conclusion here.<sup>72</sup>

Thus, under the facts and ruling in the *San Diego Unified* and *County of Los Angeles II* cases, the local agencies and school districts are mandated by federal law to perform a duty. The Legislature then passes a law setting forth procedures to comply with the federal law, and in the process, requires additional procedural duties that are intended to

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<sup>72</sup> *Id.* at pages 888-889.

implement the federal law, but are not expressly required by federal law. Absent the state law, however, local agencies and school districts are still required to comply with the underlying federal mandate. Under these circumstances, the excess procedural requirements constitute an implementation of federal law and, therefore, not reimbursable as a state mandated program. “[F]or purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law – and whose costs are, in context, de minimis- should be treated as part and parcel of the underlying federal mandate.”<sup>73</sup>

The court in *CSBA* has directed the Commission to apply the holding in *San Diego Unified* to interpret the “necessary to implement a ballot measure” language in Government Code section 17556, subdivision (f).<sup>74</sup> Accordingly, using the rule articulated by the court in the *San Diego Unified* case, duties imposed by a test claim statute or executive order are necessary to implement a ballot measure approved by the voters in a statewide or local election pursuant to Government Code section 17556, subdivision (f), when:

- A local agency and/or school district is mandated by a ballot measure to perform a duty.
- The Legislature or any state agency enacts a statute or executive order intended to implement the ballot measure mandate and also requires additional duties that are not expressly included in the ballot measure.
- Absent the statute or executive order enacted by the Legislature or any state agency, the local agency and/or school district is still required to comply with the duty mandated by the ballot measure.
- The requirements imposed by the statute or executive order that exceed the ballot measure mandate are not reimbursable, but are considered part and parcel to the underlying ballot measure mandate, when the excess requirements are intended to implement (i.e., are incidental to) the ballot measure mandate, and whose costs are, in context, de minimis.

The Department of Finance, in comments to the draft staff analysis, contends that the staff analysis is too narrow and that there is no requirement for there to be an underlying mandate imposed on local government by a ballot measure for the “necessary to implement a ballot measure” exclusion in Government Code section 17556, subdivision (f), to apply. Finance states the following:

The analysis reasons that because federal law required certain duties of the locals under the facts of the San Diego Unified School District case, there must also be specific requirements of the locals in the ballot measure in order for any state statute to be found necessary to implement that ballot measure. Nothing in the CSBA ruling required or suggested that the ballot measure mandate must share the same attributes as a federal mandate. In fact, the CSBA court found the

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<sup>73</sup> *Id.* at page 890.

<sup>74</sup> *CSBA, supra*, 171 Cal.App.4th at page 1217.

difference in wording of Section 17556 (c) (federal mandates) and (f) ballot measure mandate to be inconsequential. The court's focus was on the way a ballot measure mandate "corresponds" to a federal mandate, and "by the same reasoning" found the necessary to implement language consistent with Article XIII B, section 6 (CSBA case at p. 1213).<sup>75</sup>

The Department of Finance is wrong. A plain reading of the *CSBA* decision supports the finding that there must be an underlying ballot measure mandate imposing duties on local government before Government Code section 17556, subdivision (f), can apply. The *CSBA* court made the following findings specifically referring to ballot measure "mandates:"

1. On page 1206 of the *CSBA* decision, the court holds that "[t]he State's constitutional duty to reimburse local governments for mandated costs does not include **ballot measure mandates**." (Emphasis added.)
2. On page 1213 of the *CSBA* decision, the court holds the following:

The language of subdivision (f) of Government Code section 17556 relieving the State of the obligation to reimburse a local government for duties "necessary to implement" a ballot measure is unobjectionable because it corresponds to the Supreme Court's holding in *San Diego Unified* that state statutes codifying federal mandates are not reimbursable because they are part and parcel of the federal mandate. Therefore, contrary to the decision of the trial court, we conclude that "necessary to implement" language of the subdivision is not inconsistent with article XIII B, section 6.

In *San Diego Unified*, some of the Education Code provisions concerning expulsions were viewed as codifying federal due process requirements. [Citation omitted.] The court held that the Education Code provisions "adopted to implement a federal due process mandate" produce costs that are "nonreimbursable under article XIII B, section 6. [Citation omitted.] *By the same reasoning, statutes that are adopted to implement ballot measure mandates produce costs that are nonreimbursable.* Thus, the "necessary to implement" language of Government Code section 17556, subdivision (f) is consistent with article XIII B, section 6 because it denied reimbursement only to the extent that costs imposed by a statute are necessary to implement the ballot measure. (Emphasis added.)

3. On page 1214 of the *CSBA* decision, the court discussed the difference in wording between Government Code section 17556, subdivision (c), the federal mandate exclusion, and subdivision (f), the ballot measure mandate exclusion, stating that the difference in wording does not affect the analysis:

The difference in wording is that subdivision (c) refers to "imposing a requirement that is mandated by federal law," while subdivision (f) refers to "imposing duties that are necessary to implement ... a ballot measure." [Citation omitted.] Although the wording is different, there is no difference in the effect

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<sup>75</sup> Department of Finance comments dated January 8, 2010, page 1.

when considering the interpretation placed on subdivision (c) by the *San Diego Unified* court. There, the court states that statutes “adopted to **implement**” federal law are nonreimbursable. Subdivision (f) is even more restrictive stating that there is no reimbursement obligation if the statute is “**necessary to implement**” a ballot measure. (Emphasis in original.)

4. On page 1216 and 1217 of the *CSBA* decision, the court states the following:

We also conclude that statutes imposing duties on local governments do not give rise to reimbursable costs if the duties are incidental to the **ballot measure mandates** and produce at most de minimis added costs. [Citation omitted.]

In *San Diego Unified*, the court considered whether costs resulting from statutes that were not adopted to implement federal due process requirements were reimbursable under article XIII B, section 6, and Government Code section 17556, subdivision (c). The court determined that “the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections.” (*San Diego Unified, supra*, 33 Cal.4th at p. 889, ...) It also determined that the statutes, “viewed singly or cumulatively, did not significantly increase the cost of compliance with the federal mandate.” (*Ibid.*) The court concluded that, “for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law – and whose costs are, in context, de minimis- should be treated as part and parcel of the underlying federal mandate.” (*Id.* at p. 890 ...)

