ITEM 3

MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION

PROPOSED DECISION

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014

California Public Records Act (02-TC-10 and 02-TC-51)

14-MR-02

Department of Finance, Requester

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January 15, 2015

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

Dear Ms. Halsey:

Pursuant to Government Code section 17557, subdivision (d)(2)(A), the Department of Finance requests that the Commission on State Mandates (Commission) adopt a new test claim decision and amend the parameters and guidelines (Ps&Gs) for the California Public Records Act (02-TC-10 and 02-TC-51) mandate by adding language to show that the reimbursement period of this mandate program ended on June 3, 2014. California Proposition 42, the California Compliance of Local Agencies with Public Act (Senate Constitutional Amendment 3), was on the June 3, 2014 ballot in California as a legislatively-referred constitutional amendment, where it was approved. The measure required all local governments and agencies to comply with the California Public Records Act (CPRA) and the Ralph M. Brown Act (Brown Act) and with any subsequent changes to the acts, thus guaranteeing a person’s right to inspect public records and attend public meetings.

Proposition 42 amended Section 3 of Article I and Section 6 of Article XIII B of the California Constitution and eliminated the requirements that the State of California reimburse local government agencies for compliance with these laws. Since the ballot was approved, no reimbursement is required pursuant to Article XIII B, section 6 of the California Constitution. As a result, the California Public Records Act mandate program no longer exists based on the constitutional amendment.

The CSM form “Request to Adopt New Test Claim Decision” is attached with a detailed analysis, declarations and documentation.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, “documents that are 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 Michael Byrne, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

TOM Dyer  
Assistant Program Budget Manager

Enclosure
Enclosure A

DECLARATION OF LEE P. SCOTT
DEPARTMENT OF FINANCE
CLAIM NO. 02-TC-10 and 02-TC-51

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.

1/15/2015
at Sacramento, CA

Lee P. Scott
ICC: DYER, BYRNE, SCOTT, FEREBEE, GEANACOU, FILE
1. TITLE OF REQUEST TO ADOPT A NEW TEST CLAIM DECISION

California Public Records Act (02-TC-10 and 02-TC-51)

2. REQUESTER INFORMATION

Name of Local Agency, School District, Statewide Association of Local Agencies or School Districts, or State Agency

California Department of Finance

Requester Contact

Michael Byrne

Title

Principal Program Budget Analyst

Organization

Department of Finance

Street Address

915 L Street

City, State, Zip Code

Sacramento, CA 95814

Telephone Number

916-445-3274

Fax Number

916-449-5252

E-Mail Address


3. REPRESENTATIVE INFORMATION

If requester designates another person to act as its sole representative for this request, all correspondence and communications regarding this request shall be forwarded to this representative. Any change in representation must be authorized by the requester in writing, and sent to the Commission on State Mandates. Please complete information below if designating a representative.

Representative Name

Title

Organization

Street Address

City, State, Zip Code

Telephone Number

Fax Number

E-Mail Address


4. IDENTIFYING INFORMATION

Please identify the name(s) of the programs, test claim number(s), and the date of adoption of the Statement of Decision, for which you are requesting a new test claim decision, and the subsequent change in law that allegedly changes the state's liability.

Regarding the subsequent change in law, please identify all relevant code sections (include statutes, chapters, and bill numbers), regulations (include register number and effective date), executive orders (include effective date), cases, or ballot measures.

On May 26, 2011, the Commission on State Mandates adopted the Statement of Decision for the California Public Records Act (02-TC-10 and 02-TC-51) and approved reimbursement for specified activities mandated by Chapter 463, Statutes of 1992; Chapter 982, Statutes of 2000; and Chapter 355, Statutes 2012 under Government Codes 6253.6253.1, 6253.9, 6254.3, and 6255.

On April 19, 2013 the Commission on State Mandates adopted Parameters and Guidelines. These Parameters and Guidelines provide reimbursable activity detail.

On June 3, 2014, California voters approved Proposition 42 which substantively amended various sections of the Government code that had served as a basis for the Commission's Statement of Decision. Based on the passage of Prop. 42, the state's obligation to provide reimbursement for this mandate has ceased pursuant to GC sections 17570 and 17556 (f).

Sections 5, 6 and 7 are attached as follows:

5. Detailed Analysis: Pages 1 to 1

6. Declarations: Pages 2 to 6

7. Documentation: Pages 7 to 1
Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the name of the request, requestor, section number (i.e., 5, 6, or 7), and a heading at the top of each page.

5. DETAILED ANALYSIS

Under the heading "5. Detailed Analysis," please provide a detailed analysis of how and why the state's liability for mandate reimbursement has been modified pursuant to article XIII B, section 6(a) of the California Constitution based on a "subsequent change in law" as defined in Government Code section 17570. This analysis shall be more than a written narrative or simple statement of the facts at law. It requires the application of the law (Gov. Code, § 17570 (a) and (b)) to the facts (i.e., the alleged subsequent change in law) discussing, for each activity addressed in the prior test claim decision, how and why the state's liability for that activity has been modified. Specific references shall be made to chapters, articles, sections, or page numbers that are alleged to impose or not impose a reimbursable state-mandated program.

Also include all of the following elements:

The actual or estimated amount of the annual statewide changes in the state's liability for mandate reimbursement pursuant to Article XIII B, section 6 (subdivision (a)) on a subsequent change in the law.

A. Identification of all of the following if relevant:
   1. Dedicated state funds appropriated for the program.
   2. Dedicated federal funds appropriated for the program.
   3. Fee authority to offset the costs of the program.
   5. Court decisions.
   6. State or local ballot measures and corresponding date of election.

6. DECLARATIONS

Under the heading "6. Declarations," support the detailed analysis with declarations that:

A. Declare actual or estimated annual statewide costs that will or will not be incurred to implement the alleged mandate.

B. Identify all local, state, or federal funds and fee authority that may or may not be used to offset the increased costs that will or will not be incurred by the claimants to implement the alleged mandate or result in a finding of no costs mandated by the state, pursuant to Government Code section 17556.

C. Describe new activities performed to implement specified provisions of the statute or executive order alleged to impose a reimbursable state-mandated program.

D. Make specific references to chapters, articles, sections, or page numbers alleged to impose or not impose a reimbursable state-mandated program.

E. Are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under heading "7. Documentation," support the detailed analysis with copies of all of the following:

A. Statutes, and administrative or court decisions cited in the detailed analysis.

Statements of Decision and published court decisions from a state mandate determination by the Board of Control or the Commission are exempt from this requirement. When an omnibus bill is pled or cited, the requester shall file only the relevant pages of the statute, including the Legislative Counsel's Digest and the specific statutory changes at issue.
Read, sign, and date this section and insert at the end of the request for a new test claim decision.*

This request for a new test claim decision is true and complete to the best of my personal knowledge, information, or belief.

Michael Byrne
Print or Type Name of Authorized Official

Signature of Authorized Official

Principal Program Budget Analyst
Print or Type Title

Date

*If declarant for this certification is different from the contact identified in section 2 of the form, please provide the declarant's address, telephone number, fax number and e-mail address.
Summary of Mandate

The California Public Records Act (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. On May 26, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state mandated program upon local agencies and K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. On June 3, 2014, California voters approved Proposition 42 (Prop 42) which substantively amended sections of the Government Code relative to the CPRA mandate.

Government Code section 17570 sets forth a process for adopting a new test claim decision based on a subsequent change in law. Section 17570 defines a subsequent change in law as a change in law that requires a finding that an incurred cost is a cost mandated by the state (Government Code section 17514) or is not a cost mandated by the state (Government Code section 17556).

Proposition 42, the California Compliance of Local Agencies with Public Act (Senate Constitutional Amendment 3), was on the June 3, 2014, ballot in California as a legislatively-referred constitutional amendment, where it was approved by the voters. The measure required all local governments and agencies to comply with the CPRA and the Ralph M. Brown Act (Brown Act) and with any subsequent changes to the acts, thus requiring the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. The CPRA provides that public records are open to inspection at all times during the office hours of state or local agencies that retain those records and that every person has a right to inspect any public record. The Act also required agencies to establish written guidelines for public access to documents and to post these guidelines at their offices.

Proposition 42 amended Section 3 of Article I and Section 6 (a)(4) of Article XIII B of the California Constitution and specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance with these laws. Since the ballot measure was approved, no reimbursement is required pursuant to Article XIII B, section 6 of the California Constitution. As a result, the California Public Records Act mandate program no longer exists based on the constitutional amendment (see attachments A, B and C).

The enactment of Prop 42 constituted a "subsequent change in law", as defined in Government Code section 17570, because the voters determined that this mandate is no longer subject to subvention requirements of Article XIII B, Section 6. Therefore, the state's obligation to reimburse affected local agencies has ceased.

The following Government Code Sections no longer create require a new level of service and create reimbursable activities per California Proposition 42 (see attachments A, B and C):

- Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
- Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)
The following is a list of the activities that are no longer reimbursable:

**Reimbursable Activities**
The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

B. Ongoing Activities

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:
- Computer programming, extraction, or compiling necessary to produce disclosable records.
- Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:
1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
3) Sending or transmitting the notice to the requestor.

b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:
1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
3) Sending or transmitting the notice to the requestor.

c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:
1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.
This activity includes:

a. Conferring with the requestor if clarification is needed to identify records requested.
b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
   a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)
According to the Controller’s April 30, 2014, “State Mandated Program Cost Report of Unpaid Claims and Deficiency Pursuant to Government Code Section 17562(b)(2)”, Counties, Cities or Special Districts have a payable net balance of $9,181,522. The Commission on State Mandates adopted a Statewide Cost Estimate on May 30, 2014 and included a state wide cost of $9,674,284. Based on that data, the department of Finance included an estimate of $9,674,284 General Fund in the 2015-16 Governor’s Budget for the cost of the mandate. AS costs are paid two year in arrears, the estimate is to provide reimbursement for costs incurred in the 2013-14 fiscal year.

Based on the forgoing analysis, which provides substantiation that the reimbursable activities in the CPRA mandate cease to be eligible for reimbursement, the State’s liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero from June 3, 2014 and going forward. Proposition 42 amended Section 3 of Article I and Section 6 of Article XIII B of the California Constitution and eliminated the requirements that the State of CA reimburse local government agencies for compliance with these laws. Since the ballot was approved, no reimbursement is required pursuant to Article XIII B, section 6 of the California Constitution. As a result, the California Public Records Act mandate program no longer exists based on the constitutional amendment.
Enclosure

DECLARATION OF MICHAEL BYRNE
DEPARTMENT OF FINANCE

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.

1/15/2015

at Sacramento, CA
Michael Byrne
Request to Adopt a New Test Claim Decision
California Public Records Act
7: Documentation

Attachments

California Constitution, Article I, Section 3 ................................................................. A
California Constitution, Article XIII b, Section 6 ......................................................... B
Senate Constitutional Amendment No. 3 ................................................................. C
CALIFORNIA CONSTITUTION
ARTICLE 1 DECLARATION OF RIGHTS

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the
Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.
SEC. 6. (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 enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.
4. Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.

(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, 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.
Senate Constitutional Amendment No. 3—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 3 of Article I and Section 6 of Article XIII B thereof, relating to public information.

LEGISLATIVE COUNSEL’S DIGEST


The California Constitution provides that the people have the right of access to information concerning the conduct of the people’s business. The California Constitution requires that the meetings of public bodies and the writings of public officials and agencies be open to public scrutiny. The California Constitution requires that 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 the local government for the costs of the program or increased level of service. The California Constitution exempts certain mandates from the requirement to provide a subvention of funds including local agency compliance with the Ralph M. Brown Act (Brown Act).

The California Public Records Act (CPRA) provides that public records are open to inspection at all times during the office hours of the state or local agency that retains those records, and that every person has a right to inspect any public record, except as provided. The Brown Act requires each legislative body of a local agency to provide notice of the time and place for holding regular meetings and requires that all meetings of a legislative body be open and public. Under the act, all persons are permitted to attend any meeting of the legislative body of a local agency, unless a closed session is authorized.

This measure would require each local agency to comply with the CPRA and the Brown Act, and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act which contains findings demonstrating that the statutory enactment furthers the purposes of the people’s right of access to information concerning the conduct of the people’s business. The measure would specifically exempt mandates contained within the scope of these acts, and certain subsequent statutory enactments that contain findings demonstrating that the statutory enactment furthers those same purposes, from the requirement to provide a subvention of funds.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 2013–14 Regular Session commencing on the third day of December 2012, two-thirds of the membership of each house concurring, hereby
proposes to the people of the State of California, that the Constitution of the State be amended as follows:

First—That Section 3 of Article I thereof is amended to read:

<< CA CONSTA Art. 1, § 3 >>

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b)(1) The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

Second—That Section 6 of Article XIII B thereof is amended to read:

<< CA CONSTA Art. 13B, § 6 >>

SEC. 6. (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 enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.

(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.
IN RE TEST CLAIM ON:
Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259
Statutes 1975, Chapters 678 and 1246;
Statutes 1977, Chapter 556;
Statutes 1980, Chapter 535;
Statutes 1982, Chapter 163;
Statutes 1984, Chapters 802 and 1657;
Statutes 1985, Chapter 1053;
Statutes 1990, Chapter 908;
Statutes 1992, Chapters 463 and 970; Statutes 1993, Chapter 926; Statutes 1994, Chapter 923; Statutes 1998, Chapter 620; Statutes 1999, Chapter 83; Statutes 2000, Chapter 982;
Statutes 2001, Chapter 355; and Statutes 2002, Chapters 945 and 1073

Filed on October 15, 2002 (02-TC-10), and June 26, 2003 (02-TC-51)

By County of Los Angeles and Riverside Unified School District, Claimants.

Case No.: 02-TC-10 and 02-TC-51

California Public Records Act

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 May 26, 2011,
Corrected December 17, 2012)
(Served December 17, 2012)

NOTICE OF CORRECTED STATEMENT OF DECISION

The attached is a corrected statement of decision prepared in accordance with Title 2, California Code of Regulations section 1188.2(b). The corrections made to the statement of decision correct the following clerical errors:

The statement of decision expressly states that Government Code section 6254.3 only applies to “state employees, school districts and county offices of education.” However, the statement of decision inadvertently used “K-14 district” instead of “K-12 school district” when further addressing Government Code section 6254.3. As a result, “K-14 district” is replaced with “K-12 school district” on pages 3, 4, 5, 18, 19, and 28 of the corrected statement of decision.

HEATHER HALSEY

Date 12/17/12
BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:
Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259
Statutes 1975, Chapters 678 and 1246;
Statutes 1980, Chapter 535;
Statutes 1982, Chapter 163;
Statutes 1984, Chapters 802 and 1657;
Statutes 1985, Chapter 1053;
Statutes 1990, Chapter 908;
Statutes 1992, Chapters 463 and 970; Statutes 1993, Chapter 926; Statutes 1994, Chapter 923; Statutes 1998, Chapter 620; Statutes 1999, Chapter 83; Statutes 2000, Chapter 982;
Statutes 2001, Chapter 355; and Statutes 2002, Chapters 945 and 1073
Filed on October 15, 2002 (02-TC-10), and June 26, 2003 (02-TC-51)
By County of Los Angeles and Riverside Unified School District, Claimants.

STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on May 26, 2011. Keith Petersen appeared on behalf of Riverside Unified School District. Leonard Kaye and Lieutenant Judy Gerhardt appeared on behalf of Los Angeles County and Los Angeles County Sheriff’s Department. Donna Ferebee appeared on behalf of 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 at the hearing by a vote of 6-0 to partially approve this test claim.

Summary of Findings

This consolidated test claim filed by County of Los Angeles and Riverside Unified School District addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides for the disclosure of public records kept by state, local agencies, kindergarten through 12th grade school districts and community college districts (K-14
districts), and county offices of education. These activities include: (1) providing copies of public records with portions exempted from disclosure redacted; (2) notifying a person making a public records request whether the requested records are disclosable; (3) assisting members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) making disclosable public records in electronic formats available in electronic formats; and (5) removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

In 2004, California voters approved Proposition 59, to incorporate the right of public access to information contained in the CPRA and other open meetings and public records laws, into the California Constitution.

The Commission makes the following findings regarding the test claim statutes:

Public records open to inspection (Gov. Code, §§ 6252, 6253, and 6253.9)

Section 6253 sets forth the right of every person to inspect any public record with exceptions, and the duties of public agencies that receive a request to inspect public records. Section 6253.9 addresses the form of disclosure of public records that are in an electronic format, and sets limits on the costs charged to the requester of information in an electronic format.

Some of the activities imposed by sections 6253 and 6253.9 are not new activities. However, sections 6253 and 6253.9 do impose state-mandated new programs or higher levels of service on local agencies and K-14 districts.

Assistance to members of the public (Gov. Code, § 6253.1)

Section 6253.1 addresses the duty of a public agency to assist members of the public that request to inspect a public record. Section 6253.1 imposes a state-mandated new program or higher level of service on local agencies and K-14 districts.

Initiative, referendum, recall petitions, and petitions for reorganization of K-14 districts (Gov. Code, § 6253.5)

Section 6253.5 excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection. Section 6253.5 also provides exceptions to the exclusion, in which specified individuals are permitted to examine such records.

The plain language of section 6253.5 does not impose any activities on K-14 districts. In addition, K-14 districts are not required to seek permission to examine the documents addressed in section 6253.5, and as a result, section 6253.5 does not impose a state-mandated new program or higher level of service.

Disclosure of home addresses and phone numbers of school district and county office of education employees (Gov. Code, § 6254.3)

Section 6254.3 provides that the home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and prohibits such records from being open to public inspection.
Section 6254.3 authorizes the state, school districts, and county offices of education, to make such information open to public inspection in limited circumstances.

Section 6254.3 imposes a state-mandated new program or higher level of service on K-12 school districts and county offices of education to remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-14 district or county office of education to contact the employee.

Justification for withholding of records (Gov. Code, § 6255)

Section 6255 requires local agencies and K-14 districts to provide a justification for withholding records for which a public records request was made, but providing a justification for withholding records is not a new requirement.

Section 6255 imposes a state-mandated new program or higher level of service to respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part.

Court costs and attorney fees (Gov. Code § 6259)

Section 6259 addresses the orders of the court in proceedings brought by a person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records that a public agency has refused to disclose. Section 6259 requires the court to award court costs and attorney fees to a plaintiff that prevails in litigation alleging the improper withholding of public records by a public agency.

The payment of court costs and attorney fees is not a service to the public. Instead it is a consequence for failing to provide a service to the public when required by law, and as a result, does not constitute a program within the meaning of article XIII B, section 6 of the California Constitution.

Also, the language of section 6259 does not require local agencies or K-14 districts to engage in litigation. Even if the requirement were read into section 6259, section 6259 has not changed, as relevant to this discussion, since 1968. As a result, engaging in litigation is not a state-mandated new program or higher level of service imposed by section 6259.

Costs mandated by the state

Government Code section 17556, subdivision (f), prohibits the Commission from finding costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election. In addition, Government Code section 17556, subdivision (d), prohibits the Commission from finding costs mandated by the state where a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Neither subdivision (f) or (d), preclude the Commission from finding costs mandated by the state because there is no evidence in the law or in the record that the state-mandated activities are necessary to implement Proposition 59, and there is insufficient fee authority to cover the costs of all state-mandated activities. The fee authority applies only to the direct costs of providing an electronic copy to a person pursuant to Government Code section 6254.3, or the direct cost plus the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if: (1) the public agency would be required to produce a copy of an
electronic record and the record is one that is produced only at otherwise regularly scheduled
intervals; or (2) the request would require data compilation, extraction, or programming to
produce the record. Under article XIII B, section 6, all costs mandated by the state, including
direct and indirect costs, are reimbursable. However, the fee authority provided by the CPRA
constitutes offsetting revenue that will be identified in the parameters and guidelines.

For the reasons discussed above, the Commission finds that Government Code sections 6253,
6253.1, 6253.9, 6254.3, and 6255 impose reimbursable state-mandated programs on local
agencies and K-14 districts within the meaning of article XIII B, section 6 of the California
Constitution, and Government Code section 17514, for the following specific new activities:

1. If requested by a person making a public records request for a public record kept in an
electronic format, provide a copy of a disclosable electronic record in the electronic
format requested if the requested format is one that has been used by the agency to create
copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9,
subd. (a)(2) (Stats. 2000, ch. 982).)

2. Within 10 days from receipt of a request for a copy of records determine whether the
request, in whole or in part, seeks copies of disclosable public records in the possession
of the local agency or K-14 district and notify the person making the request of the
determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c)
(Stats. 2001, ch. 982).)

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency
or K-14 district due to “unusual circumstances” as defined by Government Code
section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her
designee, shall provide written notice to the person making the request, setting forth the
reasons of the extension and the date on which a determination is expected to be
dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a
public record:
   a. assist the member of the public to identify records and information that are
      responsive to the request or to the purpose of the request, if stated;
   b. describe the information technology and physical location in which the
      records exist; and
   c. provide suggestions for overcoming any practical basis for denying access to
      the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made
available to the member of the public through the procedures set forth in Government
Code section 6253; (2) the public agency determines that the request should be denied
and bases that determination solely on an exemption listed in Government Code section
6254; or (3) the public agency makes available an index of its records. (Gov. Code,
§ 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

5. For K-12 school districts and county offices of education only, redact or withhold the
home address and telephone number of employees of K-12 school districts and county
offices of education from records that contain disclosable information.
This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

6. For K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

In addition, the Commission concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

Finally, the Commission finds that any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

BACKGROUND

This test claim addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides individuals in California access to information concerning the conduct of the people’s business. Prior to the adoption of the CPRA in 1968, the law governing disclosure of public records consisted of a “hodgepodge of statutes and court decisions.”¹ The CPRA was adopted in order to more clearly define what constitutes a “public record” open to inspection and what information can be or is required to be withheld from disclosure. Since the 1968 adoption of the CPRA there have been numerous amendments to the CPRA; some of these amendments are the subject of this test claim.

On October 15, 2002 the County of Los Angeles filed the California Public Records Act: Disclosure Procedures (02-TC-10) test claim seeking reimbursement for costs associated with the procedures used by counties for responding to public records requests. The County of Los Angeles alleges reimbursable costs for activities such as: (1) assisting members of the

public to identify records and information that are responsive to the request or the purpose of the request; (2) estimate a date and time when the disclosable records will be made available; (3) respond in writing to a written request for inspection or copies of public records when the request is denied in whole or in part; (3) make information that constitutes an identifiable public record kept in electronic format available in the electronic format which it is held; and (4) include as a writing that can constitute a “public record” any photocopy, transmission by electronic mail or facsimile, and any record thereby created, regardless of the manner in which the record has been stored.2

On June 26, 2003, Riverside Unified School District filed the California Public Records Act (02-TC-51) test claim, which similarly seeks reimbursement for costs associated with complying with the CPRA. Riverside Unified School District alleges reimbursable state-mandated costs for K-14 districts and county offices of education to engage in activities including: (1) providing redacted copies of requested documents deleting portions exempted by law; (2) providing copies of public records to the public, including the determination and collection of the fee; (3) promptly notifying a person making a request for a copy of records, within 10 days from receipt of the request, of the determination of whether the requested records are disclosable records; and (4) removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by that employee.3

In 2004, California voters approved Proposition 59, which amended article I, section 3 of the California Constitution to include the right of public access to writings of government officials. In light of Proposition 59, it was determined that the California Public Records Act: Disclosure Procedures (02-TC-10) test claim and the California Public Records Act (K-14) (02-TC-51) test claim would require consideration of Government Code section 17556, subdivision (f), which provided that the Commission shall not find costs mandated by the state if the Commission finds:

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 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.4

However, on March 13, 2007, Government Code section 17556, subdivision (f), was found unconstitutional by the superior court in California School Boards Association (CSBA), et al. v. Commission on State Mandates, et al. [No. 06CS01335]. The court’s judgment enjoined the Commission from taking any action to implement Government Code section 17556, subdivision (f). This decision was appealed, and as a result, on August 2, 2007 the test claims were removed from the Commission’s hearing calendar until a final court decision in California School Boards Association, et al. v. Commission on State Mandates, et al.

On March 9, 2009, the Court of Appeal found Government Code section 17556, subdivision (f), constitutional except for the language “reasonably within the scope of.” As a result of the

2 02-TC-10 test claim, supra, pgs. 1-9.
3 02-TC-51 test claim, supra, pgs. 26-28.
court’s decision, Government Code section 17556, subdivision (f) provides that the Commission shall not find costs mandated by the state if the Commission finds:

The statute or executive order imposes duties that are necessary to implement, or are 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.\(^5\)

On November 2, 2010 the Commission consolidated the California Public Records Act: Disclosure Procedures (02-TC-10) and California Public Records Act (K-14) (02-TC-51) test claims to form the consolidated California Public Records Act (02-TC-10 and 02-TC-51) test claim.

A. Claimants’ Position

The claimants allege that the test claim statutes impose reimbursable state-mandated activities. Activities which are alleged to have resulted in reimbursable costs include: assisting members of the public in making an effective public records request, disclosing records in an electronic format, redacting information exempt from disclosure, limiting disclosure of K-14 district employees’ home address and telephone numbers, removing a K-14 district employee’s home address and telephone numbers when requested by the employee, and paying attorney fees to a prevailing plaintiff that brought suit against a K-14 district for improperly withholding public records.\(^6\)

On March 25, 2004, the California Community Colleges Chancellor’s Office (Chancellor’s Office) indicated that it would defer to the analysis of the Department of Finance (Finance) regarding the test claim, because the CPRA applies equally to all government entities, and as a result, there is nothing unique to the college districts that requires a response from the Chancellor’s Office. Interpreting this as a comment that districts are not entitled to reimbursement, the school district claimant, Riverside Unified School District, argues that the Chancellor’s Office comments must be disregarded. The claimant states:

The comment that the statute in question applies equally to all government entities is not one of the valid exceptions to mandate reimbursement set forth in Government Code section 17556. Therefore, it must be disregarded.