There is no reason not to apply this practical holding similarly to ballot measure mandates. Thus, the Commission **must consider** the holding in *San Diego Unified* in determining whether costs are reimbursable for **ballot measure mandates**. (Emphasis added.)

Accordingly, the Commission finds that duties imposed by a test claim statute or executive order are necessary to implement a ballot measure approved by the voters in a statewide or local election pursuant to Government Code section 17556, subdivision (f), only when:

- A local agency and/or school district is mandated by a ballot measure to perform a duty.
- The Legislature or any state agency enacts a statute or executive order intended to implement the ballot measure mandate and also requires additional duties that are not expressly included in the ballot measure.
- Absent the statute or executive order enacted by the Legislature or any state agency, the local agency and/or school district is still required to comply with the duty mandated by the ballot measure.
- The requirements imposed by the statute or executive order that exceed the ballot measure mandate are not reimbursable, but are considered part and parcel to the underlying ballot measure mandate, when the excess requirements are intended to

implement (i.e., are incidental to) the ballot measure mandate, and whose costs are, in context, de minimis.

**B. Government Code section 17556, subdivision (f), does not apply here**

Government Code section 17556, subdivision (f), does not apply here. The facts and circumstances in this case are distinguishable from those in the *San Diego Unified* and *County of Los Angeles II* cases.

The cases in *San Diego Unified* and *County of Los Angeles II* both present facts where local agencies and school districts were already required by existing federal law to perform a duty. In this case, however, there is no underlying ballot measure mandate imposed on local agencies or school districts. The ballot measure initiatives that added and amended article XIII B, section 6, do not impose any duties on local agencies or school districts. Article XIII B, section 6 imposes a duty solely on the state to provide a subvention of funds “whenever the Legislature or any state agency mandates a new program or higher level of service on any local government.” Therefore, the duties imposed by Government Code section 17553 and section 1183 of the Commission’s regulations are not incidental or part and parcel to a ballot measure mandate. Absent Government Code sections 17500 et seq., and the test claim statute and regulation, local agencies and school districts would still have a right to reimbursement, but would not have to comply with the administrative process established by the Legislature for the reimbursement of state-mandated costs. The requirements imposed by Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission’s regulations, as adopted in 2005, have been established by the state, rather than the voters. Under such cases, reimbursement is required.<sup>76</sup> Accordingly, the Commission finds that Government Code section 17556, subdivision (f), does not apply in this case.

The Commission further finds, based on the declarations in the record, that local agencies and school districts have incurred costs mandated by the state pursuant to Government Code section 17514 to comply with Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission’s regulations, as adopted in 2005. The claimant has alleged actual increased costs ranging from \$1,500 to \$38,600 to comply with the new test claim filing requirements, and estimates annual increased costs between \$3,500 and \$44,000 per test claim. Although the Department of Finance, in its comments on the draft staff analysis, asserts that the claimant’s cost estimates are de minimis, Finance has not submitted any evidence to rebut the declarations filed under penalty of perjury by the claimant.

Accordingly, the Commission finds that Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2), and section 1183, subdivision (d), of the

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<sup>76</sup> *CSBA, supra*, 171 Cal.App.4th at pages 1206, 1213-1214, 1216-1217; see also, *San Diego Unified School Dist., supra*, 33 Cal.4th at page 880, where the court found a state mandate when the state, rather than a local official, made the decision requiring a school district to incur the costs. The same conclusion applies when the state, rather than the voters, require local government to incur costs.



Commission's regulations impose costs mandated by the state within the meaning of Government Code section 17514.

### CONCLUSION

For the reasons stated above, Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission's regulations, as adopted in 2005, constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities only:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  - e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate. (Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)
2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
  - b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
  - c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order. (Gov. Code, § 17553,

subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

The Commission further finds that Government Code sections 17557 and 17564, as amended by Statutes 2004, chapter 890; section 1183.13 of the Commission's regulations (Register 2005, No. 36, effective September 6, 2005); and all other allegations raised by the claimant do not constitute a reimbursable state-mandated program.

Hearing: \_\_\_\_\_  
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## PROPOSED PARAMETERS AND GUIDELINES

Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2)  
 and section 1183, subdivision (d), of the Commission's regulations

Statutes 2004, chapter 890

### *Mandate Reimbursement Process II*

05-TC-05

City of Newport Beach, Claimant

#### I. SUMMARY OF THE MANDATE

On January 29, 2010, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a partially reimbursable state-mandated program upon local agencies and school 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:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  - e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; 4 Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)
2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal

knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:

- a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

## **II. ELIGIBLE CLAIMANTS**

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557, subdivision (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 City of Newport Beach filed the test claim on September 27, 2005. Therefore, costs incurred pursuant to Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission's regulations, as adopted in 2005 are reimbursable on or after January 1, 2005, the effective date of the mandate statute.

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, subdivision (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 local agency or 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. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

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 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 (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: On-going Activities – successful test claims only:

On-going Activities – successful test claims only:

1. Test Claims

All costs incurred by local agencies and school districts in drafting the test claim written narrative and written narrative declarations, including but not limited to, gathering and reviewing information, obtaining statements, calculating costs, investigating other funding sources, reviewing prior mandates cases, drafting the written narrative, drafting the declarations, reviewing with declarants, obtaining signatures and filing declarations.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; 4 Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

#### **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. 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 services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

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 point, 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.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects

broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

## B. Indirect Cost Rates

### 1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an

equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## 2. School Districts

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 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.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

## 3. County Offices of Education

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

## 4. Community College Districts

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, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> 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

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



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 offsets 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, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 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, subdivision (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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

#### **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.

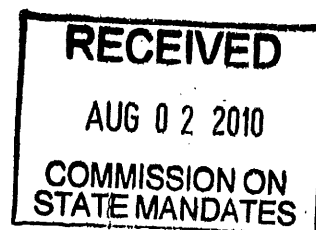


DEPARTMENT OF  
**FINANCE**

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

July 29, 2010



Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance has reviewed the proposed parameters and guidelines (Ps & Gs) submitted by the City of Newport Beach, for Claim No. 05-TC-05 "Mandate Reimbursement Process II." Finance does not object to the proposed Ps & Gs, as they appear to reflect the Commission's Statement of Decision.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your July 2, 2010 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Lorena Romero, Associate Budget Analyst at (916) 445-8913.