If, by chance, CCC intended to object to the test claim on the grounds that the statute in question is a law of general application, that too must fail. \([\it{[A]}]\) . . . . A law of general application must make local agencies indistinguishable from private employers. The test claim statutes apply only to school districts, county offices of education and community college districts and not to private employers.\(^7\)

On January 18, 2011 the County of Los Angeles submitted comments in response to the Commission’s request for comments regarding the effect of Proposition 59 on the consolidated test claims.\(^8\)

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\(^6\) 02-TC-10 Test Claim, \(supra\), 02-TC-51 Test Claim Filing, \(supra\).

\(^7\) Claimant response to the Chancellor’s Office Comments, dated April 30, 2004.
California Public Records Act (02-TC-10 and 02-TC-25) test claim. The County of Los Angeles argues:

[T]he public records act requirements included in the test claim legislation were in addition to those found in prior law and were not available or necessary in implementing the . . . declaration of fundamental rights in the California Public Records Act of 1968 and Proposition 59. In addition, the test claim legislation was not expressly included in Proposition 59.

Accordingly, the County finds that the test claim legislation did not impose duties that are necessary to implement, or are expressly included in, the Proposition 59 ballot measure approved by the voters. Consequently, the ballot initiative funding disclaimer cannot be applied to disqualify reimbursement of the County’s costs . . . 8 (Original underline.)

On April 18, 2011 both claimants submitted comments in response to the draft staff analysis, which will be addressed in the discussion below. 9

B. Department of Finance’s Position (Finance)

On November 20, 2002, Finance submitted comments in response to the unconsolidated California Public Records Act: Disclosure Procedures (02-TC-10) test claim. Finance found that a portion of the test claim may be a state mandate. Finance states:

The test claim legislation specifies the type of response that the claimant must give to the requestor and the timelines that must be met which could potentially result in a greater number of staff hours spent researching and helping requestors. Anything above and beyond staff time dedicated to expediting and or [sic] researching requests would not be considered state-mandated activities, and additional activities and equipment noted by the claimant are considered discretionary and therefore not reimbursable. 10

On January 14, 2011, Finance submitted comments in response to the Commission’s request for comments regarding the effect of Proposition 59 on the consolidated California Public Records Act (02-TC-10 and 02-TC-51) test claim. Finance argues that the Commission should find that there are no costs mandated by the state because the test claim statutes are necessary to implement Proposition 59.

On April 19, 2011, Finance submitted comments in response to the draft staff analysis, which echo the arguments made in Finance’s January 14, 2011 comments. 11

C. Chancellor’s Office Position

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8 Claimant comments in response to request for comments, dated January 18, 2011.
9 Claimants’ responses to draft staff analysis, supra.
10 Finance comments on 02-TC-10, supra.
11 Finance comments on draft staff analysis, supra.
On March 25, 2010, the Chancellor’s Office submitted comments in response to the unconsolidated California Public Records Act (K-14) (02-TC-51) test claim. The Chancellor’s Office states in relevant part:

The Chancellor’s Office chooses not to respond to this test claim. We don’t have anything to add to this issue, because the statute in question applies equally to all government entities and there’s nothing unique to college districts that requires a response. Therefore, we defer to whatever analysis is provided to you by the Department of Finance.12

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution13 recognizes the state constitutional restrictions on the powers of local government to tax and spend.14 “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.”15 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.16 In addition, the required activity or task must be new, constituting a “new program,” and it must create a “higher level of service” over the previously required level of service.17

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

12 Chancellor’s Office comments on 02-TC-51 test claim, dated March 25, 2004.
13 California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “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 enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”
14 Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th727, 735 (Kern High School Dist.).
To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation. A “higher level of service” occurs when there is “an increase in the actual level or quality of governmental services provided.” Finally, the newly required activity or increased level of service must impose costs mandated by the state.

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. 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.”

A. Some of the test claim statutes impose state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution

The following discussion will introduce each test claim statute or groups of test claim statutes with a header that describes the content of the statutes. The discussion will then analyze whether each statute or groups of statutes under the header impose state-mandated new programs or higher levels of service.

Public records open to inspection (Gov. Code, §§ 6252, 6253, and 6253.9)

Section 6252 sets forth the definitions of terms used in the CPRA. Section 6253 sets forth the right of every person to inspect any public record, with exceptions, and the duties of public agencies, state and local, and K-14 districts that receive a request to inspect public records. Section 6253.9 addresses the form of disclosure of public records that are in an electronic format, and sets limits on the costs charged to the requester of information in an electronic format.

Interpreting statutes begins with examining the statutory language, giving the words their ordinary meaning, and if the words are unambiguous the plain meaning of the language.

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19 San Diego Unified School Dist., supra, 33 Cal.4th 859, 878; Lucia Mar, supra, 44 Cal.3d 830, 835.

20 San Diego Unified School Dist., supra, 33 Cal.4th 859, 877.


The plain language of Government Code sections 6253 and 6253.9 require local agencies and K-14 districts to engage in the following activities:

1. Make public records open to inspection at all times during the office hours of the local agency or K-14 district, by every person, except for public records exempted from disclosure or prohibited from disclosure. (Gov. Code, § 6253, subd. (a) (Stats. 2001, ch. 982); and Gov. Code, § 6253.9, subd. (a)(1) (Stats. 2000, ch. 982).)

2. Make any reasonably segregable portion of a record available for inspection after the deletion of the portions that are exempted by law. (Gov. Code, § 6253, subd. (a) (Stats. 2001, ch. 982).)

3. Provide a copy, or exact copy unless impractical, of disclosable records, upon request for a copy or exact copy of records that reasonably describes an identifiable record or records. (Gov. Code, § 6253, subd. (b) (Stats. 2001, ch. 982).)

4. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

5. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

6. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district, due to “unusual circumstances” as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

The Commission finds that the above activities are mandated by the state.

In addition, the claimants argue that the provision of a copy of disclosable records pursuant to Government Code section 6253, subdivision (b), includes “the determination and collection of the fee” that local agencies and K-14 districts are authorized to charge for duplication of public records. Subdivision (b) provides in relevant part:

Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon a payment of fees covering direct costs of duplication, or a statutory fee if applicable.

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The claimants argue, “The unambiguous plain meaning of this Section is that collection of the fee is a condition precedent to providing the records, so it is a necessary activity to comply with the mandate to provide the records. Furthermore, to collect the fee, the amount must be determined.” However, the plain language of subdivision (b) does not require public agencies to determine or collect a fee. Instead, it speaks to the timing of the mandated activity of providing a copy of a public record. In addition, under Government Code section 6253, subdivision (e), which allows local agencies and K-14 districts to adopt requirements that provide greater access to records, local agencies and K-14 districts can waive fees, and thus, the collection and determination of a fee is not a necessary activity to comply with the mandate to provide public records. As a result, the Commission finds that local agencies and K-14 districts are not mandated to determine or collect fees for the duplication of public records.

The Commission further finds that the above state-mandated activities carry out the governmental function of providing a service to the public by providing access to information regarding the business of the public, and as a result, constitute a program within the meaning of article XIII B, section 6 of the California Constitution. Although the above activities constitute “programs” it is necessary to determine whether they are new in comparison with the legal requirements in effect immediately before the enactment of the test claim legislation. The following discussion will address each activity in the order listed above.

Since 1968, local agencies and K-14 districts were required to make public records open to inspection at all times during the office hours of the local agencies and K-14 districts, by every person, except for public records exempted from disclosure or prohibited from disclosure. However, the claimants argue that “public records” that are required to be open for inspection did not include records made by “photocopying, transmitting by electronic mail or facsimile [or]. . . . any record thereby created, regardless of the manner in which the record has been stored,” until the definition of “writing” as used in the CPRA was amended in 2002 to specifically include these methods of keeping information. Thus, the claimants assert that publicly disclosing information kept in these formats is a new activity.

However, in 1970 the Legislature defined “public records” to include:

[A]ny writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Italics added.)

“Writing” as used in the CPRA was defined to include:

26 North County Parents Organization v. Dept. of Education (4th. Dist. 1994) 23 Cal.App.4th 144, 148. The court, in discussing former Government Code section 6253.1 (currently Government Code section 6253, subdivision (e)) found that, “This section gives an agency power to ‘adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter.’ The trial court apparently concluded that this provision permits an agency to waive or reduce its fees. We agree. A reduction in copy fee permits ‘greater access’ to records.”

27 Former Government Code section 6253 (Stats. 1968, ch.1473).

28 02-TC-10 test claim, supra, p. 8, citing to Statutes, 2002, chapter 945.

29 Former Government Code section 6252, subdivision (d).
[H]andwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.30 (Italics added.)

The above language indicates that the Legislature intended public records to include every conceivable kind of record that is involved in the governmental process. To find otherwise would conflict with the purpose and focus of the CPRA, which is to make disclosable information open to the public, not simply the documents prepared, owned, used, or retained by a public agency.31 This interpretation is consistent with the court’s discussion of what constitutes a public record in San Gabriel Tribune v. Superior Court, which included in its discussion the following description by the Assembly Committee on Statewide Information Policy:

This definition [of what constitutes a public record] is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed.32

As a result, the Commission finds that making public records open to inspection by every person at all times during the office hours of the local agency and K-14 district does not constitute a new program or higher level of service regardless of the form which the public records are kept.

The claimants also argue that prior to 1981 state and local agencies and K-14 districts were not required to provide redacted copies of requested documents.33 In 1981, the CPRA was specifically amended to provide, “Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law.”34 However, this amendment only codified the interpretation of the CPRA accorded to it by case law. Prior to the 1981 amendment courts already held that the CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying.35 In 1979, after noting that the focus of the CPRA is information and not documents the court in Nor. Cal. Police Practices Project v. Craig concluded:

[W]here nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is

30 Former Government Code section 6252, subdivision (e).
33 02-TC-51, supra, pgs. 11 and 26, citing to Statutes 1981, chapter 968.
required to serve the objective of the [CPRA] to make public records available for
public inspection and copying unless a particular statute makes them exempt.\[36\]

As a result, the Commission finds that the general duty to make any reasonably segregable
portion of a record available for inspection after the deletion of the portions that are exempted by
law does not constitute a new program or higher level of service subject to articles XIII B,
section 6 of the California Constitution.

In regard to providing copies or exact copies of public records upon a request that reasonably
describes an identifiable record, public agencies have been required to engage in this activity
since the 1968 enactment of the CPRA. Former Government Code sections 6256 and 6257
provided:

6256. Any person may receive a copy of any identifiable public record or shall be
provided with a copy of all information contained therein. Computer data shall be
provided in a form determined by the agency.

6257. A request for a copy of an identifiable public record or information
produced therefrom, or certified copy of such record, shall be accompanied by
payment of a reasonable fee or deposit established by the state or local agency, or
the prescribed statutory fee, where applicable.\[37\]

A “certified copy” is a duplicate of an original document, certified as an exact reproduction of
the original.\[38\] Thus, since 1968 public agencies were required to provide copies or exact copies
of public records upon a request of identifiable public records. As a result, the Commission finds
that providing a copy, or exact copy unless impractical, of disclosable records, upon request for a
copy or exact copy of records that reasonably describes an identifiable record, does not constitute
a new program or higher level of service subject to article XIII B, section 6 of the California
Constitution.

Although the Commission has found that making public records, including records in an
electronic format, open to inspection at all times does not constitute a new program or higher
level of service, providing an electronic copy of a public record kept in an electronic format does
constitute a new program or higher level of service. Prior to 2000, public agencies were not
required to provide the public with an electronic copy of a public record kept in an electronic
format. Instead, public agencies were given discretion to provide “[c]omputer data . . . in a form
determined by the agency.”\[39\] One of the purposes for enacting section 6253.9, and requiring
public agencies to provide an electronic copy, was to substantially increase the availability of
public records to the public and to reduce the cost and inconvenience to the public associated

\[36\] Ibid. This interpretation of the CPRA is retroactive to the initial enactment of the CPRA in
1968 as it involves no novel or unforeseeable judicial expansion of the statutory language in
question. For retroactivity of judicial statutory interpretation see County of San Diego v. State

\[37\] Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473).

\[38\] Black’s Law Dictionary (Seventh Ed. 1999) p. 337.

\[39\] Former Government Code section 6253, subdivision (b) (Stats. 1998, ch. 620).
with large volumes of paper records. In essence, the intent was to provide a higher level of the service of providing public records to the public. As a result, the Commission finds that the requirement to provide an electronic copy of a public record kept in an electronic format constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

The claimants have pled the activities mandated by Government Code section 6253, subdivision (c), relating to providing a person making a public records request notice of the determination of whether records are disclosable and whether an extension is needed by the public agency to make a determination, as added in 1981. Immediately prior to 1981, public agencies were not required to engage in these activities. As a result, the Commission finds that the activities mandated by Government Code section 6253 constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

In summary, the Commission finds the following activities constitute state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution.

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district, and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

Assistance to members of the public (Gov. Code, § 6253.1)

Section 6253.1 addresses the duty of a public agency to assist members of the public that request to inspect a public record. The Commission finds that section 6253.1 mandates local agencies and K-14 districts to engage in the following activities:


02-TC-51 test claim, supra, pgs. 11 and 26-27. Statutes 1981, chapter 968.
When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

b. describe the information technology and physical location in which the records exist; and

c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This duty is not triggered if: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

The claimants pled Government Code section 6253.1 as added in 2001.42 Immediately before 2001, local agencies and K-14 districts were not required to engage in the activities mandated by section 6253.1. In addition, the above activities are unique to public agencies and implement the state policy of increasing access to information regarding the people’s business.43 As a result, the Commission finds that the activities mandated by Government Code 6253.1 constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Initiative, referenda, recall petitions, and petitions for reorganization of K-14 districts (Gov. Code, § 6253.5)

Section 6253.5 excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection. Section 6253.5 also provides exceptions to the exclusion, in which specified individuals are permitted to examine such records.

The claimants assert that section 6253.5 requires K-14 districts to engage in the following activity:

[W]hen necessary, [examine] petitions for the district when petitions are filed to fill vacancies on the governing board and petitions for recall, after obtaining approval of the appropriate superior court.44

However, section 6253.5 does not impose any requirements on K-14 districts. As described above, section 6253.5 prohibits disclosure of petitions, and provides exceptions to this

43 Government Code section 6250, which states that access to information concerning the people’s business is a fundamental and necessary right of every person in this state.
44 02-TC-51 test claim, supra, p. 28.
prohibition. One of the exceptions allows a K-14 district attorney to review a petition upon the approval of the appropriate superior court. This exception does not require K-14 districts to seek this approval. As a result, the Commission finds that Government Code section 6253.5 does not impose any state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Disclosure of home addresses and phone numbers of school district and county office of education employees (Gov. Code, § 6254.3)

Section 6254.3 only applies to state employees, school districts, and county offices of education. Section 6254.3 provides that the home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and prohibits such records from being open to public inspection. Section 6254.3 authorizes the state, school districts, and county offices of education, to make such information open to public inspection in limited circumstances.

Specifically, section 6254.3 provides:

(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

Although, the language of subdivision (a) is prohibitory in nature, section 6254.3 must be read in the context of the whole statutory scheme and not as individual parts or words standing alone. As discussed above, section 6253 of the CPRA requires the redaction of information that is

exempted or prohibited from disclosure from records that contain disclosable information. Section 6254.3 prohibits the disclosure of the home address and telephone number of employees of K-14 school districts and county offices of education. Thus, if a record that contains disclosable information also contains the addresses and telephone numbers of employees of K-14 school districts and county offices of education, the addresses and telephone numbers must be redacted from the record, except in the limited circumstances listed in section 6254.3, subdivisions (a)(1)-(4), in which K-12 school districts and county offices of education have the discretion to release this information.

Pursuant to the plain language of the statute read in light of the whole CPRA, the Commission finds that section 6254.3 requires K-12 school districts and county offices of education to engage in the following activities:

1. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

   This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

2. Remove the home address and telephone number of an employee from any mailing list maintained by the K-12 school district or county office of education if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

In order to determine whether the activity required by section 6254.3 constitutes a state-mandated activity it is necessary to look at the underlying program to determine if the claimant’s participation in the underlying program is voluntary or legally compelled. Here, K-12 school districts and county offices of education are required to remove the home address and telephone number of an employee from any mailing list maintained by the K-12 school districts or county offices of education if requested by the employee. “Any mailing list” includes mailing lists that K-12 school districts and county offices of education are legally required to maintain and those voluntarily maintained by the K-12 school districts or county offices of education. In regard to mailing lists that K-12 school districts and county offices of education voluntarily maintain, the requirement to remove from the mailing list the home address and telephone number of an employee that requests the removal is triggered by the decision by K-12 school districts and county offices of education to voluntarily maintain a mailing list. As a result, the Commission

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46 Kern High School Dist., supra, 30 Cal.4th 727, 743.
finds in regard to voluntarily maintained mailing lists, the activity required by section 6254.3 is not a state-mandated activity. However, the Commission finds that the following requirements do constitute state-mandated activities:

1. For K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

2. For K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

The claimants have pled section 6254.3 as last amended in 1992. Immediately prior to the 1992 amendment, section 6254.3 only applied to state employers and state employees. In addition, although the general duty to redact information that is exempt or prohibited from disclosure existed prior to the adoption of section 6254.3, the specific duty to redact the home address and telephone number of an employee of a K-12 school district or county office of education did not exist. Thus, the scope of what must be withheld from disclosure, and as a result, redacted from records containing disclosable information increased. As a result, the state-mandated activities imposed by section 6254.3 are new.

In addition, these mandates impose requirements that are unique to public agencies and implement the state policy of increasing access to information regarding the people’s business while being mindful of the right of individuals to privacy. As a result, the Commission finds

47 Statutes 1992, chapter 463.
48 Government Code section 6254.3 as added by Statutes 1984, chapter 1657.
49 Government Code section 6250, which states, “In enacting [the CPRA], the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”
that Government Code section 6254.3 imposes state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution:

Justification for withholding of records (Gov. Code, § 6255)

Section 6255 addresses the provision of a justification for withholding records for which a public records request was made. The Commission finds that section 6255 mandates local agencies and K-14 districts to engage in the following activities:

1. Justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255, subd. (a).)

2. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b).)

The claimants pled section 6255 as last amended in 2000. Since 1968, section 6255 required the justification of withholding records by demonstrating that the record in question is exempt or that the public interest served by not disclosing the record outweighs the public interest served by disclosing the record. As a result, that state-mandated activity does not constitute a new program or higher level of service.

However, immediately prior to the amendment of section 6255 in 2000, districts were not required to respond to written requests in writing that includes a determination that the request is denied. In addition, this mandate imposes requirements that are unique to public agencies and implement the state policy of increasing access to information regarding the people’s business. As a result, the Commission finds that Government Code section 6255, subdivision (b), imposes the following state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

Court costs and attorney fees (Gov. Code § 6259)

In 1968 Government Code section 6259 was enacted as part of the CPRA. Since its original enactment in 1968, section 6259 has addressed the orders of the court in proceedings brought by a person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records that a public agency has refused to disclose. Specifically, since 1968 the court has been required to order the officer or person charged with withholding the requested records to disclose the public record or show cause why he or she should not disclose the

50 Statutes 2000, chapter 982.
51 Government Code section 6250, which states that access to information concerning the people’s business is a fundamental and necessary right of every person in this state.
52 Statutes 1968, chapter 1473.
If the court determines that the public official was not justified in refusing to disclose the record, the court is required to order the public official to make the record public.  

In 1975, section 6259 was amended to add the provisions that a court is required to award court costs and reasonable attorney fees to the plaintiff if public records are disclosed as a result of the plaintiff filing suit. In addition, if the court finds that the plaintiff’s case is clearly frivolous, the court is required to award court costs and reasonable attorney fees to the public agency. In 1984 section 6259 was amended to add the procedure for appealing a decision by a court.

The K-14 district claimant argues that section 6259 imposes the following reimbursable state-mandated new program or higher level of service:

> [W]hen ordered by a court, [pay] to a prevailing plaintiff his or her court costs and reasonable attorney fees.

Thus, the K-14 district claimant alleges that payment of court costs and reasonable attorney fees is a reimbursable state-mandated new program or higher level of service. However, the payment of court costs and reasonable attorney fees is not a program or service provided to the public. Instead, it is a consequence of failing to provide a legally required program or service, specifically the service of making disclosable public records open for inspection by the public or providing copies of the disclosable public records to the public.

The K-14 district claimant disagrees with this characterization and argue that the “court’s determination is not a finding of a failure to implement the mandate to disclose or not to disclose the records, but instead, it is a conclusion as to whether the justification for the action was reasonable.” However, if a court finds that a local agency or K-14 district was unjustified in its

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55 Former Government Code section 6259, as amended by Statutes 1975, chapter 1246. Currently, Government Code section 6259, subdivision (d), as amended by Statutes 1993, chapter 926. See also, Los Angeles Times v. Alameda Corridor Transportation Authority (2001) 88 Cal.App.4th 1381, 1390-1391, in which the court defines “prevail,” as used in Government Code section 6259, as a situation when the plaintiff files an action which results in the defendant releasing a copy of a previously withheld document. The court further finds that an action results in the release of previously withheld document if the lawsuit motivated the defendants to produce the documents.

56 Ibid.

57 Government Code section 6259, subdivision (c).

58 02-TC-51 test claim, supra, p. 28.

59 Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, p. 4-5.
decision not to disclose a public record, and thus failed to disclose public records as mandated by the CPRA, the consequence is the payment of court costs and attorney fees. Thus, the Commission finds that payment of court costs and attorney fees pursuant to Government Code section 6259 is not a state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

In response to the draft staff analysis, the K-14 district claimant expands its allegation to provide that the various duties resulting from the CPRA (including those stemming from a statute that was not pled in this test claim), in conjunction with section 6259, mandate litigation as a whole, as opposed to only paying court costs and reasonable attorney fees pursuant to section 6259 as pled in the test claim. Similarly, the county claimant expands its allegations to provide that litigation costs, including possible court costs and attorney fees, are reimbursable state-mandated costs.

The claimants’ responses to the draft staff analysis do not allege that Government Code section 6259 specifically requires local agencies or K-14 districts to engage in litigation. Rather, the claimants’ responses provide that local agencies and K-14 districts are generally required to disclose public records by section 6253, local agencies and K-14 districts have an affirmative duty not to disclose information described in section 6254 (which was not pled), local agencies and K-14 districts are required to provide a written justification of why a public record is withheld pursuant to section 6255, that nondisclosure of a public record and justifications provided pursuant to sections 6254 and 6255 are heavily litigated, and section 6259 requires a court to award court costs and attorney fees to a plaintiff if a local agency or K-14 district unjustifiably refused to disclose a public record. From this the claimants argue:

The litigation costs incurred by the public agency are a necessary and reasonable consequence of its statutory duty to comply with Sections 62253 [sic], 6254, and 6255. Therefore, to the extent that the subject matter of the litigation pertains to information not to be disclosed pursuant to legislation enacted after December 31, 1974, the cost and fees incurred by the public agency to respond to

60 The County of Los Angeles argues in its response to the draft staff analysis that attorney costs associated with any legal analyses needed to determine whether to release a public record is a reimbursable state-mandated cost (See Claimant (County of Los Angeles) response to draft staff analysis, dated April 18, 2011, pgs. 4-6). However, the findings made in this section of the analysis only address court costs and attorney fees as awarded by a court pursuant to Government Code section 6259. They do not address attorney costs associated with any state-mandated new program or higher level of service found to be imposed by the CPRA in this test claim.

61 Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, pgs. 4-5. In the claimant’s response, the claimant cites to Government Code section 6254, which was not pled in this test claim, as being a source of the requirement to engage in litigation.

62 Claimant (County of Los Angeles) response to draft staff analysis, supra, pgs. 4-6.

63 Claimant (Riverside Unified School District) response to draft staff analysis, supra, pgs. 4-5. Claimant (County of Los Angeles) response to draft staff analysis, supra, pgs. 4-6.
the writ and the court are reimbursable, as well as any award assessed against the public agency.\textsuperscript{64}

Pursuant to the claimants’ argument Government Code section 6254 is part of the basis upon which the activity of engaging in litigation arises from. As a result, the Commission would be required to make specific findings on section 6254. However, the claimants have not pled section 6254, and thus, the Commission does not have jurisdiction to make any findings on section 6254.\textsuperscript{65}

In regard to Government Code sections 6255 and 6259, these sections, read together or separately, do not require local agencies and K-14 districts to engage in litigation. Instead, as described above, section 6255 requires local agencies and K-14 districts to provide a justification of why a public record is being withheld, and section 6259 sets forth the duties of a court when a lawsuit is brought under the CPRA. In addition, even if litigation were implied from the duties imposed on local agencies and K-14 districts to provide a justification for withholding a public record and a court’s duties when litigation is initiated, these duties have been present since the original enactment of the CPRA in 1968, and as a result, the implied duty to engage in litigation would have been present since 1968.

Since 1968, section 6255 has required local agencies and K-14 districts to justify withholding any record.\textsuperscript{66} The only substantive change that has occurred since 1968 was the addition of the requirement to provide the justification in writing when the public records request was made in writing. This additional requirement does not create a new duty to engage in litigation. Similarly, since 1968, section 6259 sets forth the duties of the court when litigation is initiated.\textsuperscript{67} The only substantive changes to section 6259 are the addition of the requirement on the court to award court costs and attorney fees to a prevailing plaintiff, and the procedures to appeal a court’s decision. Neither of these additions creates a new duty to engage in litigation. As a result, the Commission finds that Government Code sections 6255 and 6259 do not impose a state-mandated new program or higher level of service to engage in litigation.

B. The state-mandated new programs or higher levels of service impose costs mandated by the state on counties, K-14 districts, county offices of education within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556

\textsuperscript{64} Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, pgs. 4-5.

\textsuperscript{65} Pursuant to former Government Code section 17557, subdivision (c), as amended by Statutes 1998, chapter 681, which was in effect at the time of the filing of this test claim, a claimant may amend a test claim at “any time prior to a commission hearing on the claim without affecting the original filing date as long as the amendment substantially relates to the original test claim.”

\textsuperscript{66} Former Government Code section 6255, as added by Statutes 1968, chapter 1473.

\textsuperscript{67} Former Government Code section 6259, as added by Statutes 1968, chapter 1473.
In order for the test claim statutes to impose a reimbursable state-mandated program under the California Constitution, the test claim statutes must impose costs mandated by the state.\(^{68}\) Government Code section 17514 defines “cost mandated by the state” as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

“Any increased costs” for which claimants may seek reimbursement include both direct and indirect costs.\(^{69}\)

The claimants estimated that they “incurred more than $1,000 in staffing and other costs, annually, in excess of any fees collected pursuant to Government Code Section 6253, subdivision (b) and funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002”\(^{70}\) to implement all duties alleged by the claimants to be mandated by the state. Thus, the claimants have met the minimum burden of showing costs necessary to file a test claim pursuant to Government Code section 17564.

However, pursuant to Government Code section 17556, subdivision (f), Finance argues that the claimants are not entitled to reimbursement for the state-mandated new program or higher levels of service imposed by Government Code sections 6253, 6253.9, 6253.1, 6254.3, and 6255, because the activities mandated by the code sections are necessary to implement a ballot measure approved by voters.\(^{71}\) In addition, under Government Code section 6253.9, the claimants have fee authority for the costs of producing electronic copies of public records kept in an electronic format. Thus, it is also necessary to determine whether the claimants are precluded from reimbursement pursuant to the “ballot measure” and “fee authority” exceptions to reimbursement found in Government Code section 17556, subdivisions (f) and (d).

**Ballot measure exception**

Government Code section 17556, subdivision (f), prohibits a finding of costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election.\(^{72}\) The prohibition applies regardless of whether the statute was enacted before or after the date on which the ballot measure was approved by voters.

\(^{68}\) *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

\(^{69}\) Government Code section 17564.

\(^{70}\) 02-TC-51 test claim, Exhibit 1 Declarations of Michael H. Fine, of Riverside Unified School District, and Cheryl Miller of Santa Monica Community College District.


The claimants argue that the ballot measure exception to reimbursement in Government Code section 17556, subdivision (f), does not apply here because the test claim statutes were “enacted long after the advent of the declaration of rights in the 1968 California Public Records Act and [were] not available, let alone necessary, for the implementation of those rights, subsequently incorporated in Proposition 59.” In addition, the claimants note that Proposition 59 does not expressly include the activities mandated by the test claim statutes.

In 2004, California voters approved Proposition 59 to incorporate the right of access to information concerning the people’s business that was already provided by various state laws, including the CPRA, into article I, section 3 of the California Constitution. The amendment to the Constitution provides in relevant part:

The people have the right of access to information concerning the conduct of the people’s business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

The purpose of Proposition 59 was to “create a constitutional right for the public to access government information. As a result, a government entity would have to demonstrate to a somewhat greater extent than under current law why information requested by the public should be kept private.”

None of the state-mandated new programs or higher levels of service imposed by the test claim statutes are expressly included in the Proposition 59. As a result, it is necessary to determine whether the state-mandated activities are “necessary to implement” Proposition 59.

The court in California School Boards Association v. State of California, found that duties imposed by a test claim statute or executive order that are not expressly included in a ballot measure approved by the voters in a statewide or local election are “necessary to implement” the ballot measure pursuant to Government Code section 17556, subdivision (f), when the additional requirements imposed by the state are intended to implement the ballot measure mandate, and the costs are, in context, de minimis such that the requirements are considered part and parcel of the underlying ballot measure mandate. The court also makes a distinction between activities that are “necessary to implement” a ballot measure, and those that are “reasonably within the scope of” a ballot measure. In essence, for an activity to be necessary to implement a ballot measure, it must be more narrowly related to the ballot measure than an activity that simply has anything to do with the subject matter of the ballot measure.

The court borrowed this analysis from the California Supreme Court’s decision in San Diego Unified School Dist. which addressed whether state imposed procedural requirements that exceeded federal due process requirements constituted a federal mandate. The court found that the state requirements were designed to make the underlying federal due process right

73 Claimant Comments in Response to Request for Comments, dated January 18, 2011.
76 Id. at pgs. 1213-1216.
enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective due process rights. Thus, the state requirements were merely incidental to fundamental federal due process requirements and viewed singly or cumulatively they did not significantly increase the costs of compliance with the federal mandate.77

Here, because Proposition 59 incorporated the fundamental right of access to information present in the CPRA into the constitution, and the provisions of the CPRA are intended to implement the right of access to public information set forth in the CPRA, it could be argued that the provisions of the CPRA also are intended to implement the ballot measure mandate (i.e. providing open access to information concerning the conduct of the people’s business). However, unlike in San Diego Unified School Dist., the state-mandated activities imposed by the test claim statutes, such as providing electronic copies to the public, assisting members of the public to make a request, and providing a written denial to a written request for public records, are not merely incidental to the right of access to information concerning the conduct of the people’s business. Instead they impose additional requirements unnecessary to enforce the general right to access information regarding the people’s business, and are not narrowly tailored to fit the definition of “necessary to implement.”

Finding that the state-mandated activities are necessary to implement Proposition 59 would suggest that any activity that has anything to do with open government would be necessary to implement Proposition 59. In addition, there is no concrete evidence in the law or in record that the costs of the state-mandated activities, singly or cumulatively, do not significantly increase the cost of complying with the ballot measure mandate.78 79 As a result, the Commission finds that the record supports the finding of costs mandated by the state and that the Government Code section 17556, subdivision (f), exception does not apply to deny these activities.

Fee authority exception

Government Code section 17556, subdivision (d), prohibits a finding of costs mandated by the state where a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. In addition, the court in Clovis Unified School Dist. v. Chiang notes that to the extent that a local agency or school district has the authority to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.80

In regard to providing electronic copies of disclosable public records kept in an electronic format, Government Code section 6253.9, subdivision (a)(2), gives fee authority to local agencies and K-14 districts for the “direct costs” of producing a record in an electronic format.

77 San Diego School Dist., supra, 33 Cal.4th at p. 889.


79 Pursuant to Government Code section 17564, the claimants estimated under the penalty of perjury that they “incurred more than $1,000 in staffing and other costs, annually,” in order to meet the burden of showing costs necessary to file a test claim.

The fee authority that public agencies have under subdivision (a)(2) is limited to the direct cost of producing an electronic copy. The fee authority does not attach to the indirect costs such as the inspection of and handling of the file. Under article XIII B, section 6, all costs mandated by the state, including direct and indirect costs, are reimbursable. As a result this fee authority is insufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556, subdivision (d).

Government Code section 6253.9, subdivision (b), expands a public agency’s fee authority to include the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if: (1) the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals; or (2) the request would require data compilation, extraction, or programming to produce the record. This increased fee authority, however, is not expanded to all costs, both direct and indirect. As a result, the Commission finds that the fee authority under Government Code section 6253.9, subdivision (b), is insufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556, subdivision (d).

Government Code section 6253.9, subdivisions (a)(2) and (b), however, provides offsetting revenue for the mandated activity of providing an electronic copy of disclosable public records kept in an electronic format and will be identified in the parameters and guidelines.

Pursuant to the above discussion, the Commission finds that the state-mandated new programs or higher levels of service impose costs mandated by the state on local agencies and K-14 districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

CONCLUSION

The Commission concludes that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255 impose reimbursable state-mandated programs on local agencies and K-14 districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)

2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the

81 Government Code section 17564.
reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a public record:
   a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
   b. describe the information technology and physical location in which the records exist; and
   c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

5. For K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

6. For K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

In addition, the Commission concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting
revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

Finally, the Commission finds that any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.
BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES:

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

Period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.

Case No.: 02-TC-10 and 02-TC-51

California Public Records Act

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

(Adopted April 19, 2013)
(Served April 25, 2013)
(Corrected July 26, 2013)
(Served August 2, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted a statement of decision and parameters and guidelines on consent during a regularly scheduled hearing on April 19, 2013. On May 24, 2013, the Commission granted a request filed by the California Special Districts Association (CSDA) for reconsideration of the decision and parameters and guidelines pursuant to Government Code section 17559 and California Code of Regulations, title 2, section 1188.4 to correctly identify special districts as eligible claimants.

On July 26, 2013, the Commission reconsidered and corrected the decision to clarify that some special districts are eligible to claim reimbursement for this program.

Dorothy Holzem appeared on behalf of the requester, CSDA. Andy Nichols appeared on behalf of Nichols Consulting. Geoffrey Neill appeared on behalf of the California State Associations of Counties (CSAC).

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 this corrected statement of decision and parameters and guidelines by a vote of 7-0.

I. SUMMARY OF THE MANDATE

These proposed parameters and guidelines pertain to the consolidated California Public Records Act test claim (02-TC-10 and 02-TC-51), adopted May 26, 2011. Based on the filing date of the
test claim, the period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.

The California Public Records Act (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. The required activities include:

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;
- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;
- Making disclosable public records in electronic formats available in electronic formats; and
- Removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

The CPRA was originally adopted in 1968 “to more clearly define what constitutes a “public record” open to inspection and what information can be or is required to be withheld from disclosure.”¹ Prior to the adoption of the CPRA in 1968, the law governing disclosure of public records consisted of a “hodgepodge of statutes and court decisions.”² These parameters and guidelines address the statutory amendments to the CPRA made after 1975.

The Commission found in the test claim statement of decision that the requirement for local agencies and school districts to make public records available for inspection during office hours, “except for public records exempted from disclosure or prohibited from disclosure” was required prior to 1975 and thus was not new.³ The Commission also found that “the Legislature intended public records to include every conceivable kind of record that is involved in the governmental process,” and that the purpose and intent of the CPRA is “to make disclosable information open to the public, not simply the documents prepared, owned, used, or retained by a public agency.”⁴ In addition, the Commission found that a 1981 amendment to CPRA codified the courts’ interpretation, that “CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and

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¹ Exhibit A, Test Claim Statement of Decision, at p. 5.
³ Id, at p. 12.
⁴ Id, at p. 13.
Finally, the Commission found that pursuant to Government Code sections 6256 and 6257, public agencies (both state and local government) have been required to provide “copies or exact copies of public records upon a request that reasonably describes an identifiable record” since the 1968 enactment of CPRA. These activities, required by the CPRA under prior law, are not eligible for reimbursement.

However, the Commission found that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255, as amended by Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014), impose reimbursable state-mandated programs on local agencies and K-14 school districts, within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, as follows:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982).)

2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982).)

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a public record:
   a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
   b. describe the information technology and physical location in which the records exist; and


6 *Id*, at p. 14.
c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355).)

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)

In addition, the Commission concluded that the fee authority set forth in Government Code section 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and
shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.\(^7\)

II. **PROCEDURAL HISTORY**

The first test claim was filed by the County of Los Angeles (LA County) on October 15, 2002. A second test claim on the same statutes was filed by Riverside Unified School District (Riverside Unified) on June 26, 2003. Due to an ongoing dispute over the constitutionality of Government Code section 17556(f), and a ballot measure that would have triggered an analysis of the disputed issue, the two CPRA test claims were removed from the Commission’s hearing calendar until the constitutionality of section 17556 was resolved in March of 2009.\(^8\) On November 2, 2010, the two claims were consolidated by the executive director. The consolidated test claim was heard, and the statement of decision adopted, on May 26, 2011. A corrected statement of decision was issued on December 17, 2012, to correct a clerical error approving reimbursement for K-14 school districts, rather than K-12 school districts, for activities mandated by Government Code section 6254.3. That code section imposes requirements only on K-12 school districts.


On February 13, 2013, Commission staff issued the draft proposed statement of decision and parameters and guidelines setting this matter for hearing on April 19, 2013. On February 21, 2013, Cost Recovery Systems, Inc. submitted written comments on the draft. On March 5, 2013, claimant LA County submitted written comments on the draft. On March 6, 2013, SCO and DOF each submitted written comments on the draft.

On March 15, 2013, CSAC, which is not a party to this matter and had not submitted any comments on this matter until this time, requested “an extension of the April 19, 2013 hearing date to file an amended set of parameters and guidelines…to include an RRM [reasonable reimbursement methodology].” The letter stated that “the local associations are committed to doing everything possible to reach an agreement with DOF.”\(^9\) The tentative timeline set out by CSAC would have postponed this item until the December 2013 hearing. The executive director denied the request for extension, stating “there is no authority for interested parties (such as

\(^7\) Exhibit A, Corrected Statement of Decision, at pp. 4-5.

\(^8\) Exhibit A, Corrected Statement of Decision, at p. 6.

\(^9\) Exhibit K, CSAC, Hearing Postponement Request.
None of the state or local agency parties to this matter requested an extension of time or postponement of the hearing on these parameters and guidelines.

On April 19, 2013, the Commission adopted the statement of decision and parameters and guidelines for the CPRA program.

On May 2, 2013, CSDA filed a request for reconsideration pursuant to Government Code section 17559 and section 1188.4 of the Commission’s regulations of the Commission’s statement of decision and parameters and guidelines for the CPRA program, adopted April 19, 2013. CSDA contends that the decision and parameters and guidelines contain an error of law with respect to the description of eligible claimants. The decision describes the eligible claimants as “any city, county, and city and county, or any school district as defined in Government Code section 17519,” but omits special districts required to comply with the CPRA.

On May 24, 2013, the Commission granted the request for reconsideration and directed staff to schedule the matter for a hearing on the merits. On July 26, 2013, the Commission determined that the statement of decision and parameters and guidelines adopted April 19, 2013, contained an error of law by not including some special districts as eligible claimants for this program. The Commission amended this decision and parameters and guidelines by including additional analysis and findings regarding Sections II and VII of the parameters and guidelines, addressing eligible claimants and offsetting revenues.

III. POSITION OF THE PARTIES

A. Claimant, Riverside Unified’s, Position and Proposed Parameters and Guidelines

Riverside Unified submitted proposed parameters and guidelines in which the claimant proposes reimbursement for exactly the activities approved in the test claim statement of decision, except that the claimant reorganizes the activities and re-numbers them. Riverside Unified did not submit comments on the draft analysis.

B. Claimant, LA County’s, Position and Proposed Parameters and Guidelines

LA County submitted proposed parameters and guidelines in which the claimant proposes reimbursement for the activities approved in the test claim statement of decision, but also proposes reimbursement for a number of proposed reasonably necessary activities. These proposed reasonably necessary activities will be described in the analysis below. LA County

10 Exhibit K, Commission, Denial of Postponement Request.

11 Exhibit B, Riverside Unified’s Proposed Parameters and Guidelines.

12 Exhibit C, LA County’s Proposed Parameters and Guidelines.
submitted comments on the draft analysis, reiterating the need for certain reasonably necessary activities proposed, and generally disagreeing with staff’s analysis of the scope of the mandate.13

C. California Special Districts Association Position

CSDA states the following:

The Parameters and Guidelines for the CPRA . . . provides that “Any city, county, and city and county, or any ‘school district’ as defined in Government Code section 17519, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.” It appears that the term “local agencies” was replaced by “Any city, county, and city and county” for eligible claimants. This language is inconsistent with the eligible claimants identified in the following documents, in which all eligible claimants and affected entities are repeatedly identified as “local agencies”:

- Test Claim filed by the County of Los Angeles (October 2002)
- “Adopted Statement of Decision [on the test claim] (May 26, 2011)
- County of Los Angeles “Proposed Parameters and Guidelines” (June 23, 2011)
- County of Los Angeles “Revised Parameters and Guidelines” (August 30, 2011)

Government Code section 17518 defines “Local agency” to mean any city, county, special district, authority, or other political subdivision of the state. Thus, special districts have been incorrectly removed as eligible claimants. Therefore, we respectfully request that the Commission reconsiders [sic] this omission as allowed under Title 2, California Code of Regulations Section 1188.4 and includes [sic] special districts as eligible claimants to ensure they may continue to seek reimbursement for their adherence to the CPRA mandates.

CSDA also expresses a “strong concern” with the “assertion [in the staff analysis] that a local agency’s power to levy a fee for service renders it ineligible for reimbursement of state mandated local programs.” CSDA requests that the Commission consider three propositions adopted by the voters that amend the Constitution (Proposition 218 (1996), Proposition 1A (2004), and Proposition 26 (2012)), to find that special districts that have the authority to levy fees, or that are enterprise districts, be considered an eligible claimant within the meaning of article XIII B, section 6 of the California Constitution.

D. State Controller’s Office Position

SCO submitted comments on the claimants’ proposed parameters and guidelines, in which SCO stated that “the reimbursable activities listed under the "Scope of Reimbursable Activities" were numbered incorrectly, included several duplications, and were incomplete.” SCO continued, “[f]urthermore, the reimbursable activities listed were confusing, not specific, and needed

13 Exhibit H, LA County’s Comments on Draft Staff Analysis.
clarification.” SCO also suggested that activities should be designated “one-time” or “ongoing.” SCO’s comments on the draft analysis recommended no changes.14

**E. Department of Finance Position**

DOF submitted comments on the claimants’ proposed parameters and guidelines, in which DOF raises the following arguments:

- Claimants “appear to add to the activities found reimbursable by the Commission;”
- Many of the activities “appear to be outside the scope of the SOD as these were likely already required and utilized before this mandate and for purposes other than complying with this mandate;”
- Many activities are “duplicative and repetitious or are too vague and general and therefore lack sufficient specificity;”
- A number of activities “do not appear to be reasonably necessary to comply with the mandate, are inconsistent with the SOD, and additive in nature;” and
- Several of the activities “could be performed by lower-level staff than what is referenced in the [parameters and guidelines].”

The DOF recommends “that Commission staff apply the Clovis Unified School District v. Chiang (2010) 188 Cal.App.4th 794 case and offset any and all applicable costs for specified activities...to the extent of the fee authority provided by law.” DOF’s comments on the draft analysis focus on the offsetting revenue provisions of the parameters and guidelines, and are discussed below, as applicable.16

**IV. COMMISSION FINDINGS**

**A. Eligible Claimants (Section II. of the Proposed Parameters and Guidelines)**

Except for certain provisions relating only to school districts, the activities mandated by the CPRA, by definition, apply equally to all levels of government, including special districts. Government Code section 6252, a statute within the CPRA, defines “local agency” to include “a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.” And Government Code section 17518 defines “local

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14 Exhibit D, SCO Comments on Proposed Parameters and Guidelines.
15 Exhibit J, SCO Comments on Draft Analysis.
16 Exhibit E, DOF Comments on Proposed Parameters and Guidelines.
17 Exhibit I, DOF Comments on Draft Staff Analysis.
agency” for purposes of mandate reimbursement to mean “any city, county, special district, authority, or other political subdivision of the state.”

While it is clear that the mandate applies to cities, counties, any county and city, and school districts, not all special districts are eligible to claim reimbursement under article XIII B, section 6 of the California Constitution. As described below, the courts have made clear that despite the broad definition of “local agency” in section 17518, reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of the California Constitution, and only when the costs in question can be recovered solely from “proceeds of taxes.”

1. Article XIII B, section 6 requires reimbursement only for local governments subject to the tax and spend limitations of the Constitution.

To understand the reimbursement requirement in article XIII B, section 6, it is necessary to understand the history of the tax and spend restrictions in articles XIII A and B as originally enacted by Proposition 13, and the later initiatives that amended that article.

The correct approach is to read [article XIII B] section 6 in light of its historical and textual context. The rules of constitutional interpretation require a strict construction of section 6, because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used.

a) Articles XIII A and XIII C impose taxing restrictions on property taxes and special taxes.

Local government does not have an inherent power to levy and collect tax revenue. Article XIII section 24 of the California Constitution provides that “the Legislature may authorize local governments to impose” local taxes as the Legislature sees fit. Thus, the power to tax comes from the Legislature through its enactment of general laws which enable the local governing

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Local government, including special districts, must have statutory authority to levy a tax or have a tax levied on its behalf.

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution, to control ad valorem property taxes and the imposition of new “special taxes.” With respect to property taxes, Article XIII A, section 1, drastically reduced property tax revenue previously enjoyed by local governments by providing that “the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value” and that the one percent (1%) tax was to be collected by counties and “apportioned according to law to the districts within the counties…” Soon after the adoption of this provision in Proposition 13, the Legislature, giving effect to the constitutional command that the “One percent (1%) tax to be collected by the counties [be] apportioned according to law,” enacted Government Code section 26912, effective June 24, 1978. Section 26912 provided, among other things, that the amount of revenue derived from real property taxes levied by a county, “shall be allocated by the county auditor ...to each local agency” of the county according to a designated formula. Section 26912 also provided that “For the purposes of this section, a local agency includes a ... special district, ... if such local agency levied a property tax during the 1977–78 fiscal year or if a property tax was levied for such local agency for such fiscal year, ....” Thus, those special districts that did not levy property taxes or have property taxes levied for them in fiscal year 1977-1978 were no longer eligible to receive property tax revenue. In addition, the Legislature enacted Government Code section 16270, which stated the following:

The Legislature finds and declares that many special districts have the ability to raise revenue through user charges and fees and that their ability to raise revenue directly from the property tax for district operations has been eliminated by Article XIII A of the California Constitution. It is the intent of the Legislature that such districts rely on user fees and charges for raising revenue due to the lack of the availability of property tax revenue after the 1978–79 fiscal year. Such

21 Santa Clara Local Transportation Authority, supra, 11 Cal.4th 220, 247-249.

22 See, for example, Marin Hospital District v. Rothman (1983) 139 Cal.App.3d 495. In that case, the hospital district was created by statute and had been authorized by law to levy a tax upon real property within its territorial limits. Relying upon other funding, the district did not levy a property tax for fiscal year 1977–1978, nor had such a property tax been levied for it. The court determined that the district could no longer receive property tax revenue following the adoption of Proposition 13. The court determined that “the Legislature concluded (we think reasonably) that special districts which were not in need of property tax revenues during the 1977-1978 fiscal year (i.e., the year preceding Proposition 13’s adoption), and were therefore probably self-supporting, would be among the least affected by the necessary cut-off of such funds.”
districts are encouraged to begin the transition to user fees and charges during the 1978–79 fiscal year.

Article XIII A, section 4, also restricts the ability of local government to impose special taxes by first requiring the approval of the special tax by a two-thirds vote of the qualified electors in the district. Section 4 provides that: “Cities, counties, and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes of real property or a transaction or sales tax on the sale of real property within such City, county, or special district.” “Special taxes” are taxes “levied to fund a specific governmental project or program,” even when the project is the agency’s only reason for existence.

The California Supreme Court, in Los Angeles County Transportation Commission v. Richmond, analyzed the term “special district” in article XIII A, section 4 to determine if special districts were subject to the two-thirds vote requirement for special taxes. The court determined that the term “special districts” in section 4 refers to only to those entities authorized to levy a tax on real property. The court relied on the ballot materials, finding that the purpose of section 4 was to restrict the ability of local governments to impose new taxes in order to replace the property tax revenue losses brought by section 1. “Since only those ‘special districts’ which levied property taxes could replace the ‘loss’ of such taxes, these statements imply that the ‘special districts’ referred to are those which are authorized to levy a property tax.”

In 1991, the California Supreme Court in Rider v. County of San Diego broadened its interpretation of the term “special district” in article XIII A, section 4, to include special districts that did not possess the express statutory authority to levy property taxes, if the district was created after the passage of Proposition 13, was controlled by entities subject to Proposition 13, and was created in order to raise funds to replace revenues lost by those entities because of Proposition 13. A tax ordinance adopted by San Diego County Regional Justice Facility Financing Agency, an agency created by the Legislature in 1987 in express recognition of the County’s need for improved courtrooms and jails, was at issue in Rider. Under the statutory scheme, the Agency was charged with adopting a tax ordinance imposing a supplemental sales tax.

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23 Los Angeles County Transportation Commission v. Richmond (1982) 31 Cal.3d 197, 201.
24 Rider v. County of San Diego (1991) 1 Cal.4th 1, 15. “Special taxes” are not fees. In response to Proposition 13, the Legislature enacted Government Code section 50076, which states:

A special tax shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes.

25 Los Angeles County Transportation Commission v. Richmond, supra, 31 Cal.3d 197.
26 Id. at pages 205-206.
27 Rider, supra, 1 Cal.4th 1.
tax of one-half of 1 percent throughout the County for the purpose of financing the construction of justice facilities. The act provided for a countywide election held for the purpose of approving the tax ordinance by a simple majority vote. The act also provided that the Agency possesses no tax power other than the foregoing sales tax. At an election held in June 1988, the County's voters approved the tax ordinance by a simple majority vote. Taxpayers then challenged the validity of the tax, asserting that it violated the supermajority vote requirements of article XIII A, section 4. The court recognized that the prior limitation of the term “special district” to those districts possessing property tax power is unworkable as applied to districts formed after the adoption of Proposition 13, because to our knowledge no such agencies possess that power. With limited exceptions, only counties are empowered to levy the 1 percent maximum property tax allowed by Proposition 13. [Citations omitted.] In other words, as a practical matter, the proposed extension of Richmond to all districts, whenever created, which lack property tax power would read section 4's reference to “special districts” out of existence as applied to districts formed after 1978. 28

The court also acknowledged the increase in the number of revenue-generating governmental entities which lack the power to assess property taxes, noting there were now numerous “justice facility financing agencies” and authority given to counties to create special transportation districts, funding their programs exclusively through increased sales taxes. Since the court found that the tax was a “special tax” subject to the two-third vote requirement of article XIII A, section 4, the tax, upheld by only a majority of the electorate, was held invalid. The court directed the Agency to place the proceeds in an account to allow the voters to claim refunds. 29

Thus, after Rider, only the following special districts were subject to the two-thirds vote requirement in article XIII A, section 4 when levying special taxes: (1) special districts that had the power to levy property taxes and (2) special districts that did not have the authority to levy a property tax, but were created after Proposition 13 and controlled by entities subject to Proposition 13 in order to raise funds to replace revenues lost by those entities because of Proposition 13. Tax restrictions on special taxes were not imposed on other types of special districts.