Sincerely,

Nona Martinez  
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF LORENA ROMERO  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM—05-TC-05

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

7/28/10

at Sacramento, CA



Lorena Romero

PROOF OF SERVICE

Test Claim Name: MRP II  
Test Claim Number: CSM—05-TC-05

I, the undersigned, declare as follows:


I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

On July 29, 2010, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8 Floor, for Interagency Mail Service, as addressed on the attachment, and addressed as follows:

A-16  
Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

League of California Cities  
Attention: Ernie Silva  
1400 K Street  
Sacramento, CA 95815

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 29, 2010 at Sacramento, California.

  
\_\_\_\_\_  
TAMARA JOHNSON

# Commission on State Mandates

Original List Date: 10/7/2005  
Last Updated: 3/22/2010  
List Print Date: 07/02/2010  
Claim Number: 05-TC-05  
Issue: Mandate Reimbursement Process II

Mailing Information: Completeness Determination

## Mailing List

### Related Matter(s)

09-PGA-02 Mandate Reimbursement Process (CSM-4204, CSM-4485 and 05-TC-05)

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Ms. Hasmik Yaghobyan

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Assembly Budget Committee

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~~Tel: (916) 442-2952  
Fax: (916) 442-1280~~

**DUPLICATE  
ENTRY**

---

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Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	<b>Claimant</b> Tel: (949) 644-3127 Fax: (949) 644-3339
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Mr. Michael Johnston Clovis Unified School District 1450 Herndon Ave Clovis, CA 93611-0599	Tel: (559) 327-9000 Fax: (559) 327-9129
Ms. Carol Bingham California Department of Education (E-08) Fiscal Policy Division 1430 N Street, Suite 5602 Sacramento, CA 95814	Tel: (916) 324-4728 Fax: (916) 319-0116
Ms. Bonnie Ter Keurst County of San Bernardino Office of the Auditor/Controller-Recorder 222 West Hospitality Lane San Bernardino, CA 92415-0018	Tel: (909) 386-8850 Fax: (909) 386-8830

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Mr. Keith B. Petersen  
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---

Ms. Juliana F. Gmur  
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Tel: (916) 485-8102

Fax: (916) 485-0111



## COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
ail: csminfo@csm.ca.gov



April 12, 2011

Ms. Juliana Gmur  
MAXIMUS  
2380 Houston Ave  
Clovis, CA 93611

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

**RE: Draft Staff Analysis, Proposed Parameters and Guidelines, and Hearing Date**

*Mandate Reimbursement Process II*, 05-TC-05

And Proposed Consolidation of *Mandate Reimbursement Process I and II*,

CSM-4204, 4485 and 05-TC-05

Government Code Section 17553

Statutes 2004, Chapter 890 (AB 2856)

City of Newport Beach, Claimant

Dear Ms. Gmur:

The draft staff analysis, and proposed parameters and guidelines for this matter are enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the draft staff analysis and proposed parameters and guidelines by Tuesday, **May 3, 2011**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) However, this requirement may also be satisfied by electronically filing your documents on the Commission's website. Please see the Commission's website at [http://www.csm.ca.gov/dropbox\\_procedures.shtml](http://www.csm.ca.gov/dropbox_procedures.shtml) for instructions on electronic filing. The comments will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting and the comment period. This procedure will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.2, subdivision (c). If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

**Hearing**

This matter is set for hearing on **Thursday, May 26, 2011** at 9:30 a.m. We will notify you of the location of the hearing when a hearing room has been confirmed. The final staff analysis will be issued on or about May 12, 2011. This matter is proposed for the Consent Calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Nancy Patton at (916) 323-8217 with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan".

Drew Bohan  
Executive Director

**ITEM \_\_\_\_\_**  
**DRAFT STAFF ANALYSIS**  
**PROPOSED PARAMETERS AND GUIDELINES**  
**AS MODIFIED BY STAFF**

Government Code Section 17553, Subdivision (b)(1)(c) through (G) and (b)(2)  
Statutes 2004, Chapter 890 (AB 2856)

California Code of Regulations, Title 2, Sections 1183, Subdivision (d)  
(Register 2005, No. 36, Effective September 6, 2005)

*Mandate Reimbursement Process II*  
05-TC-05

And

**PROPOSED CONSOLIDATED PARAMETERS AND GUIDELINES**

Statutes 1975, Chapter 486  
Statutes 1984, Chapter 1459  
Statutes 2006, Chapter 47 (Budget Act of 2006)  
Statutes 2007, Chapter 171 (Budget Act of 2007)  
Statutes 2008, Chapter 268 (Budget Act of 2008)  
Statutes 2009, Chapter 1, Third Extraordinary Session (Budget Act of 2009)  
Government Code Section 17553, Subdivision (b)(1)(c) through (G) and (b)(2)  
Statutes 2004, Chapter 890 (AB 2856)  
California Code of Regulations, Title 2, Sections 1183, Subdivision (d)  
(Register 2005, No. 36, Effective September 6, 2005)

*Mandate Reimbursement Process I and II*  
CSM-4204, 4485, and 05-TC-05

City of Newport Beach, Claimant

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**Executive Summary**

**I. Background and Summary of the Mandate**

*Mandate Reimbursement Process I*

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), and established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution.

On March 27, 1986, the Commission adopted a statement of decision determining that local agencies and school districts are required to file "test" claims in order to establish the existence

of a mandated program, and to file claims with the State Controller's Office to obtain reimbursement for the costs of mandated programs.

Mandate Reimbursement Process II

Statutes 2004, chapter 890 amended Government Code section 17553 to increase the requirements for filing test claims. The Commission subsequently adopted regulations to implement Statutes 2004, chapter 890 (Cal. Code Regs, tit. 2, § 1183, subd. (d)).