In 1996, after many local governments increasingly relied upon other revenue tools to finance local services, Proposition 218 was adopted by the voters to add articles XIII C and XIII D to the

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28 Id. at p. 11.
29 Ibid., See also Hoogasian Flowers, Inc. v. State Bd. of Equalization (1994) 23 Cal.App.4th 1264, which applied the same rule to an agency formed by a school district as the taxing authority subject to article XIII A.
Proposition 218 provides that all taxes imposed by any local government shall be deemed to be either a general tax (taxes imposed for general governmental purposes) or a special tax (tax imposed for specific purposes, including those placed into a general fund). “Special purpose districts or agencies,” however, “shall have no power to levy general taxes” and may only levy special taxes. Proposition 218 then required all special taxes imposed by a local government to be approved by a two-thirds vote of the electorate. Thus, after Proposition 218, all special districts that have authority to levy a special tax are subject to the two-thirds vote requirement.

Proposition 218 also imposed strict notice and hearing procedures on local government, including special districts, before the adoption of any new or increased fee or assessment. In addition, voter approval of a majority of the local electorate was required before a fee or assessment could take effect. By definition in Proposition 218, fees and assessments are not “taxes.”

Proposition 26 was then adopted in 2010. Proposition 26 expressly defines “taxes,” requiring approval by a two-thirds vote, to include some fees and charges that previously could be approved with a majority vote under Proposition 218. Proposition 26 prohibits local government from enacting, increasing, or extending any levy, charge, or exaction defined to be a “tax” without approval from two-thirds of the electorate. Proposition 26 amended article XIII C, section 1, to define a tax as follows:

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30 See, Apartment Association of Los Angeles County v. City of Los Angeles (2001) 24 Cal.4th 830, 839, which recognized that the ballot materials for Proposition 218 stated the following:

There are now over 5,000 local districts which can impose fees and assessments without the consent of local voters. Special districts have increased assessments by over 2400% over 15 years.”

31 California Constitution, article XIII C, sections 1 and 2. Section 2 states that “No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.”

32 California Constitution, article XIII D.

33 Article XIII D, section 2 defines “assessment” to mean

… any levy or charge upon real property by an agency for a special benefit conferred upon the real property. “Assessment” includes, but is not limited to, “special assessment,” “benefit assessment,” “maintenance assessment,” and “special assessment tax.”

“Fee” or “charge” means “any levy other than an ad valorem tax, a special tax or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including user fees or charges for a property related service.”
As used in this article, “tax” means any levy, charge, or exaction, of any kind imposed by a local government, except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

(6) A charge imposed as a condition of property development.

(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

There will be litigation regarding the meaning of Proposition 26, and it is likely that some fees will actually be considered “taxes” under Proposition 26. However, to date, there are no published cases that have invalidated a fee, or determined that a “fee” imposed was actually a tax under a Proposition 26 analysis. 34 In the meantime, the analysis of Proposition 26 by the

34 To date, there are two published cases interpreting Proposition 26, both finding that the levy imposed was a fee and not a tax. Griffith v. City of Santa Cruz (2012) 207 Cal.App.4th 982 dealt with regulatory fees associated with a city ordinance requiring annual inspections of residential rental property. The court held the regulatory fees were not an unconstitutional special tax enacted without voter consent. The fees were imposed to cover the cost of performing inspections, the fees did not exceed the approximate cost of the activity, and the fee schedule itself showed the basis for the apportionment and established that the fees were reasonably related to the payors' burden upon the inspection program.

Schmeer v. County of Los Angeles (2013) 213 Cal.App.4th 1310 addressed a county ordinance requiring retail establishments to charge customers for each carryout paper bag provided. The court held that the ordinance was not a “tax within the meaning of Proposition 26. The charge
Legislative Analyst’s Office (LAO) is helpful and can be used to determine what the voters intended. In its summary of Proposition 26, LAO explained the state of the law before Proposition 26 and described the differences between taxes, and fees and charges as follows:

State and local governments impose a variety of taxes, fees, and charges on individuals and businesses. Taxes—such as income, sales, and property taxes—are typically used to pay for general public services such as education, prisons, health, and social services. Fees and charges, by comparison, typically pay for a particular service or program benefitting individuals or businesses. There are three broad categories of fees and charges:

- User fees—such as state park entrance fees and garbage fees, where the user pays for the cost of a specific service or program.
- Regulatory fees—such as fees on restaurants to pay for health inspections and fees on the purchase of beverage containers to support recycling programs. Regulatory fees pay for programs that place requirements on the activities of businesses or people to achieve particular public goals or help offset the public or environmental impact of certain activities.
- Property charges—such as charges imposed on property developers to improve roads leading to new subdivisions and assessments that pay for improvements and services that benefit the property owner.

State law has different approval requirements regarding taxes, fees, and property charges. As Figure 1 shows, state or local governments usually can create or increase a fee or charge with a majority vote of the governing body (the Legislature, city council, county board of supervisors, etcetera). In contrast, increasing tax revenues usually requires approval by two-thirds of each house of the state Legislature (for state proposals) or a vote of the people (for local proposals).

Over the years, however, there was disagreement about the difference of regulatory fees and taxes, particularly when the money is raised to pay for a program of broad public benefit.

35 Ballot summaries and the “Analysis by the Legislative Analyst” in the “Voter Information Guide” are recognized sources for determining the voters’ intent.” (Hodges v. Superior Court (1999) 21 Cal.4th 109, 116.)


37 For example, in Sinclair Paint Co. v. State Board of Equalization (1997) 15 Cal.4th 866, the California Supreme Court determined that a regulatory fee on businesses that made products
Thus, under Proposition 26, LAO states that “taxes” now generally include those fees and charges that government imposes to address health, environmental, or other societal or economic concerns – charges that benefit the public broadly, as follows:

**Expands Definition.** This measure broadens the definition of a state or local tax to include many payments currently considered to be fees or charges. As a result, the measure would have the effect of increasing the number of revenue proposals subject to the higher approval requirements summarized in Figure 1. Generally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns. Figure 3 provides examples of some regulatory fees that could be considered taxes, in part or in whole, under the measure. This is because these fees pay for many services that benefit the public broadly, rather than providing services directly to the fee payer. The state currently uses these types of regulatory fees to pay for most of its environmental programs.  

However, LAO determined that the change in the definition of “taxes” does not affect most user fees, property development charges, and property assessments that affect individuals or businesses. In addition, most other fees or charges in existence at the time of the November 2, 2010 election would not be affected by Proposition 26 unless that fee is later increased or extended, or the fee is increased by state law between January 1, 2010 and November 2, 2010, and conflicts with Proposition 26.  

b) **Article XIII B imposes spending limitations on “proceeds of taxes.”**

Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A, and was billed as “the next logical step to Proposition 13.” While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, “the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the ‘proceeds of taxes.”’  

The appropriations limit in article XIII B is accomplished by limiting the “total annual appropriations subject to limitation” so that “a government entity may not spend more in one year on a program funded with the proceeds of taxes than it did in the prior year.” No “appropriations subject to limitation” may be made in excess of the

containing lead was a fee, and not a tax, even though fee revenue was used to screen children at risk for lead poisoning, follow up on their treatment, and identify sources of lead contamination responsible for the poisoning. The court’s ruling in *Sinclair Paint* lead to Proposition 26.

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38 Legislative Analyst’s Office, Summary of Proposition 26, July 15, 2010.


appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.\footnote{Article XIII B, section 2.}

The spending limit applies only to appropriations made from “proceeds of taxes.” “Proceeds of taxes” for local governments are defined in article XIII B, section 8(c) to include \textit{all tax revenues}; revenues from user charges and fees \textit{to the extent that those proceeds exceed} the costs reasonably borne by that entity in providing the regulation, product, or service; proceeds from the investment of tax revenues; and subventions from the state, other than pursuant to article XIII B, section 6. “All tax revenues” would include the revenues generated from the additional taxes identified in Proposition 26. However, the appropriations limit does not apply to an appropriation totally funded by “other than the proceeds of taxes.”\footnote{California Constitution, article XIII B, section 9(c), which states: ‘‘Appropriations subject to limitation’ for each entity of government do not include: (c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.’’}

Thus, article XIII B does not place spending limits on the expenditure of revenue from fees or assessments.\footnote{Placer v. Corin, supra, 113 Cal.App.3d 443, 450.} “Proceeds of taxes” do not include “the proceeds from the sale of bonds, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents, charges, assessments, or levies, other than tax levies, made pursuant to law, the proceeds of which are required for the payment of principal and interest, or to otherwise secure such obligations, and to pay the costs and expenses associated therewith.”\footnote{Id. at p. 453, fn. 8, quoting Government Code section 53715, which implemented article XIII B; see also, County of Fresno, supra, 53 Cal.3d 482, 487.}

c) \textit{The reimbursement requirement of article XIII B, section 6, is triggered only when the costs in question are “proceeds of taxes” subject to the appropriations limit of article XIII B.}

Section 6 was included in article XIII B in recognition that articles XIII A and XIII B of the Constitution severely restricted the taxing and spending powers of local governments.\footnote{County of Fresno, supra, 53 Cal.3d at p. 487; County of San Diego v. State of California (1997) 15 Cal.4th 68, 81; Department of Finance v. Commission on State Mandates (Kern High School Dist.) (2003) 30 Cal.4th 727, 735.} Article XIII B, section 6 provides in relevant part “[w]henever the Legislature … 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….”

The Supreme Court recognized the purpose of article XIII B, section 6 was to protect the tax revenues of local governments from state mandates that would require the expenditure of tax revenues.

Specifically, [article XIII B, section 6] was designed to protect the tax revenues of local governments from state mandates that would require the expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse …local government for the costs of a state-mandated new program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.

Thus, article XIII B, section 6 does not require reimbursement for expenses that are recoverable from sources other than tax revenue. As stated earlier, these other sources of revenue include revenue received from service charges, fees, or assessments. Thus, if a local agency is funded solely from service charges, fees, or assessments – revenues which are excluded from the spending limit – they are not entitled to reimbursement under article XIII B, section 6 and are thus, not eligible claimants for mandates purposes. A local agency cannot accept the benefits of an exemption from article XIII B’s spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.

CSDA nevertheless argues that local agencies funded solely from service charges, fees, or assessments should be entitled to reimbursement in cases where the state-mandated program

47 In November 2004, the voters approved Proposition 1A, which amended article XIII B, section 6 by requiring the state to suspend state mandates in any year the Legislature does not fully fund the mandate; expands the definition of state mandate to include the transfer of responsibility of a program for which the state previously had full or partial responsibility; and requires the repayment of the amounts owed to local governments for state mandated costs incurred before fiscal year 2004-2005. Proposition 1A also protected local revenue (local property tax, sales tax, and VLF revenues) by prohibiting the Legislature from taking any action to reduce or decrease those revenues, or from shifting property taxes to schools except under limited circumstances. Proposition 1A, however, does not affect whether a special district is eligible to claim reimbursement for a state-mandated program.

48 County of Fresno, supra, 53 Cal.3d at p. 487; See also, City of El Monte v. Commission on State Mandates (2000) 83 Cal.App.4th 266, 280, and Government Code section 17556(d).

itself is not self-financing with fee authority. In this respect, CSDA attempts to distinguish this case from the facts presented in *County of Fresno v. State of California*, the case which first held that article XIII B, section 6 requires subvention only when the costs in question can be recovered solely from tax revenues. *County of Fresno* addressed a hazardous material abatement program for local agencies and the statutory scheme of the program provided fee authority to the local agencies to recover their costs.\(^{50}\)

The courts, however, have rejected CSDA’s argument. In *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates*, the court addressed a statute requiring redevelopment agencies to deposit 20 percent of its tax increment financing generated from project areas into a fund to improve the supply of affordable housing. The program at issue was not self-financing. The Commission and the trial court denied the claim, finding that the funds used by the agency were not “proceeds of taxes,” were exempt from the spending limit in article XIII B and, thus, exempt from the reimbursement requirement of section 6. Like CSDA, the agency on appeal argued that the *County of Fresno* case should be read narrowly to cover only self-financing programs, and that the broad statements by the Supreme Court in *County of Fresno* defining “costs” was mere dicta. The agency also argued that the plain language of article XIII B, section 6 does not expressly discuss the source of funds used by the agency to pay the costs of a program. Thus, the agency urged the court to approve the reimbursement requirement. The court disagreed with both arguments, and held as follows:

> The correct approach is to read section 6 in light of its historical and textual context. The rules of constitutional interpretation require a strict construction of section 6, because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. [Citation omitted.]

The goals of articles XIII A and XIII B are to protect California residents from excessive taxation and government spending. [Citation omitted.] A central purpose of section 6 is to prevent the state’s transfer of the cost of government from itself to the local level. [Citation omitted.] The related goals of these enactments require us to read the term “costs” in section 6 in light of the enactment as a whole.\(^{51}\)

Using this approach, the court determined that reimbursement is required only when the costs in question can be recovered solely from tax revenues. No duty of subvention is triggered where the local agency is not required to expend “proceeds of taxes”:

> For all these reasons, we conclude the same policies which support exempting tax increment revenues [received by redevelopment agencies] from article XIII B

\(^{50}\) *County of Fresno, supra*, 53 Cal.3d at p. 485.

\(^{51}\) *Redevelopment Agency of the City of San Marcos, supra*, 55 Cal.App.4th 976, 985.
appropriations limits also support denying reimbursement under section 6. … Section 6 “requires subvention only when the costs in question can be recovered solely from tax revenues.” [Citation omitted.] No duty of subvention is triggered where the local agency is not required to expend proceeds of taxes. … Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable “cost” under section 6. 52

These cases remain good law, and no authorities have found that reimbursement under section 6 is required when the expenditure is made from fees or assessments. The new restrictions on fees established by Proposition 218 (which now require a majority vote of the electorate) do not change this result. Article XIII B, section 6 is designed to protect the limited tax revenue that is restricted by the spending limit of article XIII B. There is no spending limit for fees or assessments.

Accordingly, only those local agencies that are subject to the tax and spend limitations of the California Constitution and use their proceeds of taxes to pay the costs incurred to implement a state-mandated program are eligible to claim reimbursement under article XIII B, section 6.

2. Some special districts are subject to the tax and spend limitations of the Constitution and, thus, are generally eligible to claim reimbursement under article XIII B, section 6.

Special districts come in many forms, but their authority is derived by statute; either under a principal act or a special act. A principal act is a generic statute which applies to all special districts of that type. For example, the Community Services District Law governs all 325 community services districts. There are about 50 principal act statutes which local voters can use to create and govern special districts. 53 On the other hand, districts which are regional in nature, have unusual governing board requirements, provide unique services, or need special financing, result in special act districts. Examples of districts formed under special acts include the Embarcadero Municipal Improvement District (Santa Barbara County), the Humboldt Bay Harbor, Recreation, and Conservation District, and the Shasta-Tehama County Watermaster District. There are about 125 special act districts. 54 All principal acts are codified state laws, whereas most special acts are not codified. For a list of special acts, see Appendix A in the State Controller’s Special Districts Annual Report. 55

52 Id. at p. 987.


54 Ibid.

Just over a quarter of the special districts are enterprise districts. Enterprise districts deliver services that are run like business enterprises and have the statutory authority to charge their customers fees for services. For example, a hospital district generally charges room fees paid by patients, not the district’s other residents. Generally, enterprise districts are not subject to the tax and spend restrictions of article XIII of the California Constitution and so are not eligible to receive mandate reimbursement. Nearly all of the water, wastewater, and hospital districts are enterprise districts that charge rates or fees for their services and do not have the statutory authority to receive any “proceeds of taxes.” Since enterprise districts are usually not funded by proceeds of taxes, they are generally exempt from article XIII B’s spending limit and, thus, are not entitled to reimbursement under section 6. However, some enterprise districts operate with a mix of tax and fee revenues; Alpaugh Irrigation District, Canebrake County Water District, Irvine Ranch Water District, and San Bernardino Valley Municipal Water District, for example. These districts are subject to the tax and spend limitations of articles XIII A and XIII B, and are thus generally eligible claimants for mandates purposes. However, as explained in section B of this analysis, if the expenses for the mandated program are funded totally from fee revenue, then the fee authority provides a complete offset and no reimbursement is required, even for these otherwise eligible special districts.

Conversely, non-enterprise districts provide services which have been deemed by some to not easily lend themselves to fees. It has been argued, for example, that fire protection services and mosquito abatement programs benefit the entire community, not just individual residents. Non-enterprise districts have the statutory authority to levy taxes, and rely overwhelmingly on property tax revenues and parcel taxes to pay their operational expenses. Non-enterprise districts are subject to the tax and spend limitations of the California Constitution and are generally eligible claimants for reimbursement of state-mandated programs. Services commonly provided by non-enterprise districts include cemetery, fire protection, library, and police services.

In addition to the statutes that provide authority to each special district, the SCO issues an annual report on special districts that identifies those special districts that collect tax revenue and are subject to the spending limitations of article XIII B. On December 13, 2011, SCO issued its

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most recent *Special Districts Annual Report* for fiscal year 2009-2010. The report shows that approximately 610, or roughly 17 percent of all special districts, are subject to the appropriations limit of article XIII B, thus making them eligible claimants for mandates purposes. Special districts have a statutory duty to submit annual reports to the SCO pursuant to Government Code section 12463. The report is required to contain, among other things:

(a) The aggregate amount of taxes levied and assessed against the taxable property in the local agency, which became due and payable during the next preceding fiscal year.

(b) The aggregate amount of taxes levied and assessed against this property collected by or for the local agency during the fiscal year. …

(e) The assessed valuation of all of the taxable property in the local agency as set forth on the assessment roll of the local agency equalized for the fiscal year, or, if the officers of the county in which the city or district is situated have collected for the city or district the general taxes levied by the city or district for the fiscal year, the assessed valuation of all taxable property.

If an officer of the district willfully and knowingly rendered a false report to the Controller, that officer would be guilty of a misdemeanor. The report submitted by the special districts contains the data upon which the SCO bases its *Special Districts Annual Report*.

The SCO can use its report to determine if a special district is eligible to claim reimbursement. It is noteworthy though, that Government Code section 12463 has not been updated to include information on other local taxes that may be imposed, which are also subject to the spending limitations of article XIII B. Therefore, even if the *Special Districts Annual Report* does not identify a particular special district as subject to the spending limitation, the SCO can look to other sources. If the Legislature has authorized the special district to levy a tax, or a court determines that a fee levied by the district was actually a “tax” and the district is not required to return that tax to the taxpayers, but instead uses it for district purposes, then the district is eligible to claim reimbursement.

Accordingly, Section II of the parameters and guidelines, addressing the eligible claimants for this program, provides as follows:

Any city; county; city and county; special district subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes; or any "school district" as defined in Government Code section 17519

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60 Government Code section 12463.

61 Government Code section 53892.

which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

B. Period of Reimbursement (Section III. of Proposed Parameters and Guidelines)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. LA County filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred on or after July 1, 2001 are reimbursable under this consolidated test claim, for statutes in effect before July 1, 2001, or later, as specified, for statutes effective after July 1, 2001. The language of Section III. Period of Reimbursement, therefore reflects a reimbursement period beginning July 1, 2001, or later for specified activities added by subsequent statutes.

C. Reimbursable Activities (Section IV. of Proposed Parameters and Guidelines)

Government Code section 17557 provides that “[t]he proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.”63 The Commission’s regulations provide that parameters and guidelines shall include “a description of the most reasonable methods of complying with the mandate.” “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.”64

Government Code section 17559 provides that a claimant or the state may petition to set aside a Commission decision not supported by substantial evidence.65 Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature, credible, and of solid value;66 and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.67 The California Supreme Court has stated that “[o]bviously the word [substantial] cannot be deemed synonymous with 'any’ evidence.”68 Moreover, substantial evidence is not submitted by a party; it is a standard of review, which

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63 Government Code section 17557 (as amended by Stats. 2010, ch. 719 § 32 (SB 856) effective October 19, 2010; Stats. 2011, ch. 144 (SB 112)).
64 Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).
65 Government Code section 17559(b) (Stats. 1984, ch. 1469, § 1; Stats. 1999, ch. 643 (AB 1679)).
68 People v. Bassett (1968) 69 Cal.2d 122, at p. 139.
requires a reviewing court to uphold the determinations of a lower court, or in this context, the Commission, if they are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is “obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor.”\(^{69}\)

The Commission’s regulations provide that hearings need not be conducted according to strict and technical rules of evidence, but that evidence must be “the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,” and that hearsay evidence will usually not be sufficient to support a finding unless admissible over objection in a civil action. The regulations also provide for admission of oral or written testimony, the introduction of exhibits, and taking official notice “in the manner and of such information as is described in Government Code section 11515.”\(^{70}\) Therefore, reasonably necessary activities, in order to be adopted by the Commission, must be supported by substantial evidence, and that evidence must include something other than hearsay evidence.

LA County has proposed reimbursement for a number of alleged reasonably necessary activities, in its Revised Proposed Parameters and Guidelines, attached as Exhibit C. These are analyzed below, incorporating SCO and DOF comments where appropriate. The claimant has ordered and categorized the proposed reasonably necessary activities under headings that approximate, but overstate, the language of the reimbursable activities expressly approved in the test claim statement of decision. The following analysis will determine that some of the activities that LA County proposes are reasonably necessary to implement the mandated activities approved in the test claim statement of decision, and others are beyond the scope of what was approved in the test claim statement of decision, or are not new.

1. **Evidence Filed by LA County in Support of its Request**

The draft staff analysis pointed out that the claimants had submitted scant evidence that the proposed activities are necessary to implement the mandate: four declarations were submitted, each of which referred to an “Attachment A,” prepared by LA County’s representative on the test claim; but none of those four declarations directly endorsed the contents of “Attachment A,” or stated directly why or how the activities referenced therein are necessary to comply with the mandate. Instead, the declarants stated that they had reviewed the attachment, and that the attachment “includes and summarizes” the department’s statutory and reasonably necessary activities for the parameters and guidelines.\(^{71}\)

LA County responded to the draft analysis by submitting new declarations, and a new Attachment A. LA County asserted that each of the new declarations “adds substantial evidence


\[^{70}\] Code of Regulations, title 2, section 1187.5.

\[^{71}\] Exhibit C, LA County’s Proposed Parameters and Guidelines, Exhibits 1-4.
to the record supporting a Commission decision to adopt CPRA Ps&Gs which include the County’s revisions.” As discussed above, “substantial evidence” is not a factor or element submitted by a party; it is the standard of review that either supports or fails to support the Commission’s decision. And in no event is “substantial evidence” that which compels a particular result, as LA County’s assertion suggests: the presence or absence of substantial evidence is considered in the light most favorable to the decision made; in this context, the decision whether to accept LA County’s proposed revisions to the parameters and guidelines.

The prior declaration of Diane Reagan stated that “I have reviewed Attachment A which includes and summarizes County Counsel’s statutory and reasonably necessary activities for inclusion in Los Angeles County’s proposed parameters and guidelines as reimbursable service components.” Ms. Reagan did not state on her own information and belief that the activities in Attachment A are necessary to implement the mandate, nor indicate any cognizance of what was mandated under prior law. The new declaration submitted by the claimant states that Ms. Reagan has reviewed the draft staff analysis, and includes new Attachment A, proposing changes, including re-inserting one-time training of employees charged with implementing the CPRA activities. Reimbursement for annual training was previously requested, and staff recommended denial. Ms. Reagan’s declaration states as follows:

I declare on information and belief that the changes recommended to Commission staff’s “reimbursable activities” are required because the provision of new CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed, and provided to the requestor in a timely and cost-efficient manner.

The same result obtains in the declarations of Rick Brouwer and Shaun Mathers, both of whom previously acknowledged having read Attachment A, but neither of whom expressly endorsed its content. New declarations submitted by Mr. Brouwer and Mr. Mathers suggest a greater degree of personal knowledge than was asserted before, and assert more emphatically an understanding of what activities are necessary to comply with the mandate.

However, none of the three new declarations provides any analysis or reasoning to explain why training is necessary to implement the higher level of service approved in the test claim statement of decision, nor why the requirement to assist requestors in making an effective public records request necessarily implies that such requests and searches must be tracked, processed, and provided to the requestor in a timely and efficient manner. As discussed at length below, the amendments to CPRA enacted by the test claim statutes were intended to remedy inadequacies in

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72 Exhibit H, LA County’s Comments on Draft Staff Analysis, Exhibit 1, at pp. 2-4.
73 Exhibit C, LA County’s Proposed Parameters and Guidelines, Exhibit 1.
74 Exhibit H, LA County’s Comments on Draft Staff Analysis, Exhibit 1, at p. 2.
75 Exhibit C, LA County’s Proposed Parameters and Guidelines, Exhibits 3-4.
the provision of public records act services originally enacted in 1968. Even if tracking and processing of requests is necessary, there is no explanation why tracking and processing would not have been necessary under prior law. One-time training to implement the incremental changes is discussed below, but such training must be strictly limited to the increased level of service.

Finally, whatever the change in form and emphasis attempted by the amended declarations, the finding of reasonably necessary activities is still a finding of law, and declarations from claimants may inform that decision, but are not controlling, even in the absence of competing submissions. The self-serving statement that “substantial evidence has been provided by three County declarants supporting a Commission decision to adopt the [parameters and guidelines] as revised by the County” is not persuasive. If it cannot be said as a matter of law that an activity is either reasonably necessary to implement the mandate, or within the scope of the mandate, that activity cannot be approved. More importantly, “substantial evidence” is a legal standard, which is defined by the contours of a court’s review of the Commission’s decision; substantial evidence is that which supports a legal finding, not a particular fact or item of evidence proffered by a party, or a quantum of evidence that necessitates or compels a particular result. Thus, “substantial evidence” is developed on the basis of the whole record.

The Commission finds that former Attachment A does not provide sufficient evidence of reasonably necessary activities because it lacks clear explanation why the proposed activities are necessary to implement the mandated increased levels of service. Rather, these declarations support the assertion that these are the practices of the respective agencies, which is not directly relevant to whether claimants have a legal duty to perform these activities, or whether they are reasonably necessary to implement the mandate.

The Commission finds also that the three additional declarations submitted do little to establish, as a matter of law, that the asserted activities are reasonably necessary to carry out the mandate. None of the three declarations illustrate how the practices of the county and its component agencies are reasonably necessary to implement the reimbursable activities approved by the Commission.

Additionally, the claimant cites to the declaration of Commander Castro, submitted in the County’s 2002 test claim filing, in which the declarant states that it is his information and belief that “the new public record duties imposed on the County, as detailed on the attached list, are reasonably necessary in complying with the test claim legislation.” The attached list to which Commander Castro’s declaration refers, without explanation or context, states that claimants should be reimbursed for:

76 Exhibit H, LA County’s Comments on Draft Staff Analysis, at p. 4.
77 Exhibit H, LA County’s Comments on Draft Staff Analysis, at p. 4 [emphasis added].
One-time Activities

1. Develop policies, protocols.
2. Conduct training on implementing test claim legislation.
3. Purchase computers to monitor and document public record service actions.
4. Purchase or develop data base software for tracking and processing Public Record Act requests.
5. Develop a Web Site for public record disclosure requests.

Continuing Activities

I. Staff time for:
   A. Station or branch personnel.
      1. Assistance in defining telephone, walk-in or written requests.
      2. Writing and logging request.
      3. Station-level research.
      4. If availability known, notify requestor.
      5. Indicate date/time available.
      6. If availability not known, forward request to central unit.
   B. Central Unit Personnel
      1. Assistance in defining telephone, walk-in or written requests.
      2. Writing and logging request.
      3. Central Unit research.
      4. If availability known, notify requestor.
      5. Indicate date/time available.
      6. If availability not known:
         a. consult with specialized personnel.
         b. document findings.
         c. notify requestor of results.
   C. County Counsel-legal services to implement and comply with the test claim legislation, including Gov Code 6253.1.\(^{78}\)

LA County implies that this list should simply be accepted and approved by the Commission, but the submission is insufficiently detailed, and does not demonstrate any consideration of prior law requirements or specifically link the proposed activities to any requirement in law. Research, in particular, whether taking place at the “station-level” or the “Central Unit,” is not meaningfully distinguished from the requirements to make a determination whether records requested are exempt from disclosure, as was required under prior law. More importantly, Commander Castro’s declaration states only an opinion regarding the means by which his department implements CPRA, and that “the County's new State mandated duties and resulting costs in

\(^{78}\) Exhibit H, LA County’s Comments on Draft Staff Analysis, at pp. 4-5; Claimant’s Exhibit 5.
implementing the test claim legislation are, in my opinion, reimbursable ‘costs mandated by the State,’ as defined in Government Code section 17514.”

The Commission finds that LA County’s submissions are not sufficient to support a finding by the Commission that the county’s proposed reasonably necessary activities are reasonably necessary as a matter of law. However, to the extent that the activities described in Attachment A, and in LA County’s proposed parameters and guidelines, and the newly-submitted exhibits here, are clarifying of the mandated activities approved in the test claim statement of decision, or reasonably define the scope of the approved activities, the suggested activities will be included in the proposed parameters and guidelines. The following analysis will address each proposed activity in turn, maintaining consistency with the test claim statement of decision and distinguishing activities which were required under prior law and are therefore not reimbursable.

2. **One-time Activities**

   a. **Developing Policies and Procedures to Implement the Mandate**

LA County has proposed reimbursement for the following:

   To develop policies, protocols, manuals and procedures for implementing the following reimbursable California Public Record Act (CPRA) provisions:

   a. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982)).

   b. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).

   c. When an extension of time is required in complying with the 10 day requirement, developing or reviewing language providing a legal basis for the extension. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).

   d. Identifying litigation, claims, and related records which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355)).

   e. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that

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79 Exhibit H, LA County’s Exhibit 5
includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

The Commission has routinely approved reimbursement for the development of policies and procedures to address the implementation of mandated new programs or increased levels of service determined to be reimbursable. And it is easily imagined that changes to CPRA would necessitate an update of policies and procedures to implement the mandate. However, as will appear below to be a consistently recurring theme, what was approved in the test claim statement of decision was only an incremental increase in service: to provide records in electronic form; to provide a time frame for response, and to ensure that the response, when denying the request, is in writing; and to place the burden on agencies to assist the public in making effective public records requests. As discussed in the test claim statement of decision, the duty of government agencies (both state and local) to make records available for inspection reaches back to the 1968 statute, and is therefore not new. The test claim statement of decision also notes that public records, per the interpretation of the courts, included “every conceivable kind of record that is involved in the governmental process,” and the spirit of the CPRA was “to make disclosable information open to the public, not simply the documents prepared, owned, used, or retained by a public agency.” Moreover, the Commission found that, “since 1968 public agencies were required to provide copies or exact copies of public records upon a request of identifiable public records.” The test claim statement of decision also found that the determination whether and to what extent a record is disclosable was not a new activity subject to reimbursement.

The Commission concluded in the test claim statement of decision that the purpose of amending the CPRA to provide for copies of electronic records was to “substantially increase the availability of public records to the public and to reduce the cost and inconvenience to the public associated with large volumes of paper records,” and that therefore “the requirement to provide an electronic copy of a public record kept in an electronic format constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.”

80 Exhibit C, LA County’s Proposed Parameters and Guidelines, at p. 15.
81 See Exhibit A, Test Claim Statement of Decision, at pp. 14-16.
82 Id, at p. 12.
However, because the requirement to provide copies of disclosable public records upon request was an element of prior law,\textsuperscript{86} the claimants cannot receive reimbursement for \textit{making a determination whether a record is disclosable}, or for \textit{providing records} upon request; those activities are not new and were required under prior law. Only the incremental increase in service of providing copies of records \textit{in an electronic format}, and of providing written notice of the determination \textit{within 10 days} whether a record is disclosable, can be reimbursed. And in this context, only the development or updating of policies and procedures to perform these incrementally increased levels of service are reimbursable.

Therefore item a., above, developing a policy or procedure for “Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable” is denied. The underlying requirement to determine whether records or parts thereof are disclosable is not new, and there is no meaningful difference between making that determination for physical records and making that determination for electronic records. Similarly, item b., above, developing policies or procedures for “Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination,” is only reimbursable for updating the existing policy or procedure to provide for the new deadline to provide notice of the determination within 10 days, and to provide for a written notice of the disclosure determination, as these activities are new.

LA County’s proposed parameters and guidelines do not include any information about the activity of developing policies and procedures for implementing the activities that were approved only for schools and school districts. If policies and procedures are to be reimbursed as a one-time activity for counties, school districts should receive the same treatment since the mandate in this regard is the same for counties and school districts, and therefore receive reimbursement for developing policies and procedures to implement those new mandated activities also.

The Commission finds that the development of policies, protocols, manuals and procedures \textit{to implement the newly mandated activities} identified in Section IV. B. is approved for all claimants, for \textit{one-time reimbursement}, but not for policies and procedures for “[d]etermining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable,” and not for policies and procedures for determining whether a record is disclosable, but only for the higher level of service of providing notice of the determination within 10 days. Section IV.A. of the parameters and guidelines authorizes reimbursement for this one-time activity as follows:

\begin{quote}
Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The
\end{quote}

\textsuperscript{86} Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473).
activities in section IV.B. represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

b. One-Time Training

In the draft analysis, reimbursement for Annual Training was recommended for denial. In comments on the draft staff analysis, LA County answered with a request for reimbursement of one-time training, excluding training on existing requirements of CPRA and provided an explanation of why this was reasonably necessary to implement the mandated activities. The one-time activity proposed for reimbursement by the claimant is as follows:

One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section "IV. REIMBURSABLE ACTIVITIES" of these parameters and guidelines. This training activity does not include and reimbursement is not required for implementing all of the California Public Records Act or instruction regarding making a determination whether a record is disclosable. 87

As discussed above, the test claim statutes impose only an incremental higher level of service, but that incremental increase includes providing copies of public records in an electronic format, as specified; providing a disclosure determination within 10 days, or explaining why a disclosure determination cannot be provided within that time; providing assistance to the public in making effective public records requests; and providing a written response when a record is determined not to be disclosable. To the extent that these incremental increases in service may require training, one-time training may be approved for each employee whose duties include responding to CPRA requests consistently with the test claim statute.

The Commission finds that one-time training of employees is reasonably necessary to comply with the mandated activities. The parameters and guidelines include the one-time activity of training employees, as follows:

One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these

87 Exhibit H, LA County’s Comments on Draft Staff Analysis, at p. 7.
parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

3. **On-Going Activity: Acquiring or Developing Technology and Equipment to Track and Process Public Records Requests**

LA County has proposed reimbursement for the following activities relating to acquiring or developing technology and equipment:

- *To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable test claim provisions (as stated above).*

- *To purchase or lease computers to monitor and document public records request actions to implement reimbursable test claim provisions (as stated above). (Use for other purposes is not reimbursable).*

- *To develop or update web site(s) for public record act requests to implement reimbursable test claim provisions (as stated above).*

These activities are not established as being reasonably necessary on the basis of the record. As discussed above, none of the four declarations submitted directly supports a finding that the activities proposed are reasonably necessary to comply with the mandated activities. Moreover, none of the four declarations refers to any technological difficulties that could be ameliorated by tracking software or documentation. Neither do any of the four declarants specifically cite the tracking of requests as a necessary activity. Finally, none of the other exhibits that LA County has submitted speaks to the necessity of technological methods to “track and process” or “monitor and document” public records requests. The need to “track and process” public record requests is not new, in any event, since the CPRA has been law since 1968 and public record requests have required processing for nearly 35 years.

DOF argues, in its comments on the claimants’ proposed parameters and guidelines, that many of the activities, “including, but not limited to, developing data base software for tracking and processing public records requests appear to be outside the scope of the [statement of decision] as these were likely already required and utilized before this mandate and for purposes other than complying with this mandate.”

LA County does not directly answer that argument in its rebuttal comments, instead arguing that the CPRA amendments giving rise to the test claim were intended to prevent public agencies from ignoring public records requests. LA County argues that “tracking and processing public records act requests to ensure timely compliance of CPRA

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88 Exhibit C, LA County’s Proposed Parameters and Guidelines, at p. 6.
89 Exhibit E, DOF Comments on Proposed Parameters and Guidelines.
provisions” is necessary, and should be reimbursable, because without “such systems, the status of requests would be left to memory – easily ignored as in the past.”

Even accepting LA County’s argument that a “system” for tracking and processing of records is essential to comply with the mandate, nothing submitted in the record amounts to substantial evidence that acquiring or developing a data base or purchasing or leasing computers is necessary to comply with the mandated activities approved by the Commission in the test claim statement of decision. Nor does LA County answer DOF’s charge that such methods “were likely already required and utilized before this mandate and for purposes other than complying with this mandate.” Furthermore, the claimants ignore the fact that whatever difficulties in tracking and responding to public records requests might have obtained prior to the enactment of the test claim statutes, the fundamental and existing requirement to make records available and provide copies upon request has not changed; a lost or ignored records request was no more permitted under prior law than it can be permitted now. The state is not required to provide reimbursement to local government for increased costs of complying with an existing requirement merely because local government did not comply prior law. Compliance with existing law is presumed.

As discussed above, the changes implicated here are incremental. The requirement to respond to a public records request is not new. The bill analysis attached to LA County’s rebuttal comments describes an audit in which it was found that local agencies rejected or ignored public records requests 77% of the time. LA County cites this as evidence of the need for tracking software and other technology, but it is also evidence that the test claim statute was meant to remedy an inadequacy; that the Legislature was not satisfied that local governments were fully and properly implementing the CPRA, and the Legislature chose to make the requirements more stringent in order to encourage more consistent compliance. To the extent that local governments must implement processes to track records requests to avoid losing them or ignoring them, those requirements are not new; the prior law was not being implemented properly and completely. Moreover, to the extent that existing equipment is inadequate to implement the mandate, replacing such outmoded equipment is not reimbursable because the underlying mandate to receive and respond to public records requests is not new.

LA County’s comments on the draft staff analysis continue to assert the need for computers and other technology to implement the mandate. The county requests reimbursement for “the pro rata costs of purchasing and installing software systems permitting key word searches for those

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90 Exhibit F, LA County’s Rebuttal Comments, at p. 4.

91 See Government Code sections 6256 and 6257 [public agencies (both state and local government) have been required to provide “copies or exact copies of public records upon a request that reasonably describes an identifiable record” since the 1968 enactment of CPRA].

92 Exhibit F, LA County’s Rebuttal Comments, at p. 4.
requests requiring assistance to the requestor in making a focused and effective search.” But LA County still fails to provide any explanation why new technology or equipment is needed, or why new technology or equipment should be reimbursable under this mandate, where, as discussed above, this mandate was meant, at least in part, to be remedial; to correct the failings of local government under prior law to properly receive and respond to public records act requests in a timely manner.

Therefore, the Commission finds that the request for reimbursement for acquiring or developing new technology and equipment is denied, because there is no evidence that these activities are reasonably necessary to implement the limited approved activities in this claim.

4. **On-Going Activity: Providing a Copy of a Disclosable Electronic Record**

The test claim statement of decision approved reimbursement for *providing a copy of an electronic record* as follows:

*If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.*

LA County has proposed reimbursement for the following, citing the same code section as authority, as was relied upon in the test claim statement of decision:

- Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982)).
  a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for electronic public records.
  b. Determining whether the electronic public records request falls within the agency's jurisdiction.
  c. Determining whether the request reasonably describes any identifiable electronic records(s) and conferring with the requestor if clarification is needed.
  d. Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring with those entities to provide the requested electronic data or information.

93 Exhibit A, Test Claim Statement of Decision, at p. 27 [citing Government Code section 6253.9, as amended by Statutes 2000, chapter 982].
e. Conducting legal reviews, research and analysis of the requested electronic record(s) to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.

f. Processing the requested electronic record(s) or parts thereof that are disclosable.

g. Reviewing the electronic record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested electronic record(s).

i. Copying or saving electronic record(s) and accompanying correspondence.

j. Sending or transmitting the electronic records to the requestor.

k. Tracking the shipment of requested CPRA electronic records.

LA County’s proposed reimbursable activities under this heading suggest that “provid[ing] a copy of a disclosable electronic record,” as was approved in the test claim statement of decision, necessarily implies making a determination as to whether the record is disclosable. As the test claim statement of decision explored at length, the making of a determination whether a record or part thereof is disclosable is not new. The test claim statement of decision makes clear that local government claimants would have been required under prior law to determine whether a record is disclosable under statutory and case law exemptions, in order to make a record “open to inspection by every person at all times during the office hours of the local agency and [school district].”95 The activity of making that determination is no different whether the determination applies to electronic records or physical records. Therefore the activities proposed above are not new. Furthermore, the Commission found in the test claim statement of decision that the process of determining that a portion of a record is exempt from disclosure and redacting the document was not new. The Commission found that “[p]rior to the 1981 amendment courts already held that the CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying.”96

94 Exhibit C, LA County’s Proposed Parameters and Guidelines, at pp. 6-7.
95 Exhibit A, Test Claim Statement of Decision, at p. 12, [citing former Government Code section 6253 (Stats. 1968, ch. 1473)].
The activity that was approved, read in context of the test claim analysis, includes only the marginal increase in service to provide a copy of a disclosable electronic record, in an electronic format requested, as specified; the activity does not include the determination of whether a record is disclosable, and does not include the provision of a copy of a public record. Any of the activities described above that relate to the making of a determination whether a record is disclosable are denied, because that determination was required under prior law, in order to make records available for inspection and to provide copies upon request. In fact, even the 1968 statute required disclosure of electronic data: “[c]omputer data shall be provided in a form determined by the agency.” The inclusion of “computer data,” though vague, expresses the Legislature’s intent that electronic records should receive differential treatment only insofar as the form in which they would be provided, and further reinforces the view, as found in the test claim statement of decision, that determining whether records are disclosable is not new, and therefore not reimbursable, even where the records are in electronic form. Additionally, any of the above activities related to receiving, logging, tracking of requests, or copying, saving, sending, or transmitting the records requested are not new. These activities are either within the scope of providing access to and copies of physical records under the 1968 statute, or they are not within the scope of the amended statute.

In comments submitted in response to the draft staff analysis, Cost Recovery Systems, Inc. (CRS) objects to this view, and argues that the approved activity in the test claim statement of decision includes sending the records, as part of the new program or higher level of service approved. CRS claims that the above analysis contradicts the test claim statement of decision. But CRS’ view can only be supported if the phrase “provide a copy of a disclosable electronic record” is read in isolation, and the remainder of the same sentence, “in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies,” is ignored, and the analysis of prior law in the test claim statement of decision is forgotten. The finding made in the test claim statement of decision was that providing a copy of a disclosable electronic record in the format requested, as specified, was a new activity. The higher level of service is imposed by expressly requiring disclosure of public records in electronic format, in addition to the physical format, which was required under prior law and so is not reimbursable. The test claim statement of decision analyzed at length what was required under prior law, and in fact makes very plain that the provision of copies or exact copies of identifiable disclosable public records has been required since 1968:

Former Government Code sections 6256 and 6257 provided:

6256. Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein. Computer data shall be provided in a form determined by the agency.

97 Former Government Code section 6256 (Stats. 1968, ch. 1473).
6257. A request for a copy of an identifiable public record or information produced therefrom, or certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable.98

As articulated throughout this analysis, the test claim statement of decision approved only an incremental increase in service: where an electronic format requested is one that the agency has used, the agency must provide the requested records in that format. Provision of the records is not a new activity. Accordingly, “sending” the records, in the electronic format, is not a higher level of service, because physical records too would have to be sent.

The activities requested for reimbursement above, under this heading, are therefore denied. The activity of providing a copy of a disclosable electronic record, in an electronic format requested, exactly as approved in the test claim statement of decision, is included in the parameters and guidelines.

However, the test claim statutes, as interpreted by the courts, imply that the activity of “providing a copy of a disclosable electronic record” may at times be more involved than simply copying, redacting, and emailing a document. Section 6253.9(b) provides, in pertinent part:

[T]he requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

1. In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

2. The request would require data compilation, extraction, or programming to produce the record.

This section does not impose an explicit mandate to conduct activities related to data compilation, extraction, or programming, or a mandate to provide a copy of a record that is produced only at otherwise regularly scheduled intervals. But the section implies that such activities might from time to time be required. However, the section also provides new fee authority to cover those activities. Furthermore, the Attorney General of California assumes, in a published opinion analyzing section 6253.9, that a request for electronic records might “require data compilation, extraction, or programming to produce the record,” and that in that event the fee authorized under section 6253.9 “may additionally include ‘the cost to construct [the] record, and the cost of programming and computer services necessary to produce a copy of the

98 Exhibit A, Test Claim Statement of Decision, at p. 14 [citing Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473)].
This comports with the broad definition of “public records,” and the emphasis on the disclosure of “information,” rather than individual documents.\textsuperscript{100}

The same interpretation is accorded in \textit{County of Santa Clara v. Superior Court} (Cal. Ct. App. 6th Dist. 2009) 170 Cal.App.4th 1301. In that case the court found that section 6253.9 permitted the county to charge the requestor fees in excess of the direct cost of duplicating the records, where the county was being asked to produce electronic records “at an unscheduled interval.” The court remanded the case to resolve a factual dispute but first recognized that, if excess costs were shown, the agency may charge “the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record...” pursuant to section 6253.9(b).\textsuperscript{101}

The Commission therefore finds that providing a copy of an electronic record may include compiling information from disparate sources, extracting information from larger data sets, or writing computer programs or code to cull information, in order to generate an electronic record. However, the Commission also finds that the test claim statutes provide fee authority to offset the requirement to “provide a copy of a disclosable electronic record in the electronic format requested,” as discussed below, including fee authority to offset the costs of compiling, extracting, or otherwise generating an electronic record. The SCO is authorized to reduce reimbursement for these activities accordingly, as discussed below. The parameters and guidelines contain the following approved activity:

\textit{Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2), Stats. 2000, ch. 982).}

This activity includes:

\textit{a. Computer programming, extraction, or compiling necessary to produce disclosable records.}

\textit{b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.}

\textit{Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining}


\textsuperscript{100} Exhibit A, Test Claim Statement of Decision, at p. 5; Government Code section 6250 (Stats. 1968, ch. 1473) [“access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state”].

whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

*Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.*

LA County has proposed a number of changes to the above activity, including re-inserting language providing for reimbursement of technology and equipment costs, and eliminating the above limitation that reimbursement is not required for the costs of determining whether a request describes reasonably identifiable records and identifying access to those records. The “pro rata costs of purchasing and installing software systems permitting keyword searches” is not supported on the record here; the requirement to provide electronic records in a format requested only applies if the format is one that has been used by the agency to create copies for its own use. There is no requirement that all records be made available electronically. The test claim statute does now require an agency to assist a member of the public in making an effective request, but that still fails to justify a complete overhaul of local government’s recordkeeping, as implied by LA County’s request. The pro rata costs of software systems requested are denied. Each of the remaining changes proposed is discussed in other sections of this analysis, and needs no further explanation here. The proposed changes are not incorporated in the parameters and guidelines.

5. **On-Going Activities: Responding to a Public Records Act Request Within 10 Days With Either a Notice of Disclosure Determination or Notice of Extension; and, Where a Request is Denied, Responding to the Requestor in Writing.**

In the test claim statement of decision the Commission approved reimbursement for three separate activities conducted in response to a public records request, as follows:

*Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)*

*If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)*

¶...¶
If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

These three activities are analyzed together for purposes of these parameters and guidelines, and listed together in section IV.B., because, in practice, they impact one another. Note also that the response made within 10 days need not be in writing. Only a notice of extension of the 10 day time limit, or a determination that the records are exempt from disclosure must be made in writing. Therefore oral or telephone notice must be included as a reimbursable means of compliance for the initial notice of the disclosure determination.

a. Within 10 days, provide notice of the disclosure determination.

With respect to the first activity approved under section 6253, LA County has proposed reimbursement for the following:

Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).

a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10-day time limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.

b. Determining whether the public record(s) request falls within the agency's jurisdiction.

c. Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.

d. Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.

e. Conducting legal reviews, research and analysis of the requested records to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

f. Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.
Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

h. Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

i. Copying or saving record(s) and accompanying correspondence.

j. Sending or transmitting the records to the requestor.

k. Tracking the shipment of requested CPRA records.\textsuperscript{102}

As discussed above, the determination whether a record is disclosable and the provision of copies upon request, are not new activities and so are not reimbursable. The approved newly-mandated activity is to provide notice to the requestor of the determination within 10 days. This is an \textit{incremental} increase in service, and the focus is not \textit{whether the records are disclosable}, as implied by the claimant’s proposed activities, but providing notice to the requestor within 10 days. The plain language of the statute does not impose a requirement to provide the records within 10 days, only to provide notice (verbal or written) to the requestor of the determination on the request.

As discussed throughout this analysis, and in the test claim statement of decision, prior law provided for “the right of every person to inspect any public record, with exceptions.”\textsuperscript{103} The Commission found, in the test claim statement of decision, that “[s]ince 1968, local agencies and K-14 districts were required to make public records open to inspection at all times during the office hours of the local agencies and K-14 districts, by every person, except for public records exempted from disclosure or prohibited from disclosure.”\textsuperscript{104} The Commission also found that “the general duty to make any reasonably segregable portion of a record available for inspection” was not a new program or higher level of service as compared with prior law.\textsuperscript{105} Moreover, the Commission found that, “since 1968 public agencies were required to provide copies or exact copies of public records upon a request of identifiable public records.”\textsuperscript{106} The test claim statement of decision also found that the determination whether and to what extent a record is disclosable was not a new activity subject to reimbursement. Therefore, the duty to make a determination as to what records or parts of records were exempt from disclosure or prohibited

\textsuperscript{102} Exhibit C, LA County’s Proposed Parameters and Guidelines, at pp. 8-9.

\textsuperscript{103} Exhibit A, Test Claim Statement of Decision, at p. 10.

\textsuperscript{104} Exhibit A, Test Claim Statement of Decision, at p. 12.

\textsuperscript{105} Exhibit A, Test Claim Statement of Decision, at pp. 13-14.

\textsuperscript{106} Id. at p.14, citing former Government Code sections 6256 and 6257 as adopted by Statutes 1968, chapter 1473.
from disclosure is not a new program or higher level of service. Only the requirement to notify the requestor within 10 days is new.

Receiving, logging, and tracking public records requests, as well as determining whether the agency has jurisdiction over the request, and whether the request describes reasonably identifiable records, are all requirements of the public records act under prior law. Similarly, identifying access to pertinent records and conducting legal review would have been required under prior law. Processing and reviewing the records for compliance, as well as preparing supervisory approval and signature of correspondence, copying or saving records and correspondence, sending the records, and tracking shipment are all activities that were required, at least in analog, with respect to physical records subject to disclosure under prior law. Therefore, items (a.) through (e.), and (g.) through (k.), above, are either duplicative or not new mandated activities, and must be denied.

The Commission finds that item (f.) - Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination - reasonably defines the mandate to provide notice to the requestor within 10 days, and this activity is therefore approved.