On January 29, 2010, the Commission adopted a statement of decision finding that the test claim statute and regulations impose a partially reimbursable state-mandated program upon local agencies and school 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:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  - e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; 4 Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
  - b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the

claimant to implement the alleged mandate, including direct and indirect costs.

- c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

## **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. As of January 1, 2011, the hearing on the adoption of proposed parameters and guidelines is conducted under Article 7 of the Commission's regulations. 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.<sup>1</sup>

## **III. Discussion**

Staff is proposing to adopt new parameters and guidelines for the *Mandate Reimbursement Process II* program that would be effective from January 1, 2005 until June 30, 2011. Staff is also proposing to consolidate the parameters and guidelines for *Mandate Reimbursement Process I and II* by amending the existing parameters and guidelines for *Mandate Reimbursement Process I* to clarify that reimbursement under those parameters and guidelines is only effective through June 30, 2011, and adopting new consolidated parameters and guidelines that would be effective beginning July 1, 2011.

### **A. Position of Department of Finance**

Department of Finance filed comments stating they had no objections to claimant's proposed parameters and guidelines.

### **B. Staff Analysis**

#### *Mandate Reimbursement Process II*

Staff made substantive changes to Section IV, Reimbursable Activities. These changes are discussed below.

Staff added the list of approved activities from the statement of decision to the proposed parameters and guidelines.

The claimant proposed the following activities, in addition to the activities explicitly approved in the statement of decision, as being reasonably necessary to carry out the mandated program:

---

<sup>1</sup> Government Code section 17559, subdivision (b); California Code of Regulations, Title 2, section 1187.5.

All costs incurred by local agencies and school districts in drafting the test claim written narrative and written narrative declarations, including but not limited to, gathering and reviewing information, obtaining statements, calculating costs, investigating other funding sources, reviewing prior mandates cases, drafting the written narrative, drafting the declarations, reviewing with declarants, obtaining signatures and filing declarations.

Section 1183.1, subdivision (a)(4), of the Commission's regulations authorizes the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program."

Regarding the proposed activities of: (1) gathering and reviewing information; (2) calculating costs; (3) investigating other funding sources; (4) reviewing prior mandates cases; (5) obtaining statements; (6) drafting the declarations; (7) reviewing the declarations with declarants; (8) obtaining signatures; and (9) filing declarations; there is evidence in the record that these activities are reasonably necessary to carry out the mandated program. There are declarations filed with the test claim, signed under penalty of perjury, that these activities were necessary to complete the information required in the written narrative and declarations.

Therefore, staff retained these activities in the proposed parameters and guidelines.

*Consolidation of Mandate Reimbursement Process I and Mandate Reimbursement Process II*

On February 22, 2010, Mr. Keith Petersen, SixTen and Associates, filed a letter recommending that the parameters and guidelines for *Mandate Reimbursement Process I and Mandate Reimbursement Process II* be consolidated.

Staff is proposing to consolidate these parameters and guidelines. Therefore, staff added language to the existing parameters and guidelines for *Mandate Reimbursement I* clarifying that claimants shall use the existing parameters and guidelines until June 30, 2011, and after that date, claimants shall claim for reimbursement using the consolidated parameters and guidelines.

Staff also drafted the proposed consolidated parameters and guidelines to combine the summaries and reimbursable activities for both programs, and clarify that the consolidated parameters and guidelines are effective beginning July 1, 2011.

#### **IV. Staff Recommendation**

Staff recommends that the Commission:

- Adopt this analysis as its decision along with the claimant's proposed parameters and guidelines, as modified by staff, for *Mandate Reimbursement Process II* that would be effective from January 1, 2005 through June 30, 2011 (Attachment 1).
- Adopt the proposed amendments to the existing parameters and guidelines for *Mandate Reimbursement Process I* that would end reimbursement under these parameters and guidelines on June 30, 2011 (Attachment 2).

- Adopt the proposed consolidated parameters and guidelines for *Mandate Reimbursement Process I and II* that would be effective on July 1, 2011 (Attachment 3).
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

## STAFF ANALYSIS

### Claimant

City of Newport Beach

### Chronology

01/29/2010 Commission adopts statement of decision for *Mandate Reimbursement Process II*. (Exhibit A.)

03/03/2010 Claimant submits proposed parameters and guidelines. (Exhibit B.)

07/29/2010 Department of Finance (DOF) submits comments. (Exhibit C.)

### I. Background and Summary of the Mandate

#### Mandate Reimbursement Process I

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission adopted a statement of decision determining that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs.

#### Mandate Reimbursement Process II

Statutes 2004, chapter 890 amended Government Code section 17553 to increase the requirements for filing test claims. The Commission subsequently adopted regulations to implement Statutes 2004, chapter 890 (Cal. Code Regs, tit. 2, § 1183, subd. (d)).

On January 29, 2010, the Commission adopted a statement of decision finding that the test claim statute and regulations impose a partially reimbursable state-mandated program upon local agencies and school 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:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  - e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; 4 Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
  - b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
  - c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*



## **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. 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.<sup>2</sup>

As of January 1, 2011, the hearing on the adoption of proposed parameters and guidelines is conducted under Article 7 of the Commission's regulations.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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 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. Discussion**

### **A. Position of Department of Finance**

Department of Finance filed comments stating they had no objections to the proposed parameters and guidelines.

### **C. Staff Analysis**

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<sup>2</sup> Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

<sup>3</sup> California Code of Regulations, Title 2, section 1187.

<sup>4</sup> Government Code section 17559, subdivision (b); California Code of Regulations, Title 2, section 1187.5.

<sup>5</sup> California Code of Regulations, Title 2, section 1187.5.

## Mandate Reimbursement Process II

Staff reviewed the claimants' proposed parameters and guidelines and the comments received from the Department of Finance.

Non-substantive changes were made to the following sections of the proposed parameters and guidelines:

- The title of the parameters and guidelines was modified to include only those statutes and regulations that the Commission determined to be mandated.
- Section II, Eligible Claimants, Section III, Period of Reimbursement, and Section VII, Offsetting Revenues and Reimbursements, were amended to conform the parameters and guidelines to other parameters and guidelines previously approved by the Commission.

Substantive changes were made to Section IV, Reimbursable Activities. These changes are discussed below.