In its comments submitted in response to the draft staff analysis, CRS proposed altering the approved activity, on the ground that “developing and reviewing language to notify” was ambiguous. CRS suggested applying the same phrasing as the activity of notifying a requestor when a determination cannot be made within 10 days, as discussed below. The Commission agrees that the phrase “drafting, editing, and reviewing a written notice,” as applied in that context, is more specific and clear, and the parameters and guidelines will therefore adjust the phrasing suggested by LA County. CRS also proposed allowing for an oral notification, and reimbursing staff time to make that notification. The Commission finds that orally notifying the requestor is within the scope of the approved activity. Finally, CRS proposed reimbursement for obtaining supervisory review and sending the notice to the requestor, as those activities are approved in a similar context below, where the determination cannot be made within 10 days. The Commission finds that obtaining supervisory review and sending the required notice to the requestor are reasonably within the scope of the approved activity, and are not requirements of prior law. The parameters and guidelines reflect this analysis.

Finally, the activity approved for reimbursement in the conclusion of the test claim statement of decision is written vaguely enough to be interpreted as encompassing activities beyond those approved in the body of the analysis, if not read in the context of the analysis, which are beyond the higher level of service imposed by the test claim statute. For this reason, the Commission defines the scope of the approved activity in the parameters and guidelines to appropriately limit reimbursement to the scope of the test claim statement of decision and the higher level of service imposed by the test claim statutes and to exclude reimbursement for requirements of prior law.

107 Exhibit G, CRS Comments on Draft Staff Analysis, at p. 2.
The parameters and guidelines authorize reimbursement for the following activity:

Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.

2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.

3) Sending or transmitting the notice to the requestor.

b. When the 10-day time limit cannot be met due to unusual circumstances, providing notice to the requestor setting forth the reasons for the extension.

With respect to the second activity approved under section 6253, providing a reason for an extension of time, LA County has proposed reimbursement for the following:

If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).

a. Reviewing the following "unusual circumstances" (in Government Code section 6253, subdivision (c)(1)-(4)) to determine which are relevant in justifying an extension of the 10-day time limit in providing the requested document(s).

i. The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

ii. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

iii. The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more
components of the agency having substantial subject matter interest therein.

iv. The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

b. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments have oversight and/or ownership of the requested data or information, meeting and/or conferring with those staff to ascertain an expected determination date.

c. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.

d. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice and accompanying correspondence.

e. Copying or saving the extension notice and accompanying correspondence.

f. Sending or transmitting the notice and accompanying correspondence to the requestor.

g. Tracking delivery of the notice and accompanying correspondence to the requestor. ¹⁰⁸

The Commission approved, in the test claim statement of decision, reimbursement for “providing written notice” to a requestor when the 10-day time limit must be extended due to unusual circumstances. Based on the intent of the amendments made to CPRA that are the subject of this test claim, this activity should be read as narrowly as possible. The intent and purpose of the amendments to CPRA was to promote access to public records and accountability to the public, and to remedy existing failures in the administration of the CPRA, by providing more specific guidelines for agencies and school districts to respond promptly to public records requests.

Item a. above, restates the “unusual circumstances” that are provided in the test claim statute to justify an extension of time beyond the 10-day time limit, and provides reimbursement for the decisionmaking process of selecting an appropriate justification. The activity approved in the statement of decision is to prepare and send written notice to the requestor when the 10-day time limit cannot be met due to unusual circumstances. The circumstances are enumerated in the code and need not be repeated. Item a. and its sub-parts are therefore denied.

¹⁰⁸ Exhibit C, LA County’s Proposed Parameters and Guidelines, at pp. 9-10.
Item b. above is not sufficiently specific. As discussed above, the claimants have not submitted substantial evidence to defend the reasonably necessary activities proposed, and the activity of meeting or conferring with other staff to determine the date on which the determination can be expected is not sufficiently distinguished from item c., “drafting, editing, and reviewing...” Item b. is therefore denied.

Items c. and d. are reasonably within the scope of the mandate. As discussed above, the 10-day time limit is new, and was approved, as was the requirement to inform a requestor when the 10-day time limit must be extended. In the case an extension is necessary, a written notice is due the requestor, identifying the reasons for the extension and the date on which a determination is expected. Items c. and d. include drafting and reviewing that notice, and obtaining the signature of the agency head or his or her designee. These activities are consistent with the mandated activity, are reasonably necessary to comply with the mandated activity, and are therefore approved.

Item e. is denied: there is no requirement to copy or save the notice prepared for the requestor, only to “provide written notice to the person.” It may be a policy of the agencies to save the notice prepared for the requestor, but that activity is not necessary to perform the mandated activity of “providing” written notice.

Item f., to send or transmit the notice, is approved. As discussed above, the requirement to inform the requestor if the 10-day time limit cannot be met is new, and in order to inform the requestor, a written notice must be sent or transmitted. This activity is reasonably within the scope of the approved activity.

Item g. is denied: there is no requirement to track delivery of the written notice or accompanying correspondence.

Items c., d., and f. reasonably describe and explain the process of providing notice to a requestor that the 10-day time limit must be extended, consistently with the activities approved in the test claim statement of decision. These activities are reasonably within the scope of the mandate and are therefore approved.

Thus, the parameters and guidelines authorize reimbursement for the following activity:

_Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982)._

_This activity includes, where applicable:_

1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.

3) Sending or transmitting the notice to the requestor.

c. When a written request is denied, respond in writing.

With respect to the activity approved under section 6255, providing a written response to a written request for inspection or copies of records when the request is denied, LA County has proposed reimbursement for the following:

If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code § 6255, subd. (b) (Stats. 2000, ch. 982)).

a. Meeting and/or conferring with staff, including but not limited to legal staff, to review and finalize the analysis, findings and conclusions providing the basis for the denial determination.

b. Drafting and editing a written response that includes a determination that the request is denied.

c. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

d. Copying or saving the written denial response and accompanying correspondence.

e. Copying or saving the denial response and accompanying correspondence.

f. Sending the denial response and accompanying correspondence to the requestor.

g. Tracking delivery of the denial response and accompanying correspondence to the requestor.\textsuperscript{109}

The requirement to provide a written response is new, and was expressly approved in the test claim statement of decision, as provided above. The incremental increase in service here is to provide the determination in writing, and not to make the determination, as repeated throughout this analysis. LA County, in its comments filed in response to the draft staff analysis, argues that staff inappropriately denied reimbursement for “all legal services,” and that “the Commission’s [test claim statement of] decision does not deny reimbursement for all legal services.” LA County argues that the test claim statement of decision “only denies reimbursement for legal

\textsuperscript{109} Exhibit C, LA County’s Proposed Parameters and Guidelines, at p. 12.
service when performed to determine whether the requested records are disclosable.”  

The Commission agrees that the test claim statement of decision denied legal research and review to determine whether a record is disclosable, and throughout this analysis the same approach is adopted. LA County cites to the Commission’s hearing on the test claim, in which Commissioner Alex stated, “…the idea that you need some legal advice on how to proceed initially is pretty clear.”  

It is not clear, from the county’s reliance on this off-hand remark, or from the comments on the draft staff analysis, exactly what sort of legal services the county proposes for reimbursement. If the “legal advice on how to proceed initially” is encompassed in the training of existing employees and the development of policies and procedures with respect to the activities approved by the Commission, those activities are approved above. If the county proposes any other legal services or advice for reimbursement, those activities must be distinguished from legal review regarding disclosure. It is not the Commission’s purview to assume or otherwise guess the activities for which claimants might wish to claim reimbursement; a successful claimant must describe the activities for which reimbursement is sought with some particularity. The Commission holds to the test claim analysis, finding that legal review for purposes of determining whether requested records are disclosable is not reimbursable.

However, the Commission does recognize that a denial of a request under CPRA may lead to litigation. Therefore review of the language in the written notice by an agency’s legal staff may be necessary, and is reasonably within the scope of providing a written notice when a request is denied.

Additionally, as discussed above in similar context, drafting and editing a response, obtaining approval and signature of the denial response, and sending the response are also within the scope of the approved activity.

Item d. is not required: there is no requirement to copy or save the denial response, and no consequence for failure to do so; it may be a policy of the agencies to save denial responses, but it is not required by the statute. Item e. is duplicative, and is not required, and is therefore denied. Item g. is not established as necessary; there would seem to be no consequence in the test claim statute for failing to track delivery of a denial response.

The parameters and guidelines identify the following activities for reimbursement:

Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982)).

This activity includes, where applicable:

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110 Exhibit H, LA County Comments on Draft Staff Analysis.
111 Exhibit H, LA County’s Comments on Draft Staff Analysis, at p. 1.
1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the denial are not reimbursable.

2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.

3) Sending or transmitting the notice to the requestor.

   d. Limiting language applicable to these three activities.

The three activities described under section 4., above, providing notice of the disclosure determination in response to a public records act request within 10 days; providing notice of an extension when the 10-day time limit cannot be met; and, where a request is denied, responding to the requestor in writing; are all limited by the same prior law requirements. Prior law required a determination regarding whether records were disclosable; prior law required receiving and processing public records requests; prior law required determining whether records were within the jurisdiction and possession of the agency; and prior law required sending or transmitting the records, if the request was granted. Therefore, the following limits on reimbursement are included in the parameters and guidelines after activity c.:

   Reimbursement for activities 2a., 2b., and 2c.is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

6. On-Going Activity: Assisting the Public in Making Effective Records Requests

The test claim statement of decision approved reimbursement for the following:

When a member of the public requests to inspect a public record or obtain a copy of a public record:

   a. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

   b. Describe the information technology and physical location in which the records exist; and

   c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when:
The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;

The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or

The public agency makes available an index of its records. (Gov. Code. § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

LA County has proposed reimbursement for the following:

When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

b. describe the information technology and physical location in which the records exist; and

c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

To implement Sections (9) a., b., c. (above):

(i) Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with public requests to inspect a public record or obtain a copy of a public record.

(ii) Determining whether the public record(s) request falls within the agency's jurisdiction.

(iii) Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.

(iv) Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.

(v) Conducting legal reviews, research and analysis of the requested records to determine if the requested record(s) or parts thereof are

112 Exhibit A, Test Claim Statement of Decision, at p. 28.
subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

(vi) Identifying litigation, claims, and related record(s) which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(vii) Developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

(viii) Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

(ix) Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

(x) Copying or saving record(s) and accompanying correspondence.

(xi) Sending or transmitting the records to the requestor.

These activities are not reimbursable when:

1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;

2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or

3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355)).

In its comments on the draft staff analysis, LA County proposed isolating public records requests that require assistance to the requestor, and treating them differently from all other requests, ensuring that such requests are fully reimbursable, including activities specifically denied in the test claim decision if assistance to the requestor is involved. For example, where staff recommended approving reimbursement for providing a copy of a disclosable electronic record in an electronic format, as discussed above, staff also recommended the following limitation:

This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act

113 Exhibit C, LA County’s Proposed Parameters and Guidelines, at pp. 10-12.
requests; tracking requests; processing requests; determining whether a request describes reasonably identifiable records and identifying access to those records; retrieving records, or sending the records to the requestor.

LA County proposed to add, and to strike, the following language:

This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act requests not requiring assistance to the requestor in making a focused and effective search; tracking requests not requiring assistance to the requestor in making a focused and effective search; processing requests not requiring assistance to the requestor in making a focused and effective search.

Similar language, if not identical, is proposed for a number of other activities in the proposed parameters and guidelines, including the activity of providing assistance to the public in making effective public records act requests, as discussed in this section. Other than the three declarations discussed above, which contain nothing more than bare assertion, LA County has submitted no evidence or explanation that would justify reimbursement for receipt of a records request that requires assistance to the requestor; or for tracking and processing such a request. The higher level of service approved is to provide assistance to the public in making an effective records request; there is no implication that handling the records request, once made, is a new program or higher level of service. The underlying prior law requirements to provide access to disclosable records, and to provide copies or exact copies, as discussed above, apply with equal force to public records act requests that require assistance to the requestor. There is no evidence that tracking or processing a request is necessary, or if necessary, that tracking and processing are not requirements of prior law; and, receipt of records requests is clearly not new, as discussed throughout this analysis. The declarations submitted state that these activities are necessary to provide the records in a timely and cost-efficient manner, but there is nothing in the language of the statute, or implied by the test claim statute or any of the test claim findings that would justify reimbursement for activities that are either not new, or not required. Providing the records in a timely manner was always a requirement; it was simply not adequately implemented. Moreover, cost-efficiency is not a requirement of CPRA; there is no suggestion that cost should be a factor in refusing disclosure, or that the state has any interest in making the CPRA requirements inexpensive for local government; the focus has always been on the public’s

114 See e.g., Exhibit H, LA County’s Comments on Draft Staff Analysis, at pp. 8; 9; 11.
115 Former Government Code sections 6253; 6256; 6257 (Stats. 1968, ch. 1473).
116 Former Government Code section 6253 required records to be open to inspection during regular business hours; this implies that records should be made available on demand.
right to access information. The language that LA County proposes to add must be denied. The language that LA County proposes to strike is addressed below.

Proposed reimbursable activities (i) and (ii) above – receiving public records requests and determining whether the request is within the agency’s jurisdiction – are not new. As discussed throughout this analysis, agencies had a duty under prior law to receive public records requests; and the duty to determine whether the request is within the agency’s jurisdiction is implied from the duty to determine whether a record is disclosable. Similarly, activities (iv), (v), (vii), and (viii), above, restate the legal review that would be required under prior law pursuant to the requirement to make all public records available, subject to exemptions. Items (iv) and (v) describe the process of identifying access to requested records and reviewing for disclosable material (i.e., reviewing for exemptions from disclosure), and items (vii) and (viii) describe the making of the disclosure determination and the review of that determination. All four of these activities were required under prior law, and none relate to or explain the activity of assisting the public with an effective records request. Item (ix) is duplicative, and does not relate to or explain the activity of assisting the public in making an effective request. Items (ix) and (x) are not required activities, where public records are to be disclosed: an agency head is only required to sign a determination that records will not be disclosed, or a notice of extension of the time limit. And there is no requirement to copy or save records and accompanying correspondence; the requirement is merely to send the records. Thus, the activity to copy or save records is not reasonably necessary to implement the mandate to “send” the records. Item (xi) is required, but is not new: disclosable records would have to be sent or transmitted under prior law as well.

The requirement that local agencies and school districts must assist members of the public in making an effective public records act request is new, as approved in the test claim statement of decision, but is only an incremental increase in service, as discussed in similar context above. Therefore, items (i), (ii), (iv), (v), (vii), (viii), (ix), (x), and (xi) are not reasonably necessary to comply with the incremental increase in service.

Activity (vi) “Identifying litigation, claims, and related record(s)” is narrower than the requirement the test claim statute (which requires “identifying records and information which may be disclosable and may be responsive…”) and is redundant. Therefore, it is denied as written. The intent of placing the burden on the agency to assist the public in making an effective records request necessarily includes identifying records and information which “may be

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117 See Former Government Code section 6250 (Stats. 1968, ch. 1473) [“In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every citizen of this state.”].

118 See Exhibit X, Government Code 6253 (Stats. 1968, ch. 1473).

119 Government Code section 6253.1 (Stats. 2001, ch. 355 (AB 1014)).
disclosable and may be responsive to the request or to the purpose of the request.” The intent of the statutory change, and the activity approved in the test claim statement of decision, is to require an agency to interpret a request generously, with a bias toward identifying all relevant information. However, this activity not does not include determining whether such relevant information is disclosable, since that activity is not new and was specifically denied in the test claim statement of decision.

Thus, of the above activities, only a portion of activity (iii), “[d]etermining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed,” is reasonably within the scope of the approved activity of assisting the public. Activity (iii), is therefore partially approved: “conferring with the requestor” for clarification is implied by the statutory change and the activity as approved in the test claim statement of decision. But “[d]etermining whether the request reasonably describes any identifiable records(s)” is not new; this is an essential part of providing access to or copies of disclosable public records, as required under provisions of CPRA dating back to 1968. 120 In light of this long-standing requirement of prior law, in many of the approved activities in the draft proposed parameters and guidelines, staff recommended including the following limiting language:

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records...

In each activity to which this limiting language was applied, LA County proposed striking the phrase “determining whether the request describes reasonably identifiable records, [and] identifying access to records…” LA County did not explain this proposed change, other than to reiterate, in each of the three new declarations, that “I declare on information and belief that the Commission staff fairly state the activities reasonably necessary in implementing new CPRA services except for the changes I recommend which are found (highlighted) in Attachment A.” 121 As discussed in this section, determining whether a request describes reasonably identifiable records is not new. And, as discussed above, the declarations indicate no consideration of prior law, and therefore cannot be relied upon in conducting a mandates analysis. The limitation on reimbursement is left intact in the proposed parameters and guidelines, including the approved activity of assisting the public; LA County’s proposed changes are denied.

120 Former Government Code section 6256 (Stats. 1968, ch. 1473) [“Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein.”].

121 Exhibit H, LA County’s Comments on Draft Staff Analysis, at pp. 2-4.
The Commission finds that activity (iii), above, is partially approved. The parameters and guidelines authorize reimbursement for the following activities:

When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

i. Conferring with the requestor if clarification is needed to identify records requested.

ii. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

iii. Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, conducting legal review, processing the records, obtaining supervisory review, sending the records, or tracking the records.

7. **On-Going Activity: Redaction and Removal of Home Addresses and Telephone Numbers Upon Request, for K-12 School Districts Only.**

The remaining activities approved in the parameters and guidelines for Government Code section 6254.3 are those affecting only school districts, and are approved as written in the test claim statement of decision, with only slight reorganization. Those activities are, in summary, to “redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information,” and to “remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of...”
education to contact the employee."\[122\] The Commission approves these activities, as stated in the test claim statement of decision, without substantial analysis.

8. **Time Studies**

In the revised proposed parameters and guidelines LA County proposed allowing actual cost claiming by way of time studies. Staff did not include this language in the draft parameters and guidelines because it was not addressed in the claimant’s narrative, and the Commission’s boilerplate language does not normally include provision for time studies.

In its comments on the draft staff analysis, LA County has requested inclusion of language in the parameters and guidelines authorizing claiming through time studies.\[123\] The language requested by LA County is not justified on the record, but the following is inserted in the parameters and guidelines, recognizing that time studies are a claiming tool that has been approved in prior test claims:

> Claimants may use time studies to support salary, benefit, and associated indirect costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller’s Office.

D. **Offsetting Revenues (Section VII. of Parameters and Guidelines)**

In adopting parameters and guidelines, the Commission is required by Government Code section 17557 to determine the “amount to be subvened” under the Constitution. Specifically, the Commission’s regulations require parameters and guidelines to identify offsetting revenues that may apply to the program as follows:

i. Dedicated state and federal funds appropriated for this program

ii. Non-local agency funds dedicated for this program.

iii. Local agency’s general purpose funds for this program.

iv. Fee authority to offset partial costs of this program.\[124\]

The SCO has the authority to reduce reimbursement to an eligible claimant, to the extent of fee authority created by the test claim statute (or another provision), which must in turn be identified in the parameters and guidelines. A reduction in this manner is consistent with Article XIII B, section 6, which requires subvention only when the costs in question can be recovered solely from tax revenues.\[125\]

\[122\] Exhibit A, Test Claim Statement of Decision, at p. 27.

\[123\] Exhibit H, LA County’s Comments on Draft Staff Analysis, at pp. 12-13.

\[124\] Code of Regulations, Title 2, section 1183.1 (Register 2005, No. 36).

\[125\] *County of Fresno, supra*, 53 Cal.3d at p. 487.
Thus, fee authority given to local government agencies and school districts that can be used for costs of a mandated program is required to be identified as a source of offsetting revenues in the parameters and guidelines, and required to be offset against costs claimed, to the extent of the authority. Fee authority granted by the Legislature provides a mechanism by which funds other than local tax revenues can be used for costs of the program. A claimant is not in need of the protection offered by article XIII B, section 6, to the extent of the revenues that can be raised by authorized fees, and cannot show increased costs mandated by the state, consistently with sections 17556(d) and 17514, to the extent of the fee authority granted.

1. Some special districts have potential offsetting revenues that pay for the program.

In 1978, after article XIII A was adopted by the voters through Proposition 13, the Legislature enacted Government Code section 16270 to state its intent that special districts with authority to charge fees should rely on the fees and charges for raising revenue due to the lack of availability of property tax revenue after the 1978-79 fiscal year.

The Legislature finds and declares that many special districts have the ability to raise revenue through use charges and fees and that the ability to raise revenue directly from the property tax for district operations has been eliminated by Article XIIIA of the California Constitution. It is the intent of the Legislature that such districts rely on user fees and charges for raising revenue due to the lack of the availability of property tax revenues after the 1978-79 fiscal year. Such districts are encouraged to begin the transition to user fees and charges during the 1978-79 fiscal year.

Thus, special districts, generally eligible to claim reimbursement because they are subject to the tax and spend limitations of the Constitution, may still have the authority to charge fees and assessments that pay for the mandated program and not be entitled to mandate reimbursement. If fee revenue is used by the district to pay for general administration costs of the district, including the expenses to comply with the CPRA program, then reimbursement is not required in that case.

An example is highlighted in a report issued in May 2000 by the Little Hoover Commission entitled “Special Districts: Relics of the Past or Resources for the Future.” The report, beginning on page 67, discusses enterprise special districts that have the authority to charge fees and assessments for their services, but also collect property tax revenue. The report indicates that in fiscal year 1996-1997, enterprise districts received $421 million in property tax revenue, and a sizable portion of that revenue (more than $100 million) went to 15 enterprise districts. Page 70 of the report highlights three special districts that used all of their property tax revenue in fiscal year 1996-1997 to pay for debt service and capital projects. Under these circumstances,

then, the remaining expenses of the district, including the cost of compliance with the CPRA, would be paid through revenue collected from fees and reimbursement would not be required. Thus, the boilerplate language in Section VII of the parameters and guidelines addressing offsetting revenue states the following:

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

2. Fee authority in Government Code sections 6253 and 6253.9.

In addition, the fee authority found in Government Code sections 6253 and 6253.9 must be identified in the parameters and guidelines, and the SCO may reduce reimbursement to the extent of direct costs that are permissible subjects of the fees.

Government Code section 6253 provides, in pertinent part:

Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable.127

Section 6253.9 provides, in pertinent part:

(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication

shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.\(^\text{128}\)

Section 6253, above, provides that agencies shall make disclosable records “promptly available to any person upon payment of fees covering direct costs of duplication,” or statutorily defined fees, where applicable. Section 6253.9(a)(2), above states that the costs of duplication generally must be limited to direct costs of producing copies. This would include, for example, the cost of a flash drive. Subdivision (b) provides that “the requester shall bear the cost of producing a copy of the record,” if the agency is compelled to produce the record other than at the regularly scheduled time, or if the request requires data compilation, extraction, or programming.

In the context of paper records, the courts have held that “[t]he direct cost of duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it.” The courts contend that direct cost “does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted.”\(^\text{129}\) In the context of electronic records, “the statute allows an agency to recover specified ancillary costs in either of two cases: (1) when it must ‘produce a copy of an electronic record’ between ‘regularly scheduled intervals’ of production, or (2) when compliance with the request for an electronic record ‘would require data compilation, extraction, or programming to produce the record.’” The court in \textit{County of Santa Clara} held that pursuant to section 6253.9, “[u]nder those circumstances, the agency may charge ‘the cost [of staff] to construct a record, and the cost of programming and computer services necessary to produce a copy of the record ....’”\(^\text{130}\)

In this test claim, reimbursement is required for the increased level of service mandated by providing a copy of an electronic record, which the court in \textit{Santa Clara} recognizes may at times

\(^{128}\) Government Code section 6253.9 (added by Stats. 2000, ch. 982 (AB 2799)).


require “data compilation, extraction, or programming.” The fee authority under sections 6253 and 6253.9(a), as discussed, extends to the direct costs of providing copies of disclosable public records, and may not be applied to cover the costs of retrieving records to comply with a request. And the fee authority found in section 6253.9(b) also extends to the costs of programming, extraction, and compiling required to construct a record.

Based on the courts’ interpretation of sections 6253 and 6253.9, the Commission finds that the test claim statutes provide fee authority to offset the direct costs of “provid[ing] a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.” The Commission also finds fee authority for the costs of staff “construct[ing] a record, and the cost of programming and computer services necessary to produce a copy of the record,” when “the record is one that is produced only at otherwise regularly scheduled intervals...[or]... would require data compilation, extraction, or programming to produce the record.”

The remaining activities required under the test claim statutes, including responding in writing to public records requests within 10 days, assisting the public in making effective public records requests, and redacting employees’ home addresses and phone numbers, are not permissible subjects of the identified fee authority. The parameters and guidelines reflect this analysis.

In comments on the draft staff analysis, DOF suggested a small, non-substantive change to the language recommended by staff regarding fee authority. Rather than focusing on the records requested, as was the case in the test claim statement of decision and the case law on point, DOF’s version focuses on the request, and what is required to satisfy the request. The Commission finds that DOF’s proposed language has the same substantive effect as the language recommended in the draft proposed parameters and guidelines, and focuses more clearly on the request, rather than the records requested. DOF’s proposed language is therefore incorporated in the parameters and guidelines, as follows:

Revenue from the fee authority authorized in Government Code sections 6253 and 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, shall be identified and deducted from the following costs claimed:

1. The direct costs of providing a copy of a disclosable electronic record in the electronic format requested; and

2. If the request requires data compilation, extraction, or programming to produce the record, or if the record is one that is otherwise produced only at

131 Exhibit A, Test Claim Statement of Decision, at p. 27.

132 Government Code section 6253.9 (Stats. 2000, ch. 982 (AB 2799)).

133 Exhibit I, DOF Comments on Draft Staff Analysis.
regularly scheduled intervals, the cost of producing the record including the cost to construct it, and the cost of programming and computer services necessary to produce the copy of the electronic record.

V. CONCLUSION

For the foregoing reasons the Commission hereby adopts the attached proposed parameters and guidelines, providing for actual cost reimbursement of the activities approved in the test claim statement of decision and the reasonably necessary activities approved, as analyzed above.
BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES:
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

Case No.: 02-TC-10 and 02-TC-51
California Public Records Act
STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7
( Adopted April 19, 2013)
(Served April 25, 2013)
(Corrected July 26, 2013)
(Served August 2, 2013)

PARAMETERS AND GUIDELINES
The Commission on State Mandates adopted the attached corrected parameters and guidelines on July 26, 2013.

[Signature]
Heather Halsey, Executive Director
PARAMETERS AND GUIDELINES

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act
02-TC-10 and 02-TC-51

Period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes

I. SUMMARY OF THE MANDATE

The California Public Records Act (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. On May 26, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies and K-14 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 which impose an incremental increase in the level of service required under prior law:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

2. Within 10 days from receipt of a request for a copy of records, notify the person making the request of the determination regarding whether the records are disclosable and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

4. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)

5. When a member of the public requests to inspect a public record or obtain a copy of a public record:
   a. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
b. Describe the information technology and physical location in which the records exist; and

c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when:

- The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;
- The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or
- The public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

6. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

   a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

      This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

   b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

II. ELIGIBLE CLAIMANTS

Any city; county; city and county; special district subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes; or any "school district" as defined in Government Code
section 17519 which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred pursuant to the test claim statutes are reimbursable on or after July 1, 2001.

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a 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. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(e), 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(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(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. REIMBORSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, 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.
Claimants may use time studies to support salary, benefit, and associated indirect costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller’s Office.

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 that incurs increased costs, the following activities are reimbursable:

A. **One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate**

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

   This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

   This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

B. **Ongoing Activities**

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

   This activity includes:
   
   a. Computer programming, extraction, or compiling necessary to produce disclosable records.
   
   b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.
Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:

   a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

      This activity includes, where applicable:
      1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
      2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
      3) Sending or transmitting the notice to the requestor.

   b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

      This activity includes, where applicable:
      1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
      2) Obtaining agency head, or his or her designee, approval and signature of the notice of determination or notice of extension.
      3) Sending or transmitting the notice to the requestor.

   c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

      This activity includes, where applicable:
      1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
      2) Obtaining agency head, or his or her designee, approval and signature of the notice of determination.
3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

a. Conferring with the requestor if clarification is needed to identify records requested.

b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

   a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

   This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee
organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

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 services that were performed during the period covered by the reimbursement claim and itemize all costs for those services. 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

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

5. Travel

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

6. Training

The cost of training each employee to perform the mandated activities is eligible for reimbursement as a one time cost. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, and per diem.

B. Indirect Cost Rates

Indirect costs are costs that have been 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. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include 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.

For local agency claimants:

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (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 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).
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:

1. 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 of allowable indirect costs bears to the base selected; or

2. 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 of allowable indirect costs bears to the base selected.

For school district claimants:

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5 (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. 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.

1 This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.
VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

Revenue from the fee authority authorized in Government Code sections 6253 and 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, shall be identified and deducted from the following costs claimed:

1. The direct costs of providing a copy of a disclosable electronic record in the electronic format requested; and

2. If the request requires data compilation, extraction, or programming to produce the record, or if the record is one that is otherwise produced only at regularly scheduled intervals, the cost of producing the record including the cost to construct it, and the cost of programming and computer services necessary to produce the copy of the electronic record.

VIII. STATE CONTROLLER’S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.
February 17, 2015

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

Re: Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

Dear Ms. Halsey:

The State Controller’s Office concurs with the Department of Finance’s request to adopt a new test claim decision to supersede the Statement of Decision adopted on May 26, 2011 for the above-named program.

Proposition 42, California Compliance of Local Agencies with Public Act, approved on the June 3, 2014 ballot amended the California Constitution, adding Section 3 (b)(7) under Article 1, and Section 6 (a)(4) under Article XIII B. This measure requires local agencies and K-14 school districts to comply with specific state laws providing for public access to meetings of local government bodies and records of government officials. Thus, it eliminates the requirement that the State reimburse local agencies and K-14 school districts for compliance with these laws.

Should you have any questions regarding these matters, please contact Steve Purser at (916) 324-5729 or email spurser@sco.ca.gov.

Sincerely,

JAY LAL, Manager
Local Reimbursements Section
DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 18, 2015, I served the:

**State Controller’s Office Comments**
Mandate Redetermination Request, 14-MR-02
*California Public Records Act (02-TC-10 and 02-TC-51)*
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

By making it available on the Commission’s website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 February 18, 2015 at Sacramento, California.

Lorenzo Duran  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562
COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/12/15
Claim Number: 14-MR-02

Matter: California Public Records Act (02-TC-10 and 02-TC-51)
Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:
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, § 1181.3.)

Paul Abelson, Finance Director, City of Oakley
Finance Department, 3231 Main Street, Oakley, CA 94561
Phone: (925) 625-7010
abelson@ci.oakley.ca.us

John Adams, Finance Director, City of Thousand Oaks
Finance Department, 2100 Thousand Oaks Blvd., Thousand Oaks, CA 91362
Phone: (805) 449-2200
jadams@toaks.org

Joe Aguilar, Finance Director, City of Live Oak
Finance, 9955 Live Oak Blvd, Live Oak, CA 95953
Phone: (530) 695-2112
jaguilar@liveoakcity.org

Ron Ahlers, Finance Director / City Treasurer, City of Moorpark
Finance Department, 799 Moorpark Ave., Moorpark, CA 93021
Phone: (805) 517-6249
RAhlers@MoorparkCA.gov

Douglas Alessio, Administrative Services Director, City of Livermore
Finance Department, 1052 South Livermore Avenue, Livermore, CA 94550
Phone: (925) 960-4300
finance@cityoflivemore.net

Roberta Allen, County of Plumas
520 Main Street, Room 205, Quincy, CA 95971
Phone: (530) 283-6246
robertaallen@countyofplumas.com

**Mark Alvarado, City of Monrovia**
415 S. Ivy Avenue, Monrovia, CA 91016
Phone: N/A
malvarado@ci.monrovia.ca.us

**Gary Ameling, City of Santa Clara**
1500 Warburton Ave, Santa Clara, CA 95050
Phone: (408) 615-2345
Finance@santaclaraca.gov

**LeRoy Anderson, County of Tehama**
444 Oak Street, Room J, Red Bluff, CA 96080
Phone: (530) 527-3474
landerson@tehama.net

**Paul Angulo, Auditor-Controller, County of Riverside**
4080 Lemon Street, 11th Floor, Riverside, CA 92501
Phone: (951) 955-3800
pangulo@co.riverside.ca.us

**Socorro Aquino, State Controller's Office**
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

**Debra Auker, Administrative Services Directcor, City of Emeryville**
Administrative Services, 1333 Park Ave, Emeryville, CA 94608
Phone: (510) 596-4300
finance@ci.emeryville.ca.us

**Lisa Bailey, City of San Marino**
2200 Huntington Dr., San Marino, CA 91108
Phone: N/A
lbailey@cityofsanmarino.org

**Harmeet Barkschat, Mandate Resource Services, LLC**
5325 Elkhorn Blvd. #307, Sacramento, CA 95842
Phone: (916) 727-1350
harmeet@calsdrc.com

**Mary Barnhart, Interim Chief Fiscal Officer, City of Gardena**
Department of Finance, 1700 West 162nd Street, Gardena, CA 90247
Phone: (310) 217-9516
mbarnhart@ci.gardena.ca.us

**Robert Barron III, Finance Director, City of Atherton**
Finance Department, 91 Ashfield Rd, Atherton, CA 94027
Phone: (650) 752-0552
rbarron@ci.atherton.ca.us

**Timothy Barry, County of San Diego**
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101-2469
Phone: (619) 531-6259
timothy.barry@sdcounty.ca.gov

**David Batt**, Finance Director, *City of South Pasadena*
Finance Department, 1414 Mission Street, South Pasadena, CA 91030
Phone: (626) 403-7250
dbatt@southpasadenaca.gov

**David Baum**, Finance Director, *City of San Leandro*
835 East 14th St., San Leandro, CA 94577
Phone: (510) 577-3376
dbaum@sanelandro.org

**Deborah Bautista**, *County of Tuolumne*
2 South Green St., Sonora, CA 95370
Phone: (209) 533-5551
dbautista@co.tuolumne.ca.us

**Lacey Baysinger**, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
lbaysinger@sco.ca.gov

**Mary Bedard**, *County of Kern*
1115 Truxtun Avenue, 2nd Floor, Bakersfield, CA 93301
Phone: (805) 868-3599
bedardm@co.kern.ca.us

**John Beiers**, *County of San Mateo*
Office of the County Counsel, 400 County Center, Redwood City, CA 94063
Phone: (650) 363-4775
jbeiers@smcgov.org

**Maria Bemis**, *City of Porterville*
291 North Main Street, Porterville, CA 93257
Phone: N/A
mbemis@ci.porterville.ca.us

**Paul Benoit**, City Administrator, *City of Piedmont*
120 Vista Avenue, Piedmont, CA 94611
Phone: (510) 420-3042
pbenoit@ci.piedmont.ca.us

**Richard Benson**, Assessor - Recorder - County Clerk, *County of Marin*
3501 Civic Center Drive, Room 208, San Rafael, CA 94903
Phone: (415) 499-7215
rbenson@co.marin.ca.us

**Robin Bertagna**, *City of Yuba City*
1201 Civic Center Blvd, Yuba City, CA 95993
Phone: N/A
rbertagn@yubacity.net

**Angela Bickle**, Interim Auditor-Controller, *County of Trinity*
11 Court Street, P.O. Box 1230, Weaverville, CA 96093
Phone: (530) 623-1317
abickle@trinitycounty.org

Heidi Bigall, Director of Admin Services, City of Tiburon
Administration, 1505 Tiburon Blvd., Tiburon, CA 94920
Phone: (415) 435-7373
hbigall@townoftiburon.org

Teresa Binkley, Director of Finance, City of Taft
Finance Department, 209 E. Kern St., Taft, CA 93268
Phone: (661) 763-1350
tbinkley@cityoftaft.org

Barbara Bishop, Finance Manager, City of San Dimas
Finance Division, 245 East Bonita Avenue, San Dimas, CA 91773
Phone: (909) 394-6220
administration@ci.san-dimas.ca.us

Rene Bobadilla, City Manager, City of Pico Rivera
Administration, 6615 Passons Boulevard, Pico Rivera, CA 90660
Phone: (562) 801-4379
rbobadilla@pico-rivera.org

Chris Bonvenuto, Santa Monica Community College District
1900 Pico Blvd., Santa Monica, CA 90405-1628
Phone: (310) 434-4201
Bonvenuto_chris@smc.edu

Barbara Boswell, Finance Director, City of Lancaster
Finance Department, 44933 N. Fern Avenue, Lancaster, CA 93534
Phone: (661) 723-6033
bboswell@cityoflancasterca.org

Emily Boyd, Finance Director, City of Crescent City
Finance Department, 377 J Street, Crescent City, CA 95531
Phone: (707) 464-7483
eboyd@crescentcity.org

Karen Bradley, City of Fresno
2600 Fresno St. Rm. 2157, Fresno, CA 93721
Phone: N/A
karen.brady@fresno.gov

Diane Brady, California Community Colleges
Chancellor's Office, 1102 Q Street, 1102 Q Street, Sacramento, CA 95814-6511
Phone: (916) 324-2564
dbrady@cccco.edu

Danielle Brandon, Budget Analyst, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1986
danielle.brandon@dof.ca.gov

David Brandt, City Manager, City of Cupertino
10300 Torre Avenue, Cupertino, CA 95014-3202
Phone: 408.777.3212
manager@cupertino.org

**Rob Braulik**, Town Manager, *City of Ross*
P.O. Box 320, Ross, CA 94957
Phone: (415) 453-1453
rbraulik@townofross.org

**Robert Bravo**, Finance Director, *City of Port Hueneme*
Finance Department, 250 N. Ventura Road, Port Hueneme, CA 93041
Phone: (805) 986-6524
rbravo@cityofporthueneme.org

**John Brewer**, Finance Director, *City of Corning*
Finance Department, 794 Third Street, Corning, CA 96021
Phone: (530) 824-7033
jbrewer@corning.org

**Daryl Brock**, Finance Director, *City of Orland*
Finance Department, P.O. Box 547, Orland, CA 95963
Phone: (530) 865-1602
dbrock@cityoforland.com

**Dawn Brooks**, *City of Fontana*
8353 Sierra Way, Fontana, CA 92335
Phone: N/A
dbrooks@fontana.org

**Ken Brown**, Acting Director of Administrative Services, *City of Irvine*
One Civic Center Plaza, Irvine, CA 92606
Phone: (949) 724-6255
Kbrown@cityofirvine.org

**Mike Brown**, *School Innovations & Advocacy*
5200 Golden Foothill Parkway, El Dorado Hills, CA 95762
Phone: (916) 669-5116
mikeb@sia-us.com

**Daniel Buffalo**, Finance Director, *City of Lakeport*
Finance Department, 225 Park Street, Lakeport, CA 95453
Phone: (707) 263-5615
dbuffalo@cityoflakeport.com

**Allan Burdick**, 
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

**J. Bradley Burgess**, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

**Jeff Burgh**, *County of Ventura*
County Auditor's Office, 800 S. Victoria Avenue, Ventura, CA 93009-1540
Phone: (805) 654-3152
jeff.burgh@ventura.org

Vanessa Burke, Chief Financial Officer, City of Stockton
425 N. El Dorado St., Stockton, CA 95202
Phone: (209) 937-8460
vanessa.burke@stocktongov.com

Rob Burns, City of Chino
13220 Central Avenue, Chino, CA 91710
Phone: N/A
rbums@cityofchino.org

Regan M Cadelario, City Manager, City of Fortuna
Finance Department, 621 11th Street, Fortuna, CA 95540
Phone: (707) 725-1409
rc@ci.fortuna.ca.us

David Cain, Director of Finance, City of Fountain Valley
10200 Slater Ave, Fountain Valley, CA 92646
Phone: N/A
david.cain@fountainvalley.org

Rebecca Callen, County of Calaveras
891 Mountain Ranch Road, San Andreas, CA 95249
Phone: (209) 754-6343
rcallen@co.calaveras.ca.us

Robert Campbell, County of Contra Costa
625 Court Street, Room 103, Martinez, CA 94553
Phone: (925) 646-2181
bob.campbell@ac.cccounty.us

Ronnie Campbell, Finance Director, City of Camarillo
Finance Department, 601 Carmen Drive, Camarillo, CA 93010
Phone: (805) 388-5320
rcampbell@ci.camarillo.ca.us

Joy Canfield, City of Murrieta
1 Town Square, Murreita, CA 92562
Phone: N/A
jcanfield@murrieta.org

Lisa Cardella-Presto, County of Merced
2222 M Street, Merced, CA 95340
Phone: (209) 385-7511
LCardella-presto@co.merced.ca.us

Gwendolyn Carlos, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Rebecca Carr, County of Kings
1400 West Lacey Blvd, Hanford, CA 93230
Phone: (559) 582-1236
becky.carr@co.kings.ca.us

**Daria Carrillo**, Finance & Administrative Director, *City of San Anselmo*
Administration & Finance, 525 San Anselmo Ave., San Anselmo, CA 94960
Phone: (415) 258-4678
dcarrillo@townofsananselmo.org

**Roger Carroll**, Finance Director/Treasurer, *Town of Loomis*
Finance Department, 3665 Taylor Road, Loomis, CA 95650
Phone: (916) 652-1840
rcarroll@loomis.ca.gov

**Susan Casey**, *City of American Canyon*
4381 Broadway, Suite 201, American Canyon, CA 94503
Phone: (707) 647-4360
scasey@cityofamerican canyon.org

**Jack Castro**, Director of Finance, *City of Huron*
Finance Department, 3631 Lassen Avenue, PO Box 339, Huron, CA 93234
Phone: (559) 945-3020
findir@cityofhuron.com

**Karen Chang**, Interim Finance Director, *City of Pittsburg*
Finance Department, 65 Civic Avenue, Pittsburg, CA 94565-3814
Phone: (925) 252-4872
kchang@ci.pittsburg.ca.us

**Rolando Charvel**, City Comptroller, *City of San Diego*
202 C Street, MS-6A, San Diego, CA 92101
Phone: (619) 236-6060
comptroller@sandiego.gov

**Lin-Lin Cheng**, *City of Foster City*
610 Foster City Blvd, Foster City, CA 94404
Phone: N/A
lcheng@fostercity.org

**Erick Cheung**, Director of Finance/Human Resources, *City of Piedmont*
120 Vista Avenue, Piedmont, CA 94611
Phone: (510) 420-3040
echeung@ci.piedmont.ca.us

**Annette Chinn**, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

**Lawrence Chiu**, Director of Finance & Administrative Services, *City of Daly City*
Finance and Administrative Services, 333 90th Street, Daly City, CA 94015
Phone: (650) 991-8049
lchiu@daly city.org

**Doug Chotkey**, City Manager, *City of Dana Point*
Finance Department, 33282 Golden Lantern, Dana Point, CA 92629
Phone: (949) 248-3513
dchetklevys@danapoint.org

**Carmen Chu**, Assessor-Recorder, *City and County of San Francisco*
1 Dr. Carlton B. Goodlett Place, City Hall, Room 190, San Francisco, CA 94102-4698
Phone: (415) 554-5596
assessor@sfgov.org

**Hannah Chung**, Finance Director, *City of Tehachapi*
Finance Department, 115 S. Robinson St., Tehachapi, CA 93561
Phone: (661) 822-2200
hchung@tehachapicityhall.com

**David Cichella**, *California School Management Group*
3130-C Inland Empire Blvd., Ontario, CA 91764
Phone: (209) 834-0556
dcichella@csmcentral.com

**Geoffrey Cobbett**, Treasurer, *City of Covina*
Finance Department, 125 E. College Street, Covina, CA 91723
Phone: (626) 384-5506
gcobbett@covinaca.gov

**Brian Cochran**, Finance Manager, *City of Novato*
75 Rowland Way #200, Novato, CA 94945
Phone: (415) 899-8912
bcochran@novato.org

**Russell Cochran Branson**, *City of Roseville*
311 Vemon Street, Roseville, CA 95678-2649
Phone: N/A
rbranson@roseville.ca.us

**Dennis Coleman**, Finance Director/Treasurer, *City of Solana Beach*
Finance Department, City Hall 635 S. HWY 101, Solana Beach, CA 92075
Phone: (858) 720-2431
finance@cosb.org

**Shannon Collins**, Finance Manager, *City of El Cerrito*
10890 San Pablo Avenue, El Cerrito, CA 94530-2392
Phone: N/A
scollins@ci.el-cerrito.ca.us

**Harriet Commons**, *City of Fremont*
P.O. Box 5006, Fremont, CA 94537
Phone: N/A
hcommons@fremont.gov

**Stephen Conway**, *City of Los Gatos*
110 E. Main Street, Los Gatos, CA 95031
Phone: N/A
sconway@losgatosca.gov

**Julia Cooper**, *City of San Jose*
Finance, 200 East Santa Clara Street, San Jose, CA 95113
Phone: (408) 535-7000
Finance@sanjoseca.gov

**Viki Copeland, City of Hermosa Beach**
1315 Valley Drive, Hermosa Beach, CA 90254
Phone: N/A
vcopeland@hermosabch.org

**Drew Corbett, Finance Director, City of Menlo Park**
Finance Department, 701 Laurel St, Menlo Park, CA 94025
Phone: (650) 330-6640
dcorbett@menlopark.org

**Lis Cottrell, Finance Director, City of Anderson**
Finance Department, 1887 Howard Street, Anderson, CA 96007
Phone: (530) 378-6626
lcottrell@ci.anderson.ca.us

**Jeremy Craig, Finance Director, City of Vacaville**
Finance Department, 650 Merchant Street, Vacaville, CA 95688
Phone: (707) 449-5128
jcraig@cityofvacaville.com

**Vicki Crow, County of Fresno**
2281 Tulare Street, Room 101, Fresno, CA 93721
Phone: (559) 488-3496
vcrow@co.fresno.ca.us

**Deborah Cullen, City of El Segundo**
350 Main Street, El Segundo, CA 90245-3813
Phone: N/A
dcullen@elsegundo.org

**David Culver, City of San Mateo**
330 West 20th Avenue, San Mateo, CA 94403-1388
Phone: (650) 522-7100
dculver@cityofsanmateo.org

**Gavin Curran, City of Laguna Beach**
505 Forest Avenue, Laguna Beach, CA 92651
Phone: N/A
gcurran@lagunabeachcity.net

**Stefani Daniell, Finance Director, City of Citrus Hts**
Finance Department, 6237 Fountain Square Dr, Citrus Heights, CA 95621
Phone: (916) 725-2448
sdaniell@citrusheights.net

**Joshua Daniels, Attorney, California School Boards Association**
3251 Beacon Blvd, West Sacramento, CA 95691
Phone: (916) 669-3266
jdaniels@csba.org

**Chuck Dantuono, Director of Administrative Services, City of Highland**
Administrative Services, 27215 Base Line, Highland, CA 92346
Phone: (909) 864-6861
cdantuono@cityofhighland.org

Fran David, City Manager, City of Hayward
Finance Department, 777 B Street, Hayward, CA 94541
Phone: (510) 583-4000
citymanager@hayward-ca.gov

William Davis, County of Mariposa
Auditor, P.O. Box 729, Mariposa, CA 95338
Phone: (209) 966-7606
wdavis@mariposacounty.org

Daniel Dawson, City Manager, City of Del Rey Oaks
Finance Department, 650 Canyon Del Rey Rd, Del Rey Oaks, CA 93940
Phone: (831) 394-8511
cityhall@delreyoaks.org

Dilu DeAlwis, City of Colton
125 E. College Street, Covina, CA 91723
Phone: N/A
ddealwis@covinaca.gov

Suzanne Dean, Deputy Finance Director, City of Ceres
Finance Department, 2220 Magnolia Street, Ceres, CA 95307
Phone: (209) 538-5757
Suzanne.Dean@ci.ceres.ca.us

Gigi Decavalles-Hughes, Director of Finance, City of Santa Monica
Finance, 1717 4th Street, Suite 250, Santa Monica, CA 90401
Phone: (310) 458-8281
gigi.decavalles@smgov.net

Marieta Delfin, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Brent Dennis, County of Tuolumne
1021 Harvard Way, El Dorado Hills, CA 95762
Phone: (916) 614-3237
Bdennis@edhcsd.org

Leticia Dias, Accountant, City of Ceres
2720 Second Street, Ceres, CA 95307-3292
Phone: (209) 538-5764
leticia.dias@ci.ceres.ca.us

Tom Dibble, City of Hanford
315 North Douty Street, Hanford, CA 93230
Phone: (559) 585-2525
tdibble@ci.hanford.ca.us

Steve Diels, City Treasurer, City of Redondo Beach
City Treasurer's Department, 415 Diamond Street, Redondo Beach, CA 90277
Phone: (310) 318-0652
steven.diels@redondo.org

**Richard Digre, City of Union City**

34009 Alvarado-Niles Road, Union City, CA 94587
Phone: N/A
rdigre@ci.union-city.ca.us

**Andra Donovan, San Diego Unified School District**

Legal Services Office, 4100 Normal Street, Room 2148, , San Diego, CA 92103
Phone: (619) 725-5630
adonovan@sandi.net

**Richard Doyle, City Attorney, City of San Jose**

200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1900
richard.doyle@sanjoseca.gov

**Randall L. Dunn, City Manager, City of Colusa**

Finance Department, 425 Webster St., Colusa, CA 95932
Phone: (530) 458-4740
citymanager@cityofcolusa.com

**Cheryl Dyas, City of Mission Viejo**

200 Civic Center, Mission Viejo, CA 92691
Phone: N/A
cdyas@cityofmissionviejo.org

**Jennie Ebejer, County of Siskiyou**

311 Fourth Street, Room 101, Yreka, CA 96097
Phone: (530) 842-8030
Jebejer@co.siskiyou.ca.us

**Richard Eberle, County of Yuba**

915 8th Street, Suite 105, Marysville, CA 95901
Phone: (530) 749-7810
reberle@co.yuba.ca.us

**Kerry Eden, City of Corona**

400 S. Vicentia Avenue. Suite 320, Corona, CA 92882
Phone: (951) 817-5740
kerry.eden@ci.corona.ca.us

**Scott Edwards, City of Poway**

PO Box 789, Poway, CA 92074
Phone: N/A
sedwards@poway.org

**Pamela Ehler, City of Brentwood**

150 City Park Way, Brentwood, CA 94513
Phone: N/A
pehler@brentwoodca.gov

**Bob Elliot, City of Glendale**

141 North Glendale Ave, Ste. 346, Glendale, CA 91206-4998
Phone: N/A
belliot@ci.glendale.ca.us

**Edwin Eng**, State Center Community College District
1525 East Weldon Avenue, Fresno, CA 93704-6398
Phone: (559) 244-5910
ed.eng@scccd.edu

**Kelly Ent**, Director of Admin Services, City of Big Bear Lake
Finance Department, 39707 Big Bear Blvd, Big Bear Lake, CA 92315
Phone: (909) 866-5831
kent@citybigbearlake.com

**Tina Envia**, Finance Manager, City of Waterford
Finance Department, 101 E Street, Waterford, CA 95386
Phone: (209) 874-2328
finance@cityofwaterford.org

**James Erb**, County of San Luis Obispo
1055 Monterey Street, Room D222, San Luis Obispo, CA 93408
Phone: (805) 781-5040
erb@co.slo.ca.us