### Section IV. Reimbursable Activities

The Commission found the following activities to be reimbursable in the statement of decision:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  - e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate. (Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)
2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:
  - a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

- b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order. (Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

Staff added the list of approved activities from the statement of decision to the proposed parameters and guidelines.

The claimant proposed the following activities, in addition to the activities explicitly approved in the statement of decision, as being reasonably necessary to carry out the mandated program:

All costs incurred by local agencies and school districts in drafting the test claim written narrative and written narrative declarations, including but not limited to, gathering and reviewing information, obtaining statements, calculating costs, investigating other funding sources, reviewing prior mandates cases, drafting the written narrative, drafting the declarations, reviewing with declarants, obtaining signatures and filing declarations.

Section 1183.1, subdivision (a)(4), of the Commission's regulations authorizes the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program."

Regarding the proposed activities of: (1) gathering and reviewing information; (2) calculating costs; (3) investigating other funding sources; (4) reviewing prior mandates cases; (5) obtaining statements; (6) drafting the declarations; (7) reviewing the declarations with declarants; (8) obtaining signatures; and (9) filing declarations; there is evidence in the record that these activities are reasonably necessary to carry out the mandated program. There are declarations filed with the test claim, signed under penalty of perjury, that these activities were necessary to complete the information required in the written narrative and declarations.

Therefore, staff retained these activities in the proposed parameters and guidelines.

#### *Consolidation of Mandate Reimbursement Process I and Mandate Reimbursement Process II*

On February 22, 2010, Mr. Keith Petersen, SixTen and Associates, filed a letter recommending that the parameters and guidelines for *Mandate Reimbursement Process I and Mandate Reimbursement Process II* be consolidated.

Staff is proposing to consolidate these parameters and guidelines for future years. Therefore, staff added language to the existing parameters and guidelines for *Mandate Reimbursement I* clarifying that claimants shall use the existing parameters and guidelines until June 30, 2011, and

after that date, claimants shall claim for reimbursement using the consolidated parameters and guidelines.

The proposed consolidated parameters and guidelines:

- Combine summaries of both programs under Section I, Summary of the Mandate.
- Clarify in Section II, Period of Reimbursement, that the consolidated parameters and guidelines are effective beginning July 1, 2011.
- Combine the reimbursable activities for both programs under Section IV, Reimbursable Activities.
- Update Section VII, Offsetting Revenues and Reimbursements to conform to other parameters and guidelines adopted by the Commission.

#### **IV. Staff Recommendation**

Staff recommends that the Commission:

- Adopt this analysis as its decision along with the claimant's proposed parameters and guidelines, as modified by staff, for *Mandate Reimbursement Process II* that would be effective from January 1, 2005 through June 30, 2011 (Attachment 1).
- Adopt the proposed amendments to the existing parameters and guidelines for *Mandate Reimbursement Process I* that would end reimbursement under these parameters and guidelines on June 30, 2011 (Attachment 2).
- Adopt the proposed consolidated parameters and guidelines for *Mandate Reimbursement Process I and II* that would be effective on July 1, 2011 (Attachment 3).
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Proposed for Adoption: May 26, 2011

Hearing Date: \_\_\_\_\_

J://mandates/05-TC-05/psgs/draftpsgs

**PROPOSED PARAMETERS AND GUIDELINES  
AS MODIFIED BY STAFF**

Government Code Section 17553, Subdivision (b)(1)(C) through (G) and (b)(2)  
California Code of Regulations, Title 2, Sections 1183, Subdivision (d)  
(Register 2005, No. 36, Effective September 6, 2005)

~~and section 1183, subdivision (d), of the Commission's regulations~~

Statutes 2004, chapter 890 (AB 2856)

*Mandate Reimbursement Process II*

05-TC-05

**Effective January 1, 2005 through June 30, 2011**

**I. SUMMARY OF THE MANDATE**

Statutes 2004, chapter 890 amended Government Code section 17553 to increase the requirements for filing test claims. The Commission subsequently adopted regulations to implement Statutes 2004, chapter 890 (Cal. Code Regs, tit. 2, § 1183, subd. (d)).

On January 29, 2010, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statute and regulations impose a partially reimbursable state-mandated program upon local agencies and school 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:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal

agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.

- e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; 4 Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

- 2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:

- a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

## **II. ELIGIBLE CLAIMANTS**

Any "local agency" as defined in Government Code section 17518 that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

Any "school district" as defined in Government Code section 17519, including community college districts, which incurs increased costs as a result of this mandate is eligible to claim reimbursement. Charter schools are not eligible claimants.

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557, subdivision (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 City of Newport Beach filed the test claim on September 27, 2005. Therefore, costs incurred pursuant to Government Code section 17553, subdivision (b)(1)(C) through (G) and (b)(2) as amended by

Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission's regulations, as adopted in 2005 are reimbursable on or after, establishing eligibility for reimbursement beginning in fiscal year 2004-2005. The test claim statute became effective on January 1, 2005. Therefore, costs incurred for compliance with this mandate are reimbursable on or after January 1, 2005, the effective date of the mandate statute.

Reimbursement claims filed from January 1, 2005 through June 30, 2011 should be filed under these parameters and guidelines. Claims filed beginning July 1, 2011, should be filed under the consolidated parameters and guidelines for *Mandate Reimbursement Process I and Mandate Reimbursement Process II*.

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, subdivision (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 local agency or 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. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.
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, subdivision (a).
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 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 (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:

On-going Activities – Successful Test Claims Only:

All test claims and test claim amendments shall include a written narrative, as described below.

- A. Draft the written narrative that identifies the specific statutes or executive orders alleged to contain a mandate. Complete the following reimbursable activities to include in the written narrative:
1. Gather and review information to complete the test claim narrative.
  2. Calculate the actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  3. Calculate the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  4. Calculate a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  5. Investigate other funding sources to identify dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
  6. Review and identify prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, eff. September 6, 2005.)

- B. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so. The following activities to complete the declarations are reimbursable:

1. Draft and file the following declarations:
  - a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.



b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, eff. September 6, 2005).

2. Review the declarations with declarants, and obtain the declarants' signatures.

Test Claims

All costs incurred by local agencies and school districts in drafting the test claim written narrative and written narrative declarations, including but not limited to, gathering and reviewing information, obtaining statements, calculating costs, investigating other funding sources, reviewing prior mandates cases, drafting the written narrative, drafting the declarations, reviewing with declarants, obtaining signatures and filing declarations.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; 4 Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

## 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. 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 services that were performed during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

### 4. Fixed Assets and Equipment

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 point, 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.

### 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

## B. Indirect Cost Rates

### 1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## 2. School Districts

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 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.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

### 3. County Offices of Education

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

### 4. Community College Districts

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, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> 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 revenues 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, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 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.

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

Pursuant to Government Code section 17561, subdivision (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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

#### **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.

**AMENDMENT TO PARAMETERS AND GUIDELINES**

Statutes 1975, Chapter 486  
Statutes 1984, Chapter 1459  
Statutes 2006, Chapter 47 (Budget Act of 2006)  
Statutes 2007, Chapter 171 (Budget Act of 2007)  
Statutes 2008, Chapter 268 (Budget Act of 2008)  
Statutes 2009, Chapter 1, Third Extraordinary Session (Budget Act of 2009)

*Mandate Reimbursement Process*  
*CSM-4204 and 4485*

**(Effective until June 30, 2011. Reimbursement claims filed beginning July 1, 2011, shall use consolidated parameters and guidelines for *Mandate Reimbursement Process I and II.*)**

[For fiscal year 2006-2007, these parameters and guidelines are amended pursuant to the requirements of provision 7 of Item 0840-001-0001 of the Budget Act of 2006 to include Appendix A.]

[For fiscal year 2007-2008, these parameters and guidelines are amended pursuant to the requirements of provision 7 of Item 0840-001-0001, of the Budget Act of 2007 to include Appendix A.]

[For fiscal year 2008-2009, these parameters and guidelines are amended pursuant to the requirements of provision 6 of Item 0840-001-0001 of the Budget Act of 2008 to include appendix A.]

[For fiscal year 2009-2010, these parameters and guidelines are amended pursuant to the requirements of provision 6 of Item 0840-001-0001, of the Budget Act of 2009 to include Appendix A.]

Adopted: November 20, 1986  
First Amendment Adopted: March 26, 1987  
Second Amendment Adopted: October 26, 1995  
Third Amendment Adopted: January 30, 1997  
Fourth Amendment Adopted: September 25, 1997  
Fifth Amendment Adopted: October 29, 1998  
Sixth Amendment Adopted: September 30, 1999  
Seventh Amendment Adopted: September 28, 2000  
Eighth Amendment Adopted: October 25, 2001  
Ninth Amendment Adopted: February 27, 2003  
Tenth Amendment Adopted: September 25, 2003  
Eleventh Amendment Adopted: December 9, 2004  
Twelfth Amendment Adopted: September 27, 2005  
Thirteenth Amendment Adopted: March 26, 2010  
Fourteenth Amendment Proposed for Adoption: May 26, 2011

## I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs.

## II. ELIGIBLE CLAIMANTS

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

## III. PERIOD OF REIMBURSEMENT

These parameters and guidelines are effective until June 30, 2011. Effective July 1, 2011, claimants shall use the consolidated parameters and guidelines for *Mandate Reimbursement Process I* and *Mandate Reimbursement Process II*.

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, subdivision (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 local agency or 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. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall

have 120 days following the issuance date of the revised claiming instructions to file a claim.

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.<sup>1</sup>

#### 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 (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:

##### A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state-mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

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<sup>1</sup>-Statutes 2006, Chapter 47, Item 8885-295-0001, Schedule (3)(y); Statutes 2007, chapter 171, Item 8885-295-0001, Schedule (3)(y); Statutes 2008, chapter 268, Item 8885-295-0001, Schedule (3)(y).



## B. Reimbursable Activities

### 1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

### 2. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts, unless the Legislature has suspended the operation of mandate pursuant to state law. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

### 3. Training

#### a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee.)

#### b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

## 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 and Equipment

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 point, 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.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Reporting

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## 2. School Districts

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 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.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

## 3. County Offices of Education

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

## 4. Community College Districts

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, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> 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 revenues the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs

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<sup>2</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services 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, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 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 statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (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, and California Code of Regulations, title 2, section 1183.2.

### **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.

**(Continue to Appendix A)**

## PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486  
Statutes 1984, Chapter 1459

### *Mandate Reimbursement Process* *CSM-4204 and 4485*

#### APPENDIX A

#### Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years

2006-2007  
2007-2008  
2008-2009  
2009-2010<sup>3</sup>

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (A) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under subdivision A above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local

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<sup>3</sup> The limitation added by Statutes 2006, Chapter 47 (Budget Act of 2006); Statutes 2007, Chapter 171 (Budget Act of 2007); Statutes 2008, Chapter 268 (Budget Act of 2008); Budget Act of 2009, Statutes 2009, Third Extraordinary Session, chapter 1, in Item 0840-001-0001, Provision 6, is shown as part A of this Appendix.

agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

Proposed for Adoption: May 26, 2011

**PROPOSED CONSOLIDATED PARAMETERS AND GUIDELINES**

Statutes 1975, Chapter 486  
Statutes 1984, Chapter 1459  
Statutes 2006, Chapter 47 (Budget Act of 2006)  
Statutes 2007, Chapter 171 (Budget Act of 2007)  
Statutes 2008, Chapter 268 (Budget Act of 2008)  
Statutes 2009, Chapter 1, Third Extraordinary Session (Budget Act of 2009)

*Mandate Reimbursement Process I*

CSM-4204 and 4485

And

Government Code Section 17553, Subdivision (b)(1)(C) through (G) and (b)(2)

Statutes 2004, Chapter 890 (AB 2856)

California Code of Regulations, Title 2, Sections 1183, Subdivision (d)

(Register 2005, No. 36, Effective September 6, 2005)

*Mandate Reimbursement Process II*

05-TC-05

**(Effective Beginning July 1, 2011)**

[For fiscal year 2006-2007, these parameters and guidelines are amended pursuant to the requirements of provision 7 of Item 0840-001-0001 of the Budget Act of 2006 to include Appendix A.]

[For fiscal year 2007-2008, these parameters and guidelines are amended pursuant to the requirements of provision 7 of Item 0840-001-0001, of the Budget Act of 2007 to include Appendix A.]

[For fiscal year 2008-2009, these parameters and guidelines are amended pursuant to the requirements of provision 6 of Item 0840-001-0001 of the Budget Act of 2008 to include appendix A.]

[For fiscal year 2009-2010, these parameters and guidelines are amended pursuant to the requirements of provision 6 of Item 0840-001-0001, of the Budget Act of 2009 to include Appendix A.]



## I. SUMMARY OF THE MANDATE

### Mandate Reimbursement Process I

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs.

### Mandate Reimbursement Process II

Statutes 2004, chapter 890 amended Government Code section 17553 to increase the requirements for filing test claims. The Commission subsequently adopted regulations to implement Statutes 2004, chapter 890 (Cal. Code Regs, tit. 2, § 1183, subd. (d)).

On January 29, 2010, the Commission adopted a statement of decision finding that the test claim statute and regulations impose a partially reimbursable state-mandated program upon local agencies and school 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:

1. All test claims and test claim amendments shall include a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate, including:
  - a. The actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
  - b. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
  - c. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the

fiscal year immediately following the fiscal year for which the claim is filed.

- d. Identification of dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
- e. Identification of prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

- 2. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:

- a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 17553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, effective September 6, 2005.)

*These activities are reimbursable only when a test claim is approved.*

## **II. ELIGIBLE CLAIMANTS**

Any "local agency" as defined in Government Code section 17518 that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

Any "school district" as defined in Government Code section 17519, including community college districts, which incurs increased costs as a result of this mandate is eligible to claim reimbursement. Charter schools are not eligible claimants.

~~Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.~~

### III. PERIOD OF REIMBURSEMENT

These parameters and guidelines are effective beginning July 1, 2011.

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, subdivision (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 local agency or 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. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.
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.<sup>1</sup>

### 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 (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.

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<sup>1</sup>Statutes 2006, Chapter 47, Item 8885-295-0001, Schedule (3)(y); Statutes 2007, chapter 171, Item 8885-295-0001, Schedule (3)(y); Statutes 2008, chapter 268, Item 8885-295-0001, Schedule (3)(y).

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:

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state-mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

A. B. One-Time Activities (One-Time Per Employee) – Successful Test Claims Only

B.1. Training

a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

C. On-Going Activities – Successful Test Claims Only

1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The following activities are eligible for reimbursement when preparing a test claim or test claim amendment. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

a. Written Narrative

All test claims and test claim amendments shall include a written narrative as described below.

Draft the written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate. Complete the following reimbursable activities to include in the written narrative:

- Gather and review information to complete the test claim narrative.
- Calculate the actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
- Calculate the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
- Calculate a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
- Investigate other funding sources to identify dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
- Review and identify prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.

(Gov. Code, § 17553, subd. (b)(1)(C) through (G), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, eff. September 6, 2005.)

b. Declarations

The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so. The following activities to complete the declarations are reimbursable:

Draft and file the following declarations:

- Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

(Gov. Code, § 177553, subd. (b)(2), as amended by Stats. 2004, ch. 890; Cal. Code Regs., tit. 2, § 1183, subd. (d), Register 2005, No. 36, eff. September 6, 2005).

Review the declarations with declarants, and obtain the declarants' signatures.

#### D. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts, unless the Legislature has suspended the operation of mandate pursuant to state law. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

#### C. ~~Training~~

##### a. ~~Classes~~

~~Include the costs of classes designed to assist the claimant in identifying and correctly preparing state required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One time activity per employee.)~~

##### b. ~~Commission Workshops~~

~~Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.~~

### 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 and Equipment

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 point, 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.

## 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

## B. Indirect Cost Reporting

### 1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services

distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## 2. School Districts

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 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.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

### 3. County Offices of Education

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

### 4. Community College Districts

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, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> 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 SAVINGS AND REIMBURSEMENTS

Any offsetting ~~revenues~~ savings the claimant experiences in the same program as a direct 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, services 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, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 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 statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

<sup>2</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17561, subdivision (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, and California Code of Regulations, title 2, section 1183.2.

**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.

**(Continue to Appendix A)**

## PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486  
Statutes 1984, Chapter 1459

*Mandate Reimbursement Process*  
*CSM-4204 and 4485*

### APPENDIX A

#### Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years

2006-2007  
2007-2008  
2008-2009  
2009-2010<sup>3</sup>

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (A) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission or presentation of claims are recoverable within the limitations imposed under subdivision A above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not

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<sup>3</sup> The limitation added by Statutes 2006, Chapter 47 (Budget Act of 2006); Statutes 2007, Chapter 171 (Budget Act of 2007); Statutes 2008, Chapter 268 (Budget Act of 2008); Budget Act of 2009, Statutes 2009, Third Extraordinary Session, chapter 1, in Item 0840-001-0001, Provision 6, is shown as part A of this Appendix.

have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.



DEPARTMENT OF  
**FINANCE**

EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

May 3, 2011

Mr. Drew Bohan  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Mr. Bohan:

The Department of Finance (Finance) has reviewed the draft staff analysis for the proposed parameters and guidelines on the Mandate Reimbursement Process (MRP) II mandate and the proposed consolidated parameters and guidelines for the MRP I and MRP II mandates, as prepared by the Commission on State Mandates (Commission) staff.

While Finance maintains its position that the test claim statutes and regulations do not constitute a reimbursable state-mandated program because they are necessary for the implementation of Proposition 4, we have no significant objections to the Commission staff's recommendation on the draft staff analysis.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Carla Shelton, Associate Finance Budget Analyst, at (916) 445-8913.

Sincerely,

A handwritten signature in cursive script that reads "Nona Martinez".

NONA MARTINEZ  
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF JEFF CAROSONE  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-4204, 4485, 05-TC-05

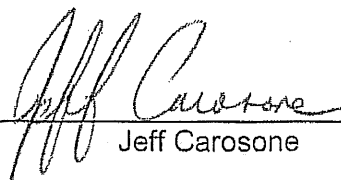
1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

5-3-11

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at Sacramento, CA

  
Jeff Carosone



**JOHN CHIANG**  
California State Controller  
Division of Accounting and Reporting

May 3, 2011

Mr. Drew Bohan  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: Draft Staff Analysis, Proposed Parameters and Guidelines  
*Mandate Reimbursement Process II, 05-TC-05*  
And Proposed Consolidation of Mandate Reimbursement Process I and II,  
CSM-4204, 4485 and 05-TC-05  
Government Code Section 17553  
Statutes 2004, Chapter 890 (AB 2856)  
City of Newport Beach, Claimant

Dear Mr. Bohan:

We have reviewed the draft staff analysis and proposed parameters and guidelines submitted by the City of Newport Beach. Below are our comments and recommendations. Proposed additions are underlined and deletions are indicated with strikethrough as follows:

**ATTACHMENT 1 – Mandate Reimbursement Process II**

**III. PERIOD OF REIMBURSEMENT**

**Page 3**

3. Pursuant to Government Code section 17560, subdivision (a), a local agency or school district... fiscal year.
4. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instruction to file a claim. (Government Code section 17560, subdivision (b)).

**COMMENT:** Add subdivision (a) in 3. and Government Code section 17560, subdivision (b) in 4. for specific reference.

## V. CLAIM PREPARATION AND SUBMISSION

### Page 6

#### 3. Contracted Services

**COMMENT:** The language for contracted services varies in the three attachments. Please insert the most current boiler plate language in all the three attachments for consistency.

#### 4. Fixed Assets ~~and Equipment~~

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.

**COMMENT:** The terminology, "fixed assets," includes equipment.

### Pages 7 and 8

#### B. Indirect Cost Rates

##### 2. School Districts

School districts and county offices of education must use the J-380 ~~(or subsequent replacement)~~ Restricted Indirect Cost Rates for K-12 Local Educational Agencies (LEAs) Five Year Listing ~~non-restrictive indirect cost rate provisionally approved~~ issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year of costs.

##### ~~3. County Offices of Education~~

~~County offices of education must use the J-580 (or subsequent replacement) non-restrictive Indirect cost rate provisionally approved by the California Department of Education.~~

**COMMENT:** The J-380 and J-580 forms previously used by school districts and county offices of education, respectively, have since become obsolete.

#### ATTACHMENT 2 – Mandate Reimbursement Process I – Page 1

#### ATTACHMENT 3 – Mandate Reimbursement Process I and II – Page 1

Statutes 2009, Chapter 1, Third Extraordinary Session (Budget Act of 2009)  
Statutes 2010, Chapter 712 (Budget Act of 2010)

(For fiscal year 2009-2010....of the Budget Act of 2009 to include Appendix A.)

(For fiscal year 2010-2011, these parameters and guidelines are amended pursuant to the requirements of provision 5 of Item 0840-001-0001, of the Budget Act of 2010 to include Appendix A.)

**COMMENT:** Fiscal Year 2010-2011 was inadvertently omitted.



## ATTACHMENT 2 – Mandate Reimbursement Process I

Page 9

### APPENDIX A

2009-2010  
2010-2011<sup>3</sup>

<sup>3</sup> The limitation added by Statutes 2006.....Budget Act of 2009, Statutes 2009, Third Extraordinary Session, chapter 1, Provision 6; Budget Act of 2010, Statutes 2010, Chapter 712, Provision 5, in Item 0840-001-0001, ~~Provision 6~~, is shown as part A of this Appendix.

**COMMENT:** Fiscal Year 2010-2011 was inadvertently omitted.

## ATTACHMENT 3 – Mandate Reimbursement Process I and II

### III. PERIOD OF REIMBURSEMENT

Page 4

These consolidated parameters and guidelines are effective beginning July 1, 2011.

**COMMENT:** The word , “consolidated,” is added to provide a specific description of the parameters and guidelines.

3. Pursuant to Government Code section 17560, subdivision (a), a local agency or school district.... fiscal year.
4. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instruction to file a claim. (Government Code section 17560, subdivision (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, subdivision (a).

**COMMENT:** The government codes and subdivisions were added for specific reference.

### IV. REIMBURSABLE ACTIVITIES

Page 7

#### D. Reimbursement Claims

All costs incurred during the period.... Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

(Please insert appropriate verbiage from Appendix A.)

Incorrect Reduction Claims.....set forth above for successful reimbursement claims.

**COMMENT:** We recommend that the language from Budget Item 0840-001-0001, Provision 5, of the Budget Act of 2010, Chapter 712, Statutes 2010, be included in the P's and G's as aforementioned. The SCO has conferred with the Department of Finance and they agree that by including the language in the P's and G's there will be no need to annually amend the P's and G's to include Appendix A. Additionally, the provision can be removed from future Budget Acts and Appendix A can be removed from the P's and G's.

## V. CLAIM PREPARATION AND SUBMISSION

### Page 8

#### 3. Contracted Services

**COMMENT:** Please insert the most current boiler plate language.

#### 4. Fixed Assets and Equipment

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.

**COMMENT:** The terminology, "fixed assets," includes equipment.

### Pages 9 and 10

#### B. Indirect Cost Rates

##### 2. School Districts

School districts and county offices of education must use the J-380 (or subsequent replacement) Restricted Indirect Cost Rates for K-12 Local Educational Agencies (LEAs) Five Year Listing non-restrictive indirect cost rate provisionally approved issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year of costs.

##### 3. ~~County Offices of Education~~

~~County offices of education must use the J-580 (or subsequent replacement) non-restrictive Indirect cost rate provisionally approved by the California Department of Education.~~

**COMMENT:** The J-380 and J-580 forms previously used by school districts and county offices of education, respectively, have since become obsolete.

Should you have any questions regarding the above, please contact Marieta Delfin at (916) 322-4320, or e-mail to [mdelfin@sco.ca.gov](mailto:mdelfin@sco.ca.gov).

Sincerely,



JAY LAL, Manager  
Local Reimbursement Section

## Commission on State Mandates

Original List Date: 10/7/2005  
Last Updated: 5/17/2011  
List Print Date: 05/17/2011  
Claim Number: 05-TC-05  
Issue: Mandate Reimbursement Process II

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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