**Vic Erganian**, Deputy Finance Director, City of Pasadena
Finance Department, 100 N. Garfield Ave, Room S348, Pasadena, CA 91109-7215
Phone: (626) 744-4355
verganian@cityofpasadena.net

**Eric Erickson**, Director of Finance and Human Resources, City of Mill Valley
Department of Finance and Human Resources, 26 Corte Madera Avenue, Mill Valley, CA 94941
Phone: (415) 388-4033
finance@cityofmillvalley.org

**Steve Erlandson**, Finance Director/City Treasurer, City of Laguna Niguel
Finance Director/City Treasurer, 30111 Crown Valley Parkway, Laguna Niguel, CA 92677
Phone: (949) 362-4300
serlandson@cityoflagunaniguel.org

**Gary Ernst**, City Treasurer, City of Oceanside
City Treasurer, 300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3553
gernst@ci.oceanside.ca.us

**Jennifer Erwin**, Assistant Finance Director, City of Perris
Finance Department, 101 N. D Street, Perris, CA 92570
Phone: (951) 943-4610
jerwin@cityofperris.org

**Paul Espinoza**, City of Alhambra
111 South First Street, Alhambra, CA 91801
Phone: N/A
pespinoza@cityofalhambra.org

**Lori Ann Farrell**, Finance Director, City of Huntington Beach
2000 Main St., Huntington Beach, CA 92648
Phone: (714) 536-5630
loriann.farrell@surfcity-hb.org

Sandra Featherson, Administrative Services Director, *City of Solvang*
Finance, 1644 Oak Street, Solvang, CA 93463
Phone: (805) 688-5575
sandraf@cityofsolvang.com

Nadia Feeser, Administrative Services Director, *City of Pismo Beach*
Finance Department, 760 Mattie Road, Pismo Beach, CA 93449
Phone: (805) 773-7010
nfeeser@pismobeach.org

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Chris Ferguson, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Ferguson@dof.ca.gov

Matthew Fertal, City Manager, *City of Garden Grove*
Finance Department, 11222 Acacia Parkway, Garden Grove, CA 92840
Phone: (714) 741-5000
CityManager@ci.garden-grove.ca.us

Jimmy Forbis, Finance Director, *City of Monterey*
Finance Department, 735 Pacific Street, Suite A, Monterey, CA 93940
Phone: (831) 646-3940
forbis@monterey.org

Karen Fouch, *County of Lassen*
221 S. Roop Street, Ste 1, Susanville, CA 96130
Phone: (530) 251-8233
kfouch@co.lassen.ca.us

James Francis, *City of Folsom*
50 Natoma Street, Folsom, CA 95630
Phone: N/A
jfrancis@folsom.ca.us

Charles Francis, Administrative Services Director/Treasurer, *City of Sausalito*
Finance, 420 Litho Street, Sausalito, CA 94965
Phone: (415) 289-4105
cfrancis@ci.sausalito.ca.us

Eric Frost, Deputy City Manager, *City of Visalia*
707 West Acequia, Visalia, CA 93291
Phone: (559) 713-4474
efrost@ci.visalia.ca.us

Harold Fujita, *City of Los Angeles*
Department of Recreation and Parks, 211 N. Figueroa Street, 7th Floor, Los Angeles, CA 90012
Phone: (213) 202-3222
harold.fujita@lacity.org

Mary Furey, City of Saratoga
13777 Fruitvale Avenue, Saratoga, CA 95070
Phone: N/A
mfurey@saratoga.ca.us

Carolyn Galloway-Cooper, Finance Director, City of Buellton
Finance Department, 107 West Highway 246, Buellton, CA 93427
Phone: (805) 688-5177
carolync@cityofbuellton.com

Robert Galvan, Director of Administrative Services, City of Hollister
Administrative Services, 375 Fifth Street, Hollister, CA 95023
Phone: (831) 636-4300
robert.galvan@hollister.ca.gov

Jason Garben, Financial Services Manager, City of Suisun City
Administrative Services, 701 Civic Center Blvd., Suisun City, CA 94585
Phone: (707) 421-7320
jgarben@suisun.com

Marisela Garcia, Finance Director, City of Riverbank
Finance Department, 6707 Third Street, Riverbank, CA 95367
Phone: (209) 863-7109
mhgarcia@riverbank.org

Rebecca Garcia, City of San Bernardino
300 North, San Bernardino, CA 92418-0001
Phone: (909) 384-7272
garcia_re@sbcity.org

Henry Garcia, Interim Finance Director, City of Cudahy
Finance Department, 5220 Santa Ana Street, Cudahy, CA 90201
Phone: (323) 733-5143
hgarcia@cityofcudahyca.gov

Jeffry Gardner, City Manager & Finance Director, City of Plymouth
P.O. Box 429, Plymouth, CA 95669
Phone: (209) 245-6941
jgardner@ci.plymouth.ca.us

George Gascon, District Attorney, City and County of San Francisco
850 Bryant Street, Room 322, San Francisco, CA 94103
Phone: (415) 553-1751
robyn.burke@sfgov.org

Susan Geanacou, Department of Finance
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov
Robert Geis, County of Santa Barbara  
Auditor-Controller, 105 E Anapamu St, Room 303, Santa Barbara, CA 93101  
Phone: (805) 568-2100  
geis@co.santa-barbara.ca.us

Gloriette Genereux, Finance Director, City of Modesto  
Finance Department, 1010 10th Street, P.O. Box 642 Modesto, CA 95353, Modesto, CA 95354  
Phone: (209) 577-5371  
ggenreux@modestogov.com

Laura S. Gill, City Manager, City of Elk Grove  
Finance Department, 8401 Laguna Palms Way, Elk Grove, CA 95758  
Phone: (916) 478-2201  
Lgill@elkgrovecity.org

Jeri Gilley, Finance Director, City of Turlock  
156 S. Broadway, Ste 230, Turlock, CA 95380  
Phone: (209) 668-5570  
jgilley@turlock.ca.us

Cindy Giraldo, City of Burbank  
301 E. Olive Avenue, Financial Services Department, Burbank, CA 91502  
Phone: N/A  
cgiraldo@ci.burbank.ca.us

James Goins, City of Richmond  
1401 Marina Way South, P.O. Box 4046, Richmond, CA 94804  
Phone: N/A  
james_goins@ci.richmond.ca.us

Paul Golaszewski, Legislative Analyst’s Office  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8341  
Paul.Golaszewski@lao.ca.gov

Donna Goldsmith, Finance Manager, City of Santee  
Finance Department, 10601 Magnolia Avenue, Building #3, Santee, CA 92071  
Phone: (619) 258-4100  
dgoldsmith@ci.santee.ca.us

Jesus Gomez, City Manager, City of El Monte  
Finance Department, 11333 Valley Blvd, El Monte, CA 91731-3293  
Phone: (626) 580-2001  
citymanager@elmonteca.gov

Jose Gomez, Director of Finance and Administrative Services, City of Santa Fe Springs  
Finance and Administrative Services, 11710 E. Telegraph Road, Santa Fe Springs, CA 90670  
Phone: (562) 868-0511  
josegomez@santafesprings.org

Vivian Gong, City of Dublin  
100 Civic Plaza, Dublin, CA 94568  
Phone: N/A
vivian.gong@ci.dublin.ca.us

Joe Gonzalez, County of San Benito
440 Fifth Street Room 206, Hollister, CA 95023
Phone: (831) 636-4090
jgonzalez@auditor.co.san-benito.ca.us

Adela Gonzalez, City Manager, City of Soledad
248 Main St., PO Box 156, Soledad, CA 93960
Phone: (831) 223-5014
adelag@cityofsoledad.com

Mike Goodson, City Manager, City of Hawthorne
Finance Department, 4455 W. 126th Street, Hawthorne, CA 90250
Phone: (310) 349-2901
mgoodson@hawthorneCA.gov

Jim Goodwin, City Manager, City of Live Oak
9955 Live Oak Blvd., Live Oak, CA 95953
Phone: (530) 695-2112
liveoak@liveoakcity.org

Craig Graves, Finance Director, City of Baldwin Park
14403 East Pacific Avenue, Baldwin Park, CA 91706
Phone: N/A
cgraves@baldwinpark.com

Michelle Green, Admin Service Director, City of Banning
Administrative Services, 99 E. Ramsey St., Banning, CA 92220
Phone: (951) 922-3105
mgreen@ci.banning.ca.us

Michelle Greene, City Manager, City of Goleta
130 Cremona Drive, Suite B, Goleta, CA 93117
Phone: (805) 961-7500
mgreene@cityofgoleta.org

Nancy Greenhalgh, Accounting Specialist, City of Canyon Lake
Finance Department, 31516 Railroad Canyon Rd, Canyon Lake, CA 92587
Phone: (951) 244-2955
ngreenhalgh@cityofcanyonlake.com

Jan Grimes, County of Orange
P.O. Box 567, Santa Ana, CA 92702
Phone: (714) 834-2459
jan.grimes@ac.ocgov.com

John Gross, City of Long Beach
333 W. Ocean Blvd., 6th Floor, Long Beach, CA 90802
Phone: N/A
john.gross@longbeach.gov

Shelly Gunby, Director of Financial Management, City of Winters
Finance, 318 First Street, Winters, CA 95694
Phone: (530) 795-4910
shelly.gunby@cityofwinters.org

**Francisco Gutierrez**, Finance Director, *City of Santa Ana*
20 Civic Center Plaza, Santa Ana, CA 92701
Phone: (714) 647-5400
fgutierrez@santa-ana.org

**Thomas J. Haglund**, City Administrator, *City of Gilroy*
Finance Department, 7351 Rosanna Street, Gilroy, CA 95020
Phone: (408) 846-0202
Tom.Haglund@ci.gilroy.ca.us

**Amanda Hall**, *City of Lynwood*
11330 Bullis Road, Lynwood, CA 90262
Phone: (310) 603-0220
ahall@lynwood.ca.us

**Tori Hannah**, Finance Director, *City of Capitola*
Finance Department, 480 Capitola Ave, Capitola, CA 95010
Phone: (831) 475-7300
thannah@ci.capitola.ca.us

**Ed Hanson**, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
ed.hanson@dof.ca.gov

**Anne Haraksin**, *City of La Mirada*
13700 La Mirada Blvd., La Mirada, CA 90638
Phone: N/A
aharaksin@cityoflamirada.org

**Joe Harn**, *County of El Dorado*
360 Fair Lane, Placerville, CA 95667
Phone: (530) 621-5633
joe.harn@edcgov.us

**George Harris**, *City of Rialto*
150 South Palm Ave., Rialto, CA 92376
Phone: N/A
gharris@rialto.ca.gov

**Emily Harrison**, Interim Finance Director, *County of Santa Clara*
70 West Hedding Street, San Jose, CA 95110
Phone: (408) 299-5205
emily.harrison@ceo.sccgov.org

**Jenny Haruyama**, Director of Finance & Administrative Services, *City of Tracy*
Finance Department, 333 Civic Center Plaza, Tracy, CA 95376
Phone: (209) 831-6800
financedept@ci.tracy.ca.us

**Jone Hayes**, Administrative Services Director, *City of Healdsburg*
Administrative Services, 401 Grove Street, Healdsburg, CA 95448
Phone: (707) 431-3317
jhayes@ci.healdsburg.ca.us

Jim Heller, City Treasurer, City of Atwater
Finance Department, 750 Bellevue Rd, Atwater, CA 95301
Phone: (209) 357-6310
finance@atwater.org

Jennifer Hennessy, City of Temecula
41000 Main St., Temecula, CA 92590
Phone: N/A
Jennifer.Hennessy@cityoftemecula.org

Darren Hernandez, City of Santa Clarita
23920 Valencia Blvd., Suite 295, Santa Clarita, CA 91355
Phone: N/A
dhernandez@santa-clarita.com

Dennis Herrera, City Attorney, City and County of San Francisco
Office of the City Attorney, 1 Dr. Carton B. Goodlett Place, Rm. 234, San Francisco, CA 94102
Phone: (415) 554-4700
brittany.feitelberg@sfgov.org

John Herrera, Interim Finance Director, City of Goleta
Finance Department, 130 Cremona Drive, Suite B, Goleta, CA 93117
Phone: (805) 961-7500
Jherrera@cityofgoleta.org

Robert Hicks, City of Berkeley
2180 Milvia Street, Berkeley, CA 94704
Phone: N/A
finance@ci.berkeley.ca.us

Wally Hill, City Manager, City of Hemet
Finance Department, 445 E. Florida Ave, Hemet, CA 92543
Phone: (951) 765-2301
kaguilar@cityofhemet.org

Rod Hill, City of Whittier
13230 Penn Street, Whittier, CA 90602
Phone: N/A
rhill@cityofwhittier.org

Lorenzo Hines Jr., Assistant City Manager, City of Pacifica
170 Santa Maria Avenue, Pacifica, CA 94044
Phone: (650) 738-7409
lhines@ci.pacifica.ca.us

Daphne Hodgson, City of Seaside
440 Harcourt Avenue, Seaside, CA 93955
Phone: N/A
dhodgson@ci.seaside.ca.us

S. Rhetta Hogan, Finance Director, City of Yreka
Finance Department, 701 Fourth Street, Yreka, CA 96097
Victoria Holthaus, Finance Officer, City of Clearlake
Finance Department, 7684 1st Avenue, Clear Lake, CA 55319
Phone: (320) 743-3111
cityofclearlake@frontiernet.net

Dorothy Holzem, California Special Districts Association
1112 I Street, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dorothyh@csda.net

David Houser, County of Butte
25 County Center Drive, Suite 120, Oroville, CA 95965
Phone: (530) 538-7607
dhouser@buttecounty.net

Justyn Howard, Program Budget Manager, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Shannon Huang, City of Arcadia
240 West Huntington Drive, Arcadia, CA 91007
Phone: N/A
shuang@ci.arcadia.ca.us

Elizabeth Hudson, City of Danville
510 La Gonda Way, Danville, CA 94526
Phone: N/A
ehudson@danville.ca.gov

Jamie Hughson, Finance Director/City Treasurer, City of Clovis
1033 Fifth St., Clovis, CA 93611
Phone: (559) 324-2130
jamieh@ci.clovis.ca.us

Lewis Humphries, Finance Director, City of Newman
Finance Department, 938 Fresno Street, Newman, CA 95360
Phone: (209) 862-3725
lhumphries@cityofnewman.com

Sung Hyun, City of Buena Park
6650 Beach Boulevard, Buena Park, CA 90622
Phone: N/A
shyun@buenapark.com

Mark Ibele, Senate Budget & Fiscal Review Committee
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Cheryl Ide, Associate Finance Budget Analyst, Department of Finance
Education Systems Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Cheryl.ide@dof.ca.gov

**Julia James, City of Fullerton**
303 W. Commonwealth Ave., Fullerton, CA 92832
Phone: N/A
juliaj@ci.fullerton.ca.us

**Edward Jewik, County of Los Angeles**
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

**Rochelle Johnson, Acting Accounting Manager, City of Wildomar**
Finance Department, 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595
Phone: (951) 677-7751
rjohnson@cityofwildomar.org

**Scott Johnson, Assistant City Manager, City of Oakland**
1 Frank H. Ogawa Plaza, Oakland, CA 94612
Phone: N/A
sjohnson@oaklandnet.com

**Onyx Jones, Interim Finance Director, City of Adelanto**
Finance Department, 11600 Air Expressway, Adelanto, CA 92301
Phone: (760) 246-2300
ojones@ci.adelanto.ca.us

**Toni Jones, Finance Director, City of Kerman**
Finance Department, 850 S. Madera Avenue, Kerman, CA 93630
Phone: (559) 846-4682
tjones@cityofkerman.org

**Ferlyn Junio, Nimbus Consulting Group, LLC**
2386 Fair Oaks Boulevard, Suite 104, Sacramento, CA 95825
Phone: (916) 480-9444
fjunio@nimbusconsultinggroup.com

**Kim Juran, Finance Director, City of San Bruno**
Finance Department, 567 El Camino Real, San Bruno, CA 94066
Phone: (650) 616-7080
Finance-Web@sanbruno.ca.gov

**Maria Kachadoorian, Director of Finance, City of Chula Vista**
276 Fourth Avenue, Chula Vista, CA 91910
Phone: (619) 691-5250
mkachadoorian@ci.chula-vista.ca.us

**Will Kaholokula, City of Bell Gardens**
7100 S. Garfield Avenue, Bell Gardens, CA 90201
Phone: (562) 806-7700
wkaholokula@bellgardens.org

**Harshil Kanakia, County of San Mateo**
Controller's Office, 555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1080
hkanakia@smcgov.org

**Jill Kanemasu, State Controller's Office**
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

**Emma Karlen, Finance Director, City of Milpitas**
Finance Department, 455 East Calaveras Boulevard, Milpitas, CA 95035
Phone: (408) 586-3145
ekarlen@ci.milpitas.ca.gov

**Naomi Kelly, City Administrator, City and County of San Francisco**
City Hall, Room 362, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
Phone: (415) 554-4851
city.administrator@sfgov.org

**Anita Kerezsi, AK & Company**
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

**Nancy Kerry, City of South Lake Tahoe**
1901 Airport Road, South Lake Tahoe, CA 96150
Phone: N/A
nkerry@cityofslt.us

**Geoffrey Kiehl, Director of Finance and Treasurer, City of Palm Springs**
Finance & Treasury, 3200 E. Tahquitz Canyon Way, P.O. Box 2743, Palm Springs, CA 92262
Phone: (760) 323-8229
Geoffrey.Kiehl@palmspringsca.gov

**Jillian Kissee, Department of Finance**
915 L Street, Sacramento, Ca
Phone: (916) 445-0328
jillian.kissee@dof.ca.gov

**Lauren Klein, County of Stanislaus**
1010 Tenth Street, Suite 5100, Modesto, CA 95353
Phone: (209) 525-6398
kleinl@stancounty.com

**Will Kolbow, Finance Director, City of Orange**
300 E. Chapman Avenue, Orange, CA 92866-1508
Phone: (714) 744-2234
WKolbow@cityoforange.org

**Patty Kong, City of Mountain View**
P.O. Box 7540, Mountain View, CA 94039-7540
Phone: N/A
patty.kong@mountainview.gov

**Cathy Krysyna, Assistant Finance Officer, City of Pacific Grove**
Finance Department, 300 Forest Ave., Pacific Grove, CA 93950
Phone: (831) 648-3102
ckrysyna@ci.pg.ca.us

Jennifer Kuhn, Deputy, Legislative Analyst's Office
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8332
Jennifer.kuhn@lao.ca.gov

Tina Kundig, City of Redlands
P.O. Box 3005, Redlands, CA 92373
Phone: N/A
tkundig@cityofredlands.org

Ana Kwong, City of Rohnert Park
Finance, P.O. Box 1489, Rohnert Park, CA 94928
Phone: (707) 585-6722
akwong@rpcity.org

Lauren Lai, Finance Director, City of Marina
Finance Department, 211 Hillcrest Ave, Marina, CA 93933
Phone: (831) 884-1274
llai@ci.marina.ca.us

Jay Lal, State Controller's Office (B-08)
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Karina Lam, City of Paramount
16400 Colorado Avenue, Paramount, CA 90723
Phone: N/A
klam@paramountcity.com

Judy Lancaster, City of Chino Hills
14000 City Center Drive, Chino Hills, CA 91709
Phone: N/A
jlancaster@chinohills.org

Veronica Lanto, San Jose Unified School District
855 Lenzen Avenue, San Jose, CA 95126-2736
Phone: (408) 535-6572
Veronica_Lanto@sjusd.org

Ramon Lara, City Administrator, City of Woodlake
350 N. Valencia Blvd., Woodlake, CA 93286
Phone: (559) 564-8055
rlara@ci.woodlake.ca.us

Israel Lara Jr., City Manager, City of Parlier
Administration, 1100 E. Parlier Avenue, Parlier, CA 93648
Phone: (559) 646-3545
ilara@parlier.ca.us

Tamara Layne, City of Rancho Cucamonga
10500 Civic Center Drive, Rancho Cucamonga, CA 91730  
Phone: (909) 477-2700  
Tamara.Layne@cityofrc.us

Gloria Leon, Admin Services Director, City of Calistoga  
Administrative Services, 1232 Washington Street, Calistoga, CA 94515  
Phone: (707) 942-2802  
GLeon@ci.calistoga.ca.us

Grace Leung, City of Sunnyvale  
Sunnyvale City Hall, 456 W. Olive Ave., Sunnyvale, CA 94086  
Phone: (408) 730-7284  
gleung@ci.sunnyvale.ca.us

Mark Lewis, City Administrator, City of Chowchilla  
Finance Department, 130 S. Second Street Civic Center Plaza, Chowchilla, CA 93610  
Phone: (559) 665-8615  
mlewis@ci.chowchilla.ca.us

Gilbert A. Livas, City Manager, City of Downey  
11111 Brookshire Ave, Downey, CA 90241  
Phone: (562) 904-7284  
CityManager@downeyca.org

Rudolph Livingston, Finance Director, City of Ojai  
PO Box 1570, Ojai, CA 93024  
Phone: N/A  
livingston@ojaiicity.org

Darcy Locken, County of Modoc  
204 S. Court Street, Alturas, CA 96101  
Phone: (530) 233-6204  
darcylocken@co.modoc.ca.us

Kenneth Louie, City of Lawndale  
14717 Burin Avenue, Lawndale, CA 90260  
Phone: N/A  
k louie@lawndalecity.org

Linda Lowry, City Manager, City of Pomona  
City Manager's Office, 505 South Garey Ave., Pomona, CA 91766  
Phone: (909) 620-2051  
linda_lowry@ci.pomona.ca.us

Janet Luzzi, Finance Director, City of Arcata  
Finance Department, 736 F Street, Arcata, CA 95521  
Phone: (707) 822-5951  
finance@cityofarcata.org

Kathleen Lynch, Department of Finance (A-15)  
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814  
Phone: (916) 445-3274  
kathleen.lynch@dof.ca.gov

Gary J. Lysik, Chief Financial Officer, City of Calabasas
100 Civic Center Waya, Calabasas, CA 91302
Phone: (818) 224-1600
glysik@cityofcalabasas.com

Van Maddox, County of Sierra
211 Nevada Street, 2nd Floor, P.O. Box 425, Downieville, CA 95936
Phone: (530) 289-3273
vmaddox@sierracounty.ws

Martin Magana, City Manager/Finance Director, City of Desert Hot Springs
Finance Department, 65-950 Pierson Blvd, Desert Hot Springs, CA 92240
Phone: (760) 329-6411, Ext.
CityManager@cityofdhs.org

Susan Mahoney, City of Orinda
22 Orinda Way, Orinda, CA 94563
Phone: N/A
smahoney@cityoforinda.org

James Makshanoff, City Manager, City of San Clemente
100 Avenida Presidio, San Clemente, CA 92672
Phone: N/A
makshanoffJ@san-clemente.org

Debbie Malicoat, Director of Admin Services, City of Arroyo Grande
Finance Department, 300 E. Branch Street, Arroyo Grande, CA 93420
Phone: (805) 473-5410
dmalicoat@arroyogrande.org

Suzanne Mallory, City of Manteca
1001 W Center Street, Manteca, CA 95337
Phone: N/A
smallory@ci.manteca.ca.us

Eddie Manfro, City of Westminster
8200 Westminster Blvd., Westminster, CA 92683
Phone: N/A
emanfro@westminster-ca.gov

Denise Manoogian, City of Cerritos
P.O. Box 3130, Cerritos, CA 90703-3130
Phone: N/A
dmanoogian@cerritos.us

Noel Marquis, City of Beverly Hills
455 N. Rexford Dr., Beverly Hills, CA 90210
Phone: N/A
nmarquis@beverlyhills.org

Terri Marsh, Finance Director, City of Signal Hill
Finance, 2175 Cherry Ave., Signal Hill, CA 90755
Phone: (562) 989-7319
Finance1@cityofsignalhill.org

Thomas Marston, City of San Gabriel
Pio Martin, Finance Manager, City of Firebaugh
Finance Department, 1133 P Street, Firebaugh, CA 93622
Phone: (559) 659-2043
financedirector@ci.firebaugh.ca.us

Janice Mateo-Reyes, Finance Manager, City of Laguna Hills
Administrative Services Department, 24035 El Toro Rd., Laguna Hills, CA 92653
Phone: (949) 707-2623
jreyes@ci.lagunahills.ca.us

Hortensia Mato, City of Newport Beach
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Mike Matsumoto, City of South Gate
8650 California Ave, South Gate, CA 90280
Phone: N/A
zcaltitla@pico-rivera.org

Dan Matusiewicz, City of Newport Beach
3300 Newport Blvd, Newport Beach, CA 92663
Phone: N/A
danm@newportbeachca.gov

Charles McBride, City of Carlsbad
1635 Faraday Avenue, Carlsbad, CA 92008-7314
Phone: N/A
chuck.mcbride@carlsbadca.gov

Teresa McBroome, Finance Director/City Treasurer, City of Del Mar
Finance Department, 1050 Camino Del Mar, Del Mar, CA 92014
Phone: (858) 755-9313
tmcbroome@delmar.ca.us

Mary McCarthy, Finance Manager, City of Pleasant Hill
Finance Division, 100 Gregory Lane, Pleasant Hill, CA 94523
Phone: (925) 671-5231
Mmccarthy@ci.pleasant-hill.ca.us

Kevin McCarthy, Director of Finance, City of Indian Wells
Finance Department, 44-950 Eldorado Drive, Indian Wells, CA 92210-7497
Phone: (760) 346-2489
kmccarthy@indianwells.com

Michelle McClelland, County of Alpine
P.O. Box 266, Markleeville, CA 96120
Phone: (530) 694-2284
mmclelland@alpinecountyca.gov

Sheila McCrory, Interim Finance Director / Treasurer, City of St. Helena
Finance, 1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2751
sheilam@cityofsthelena.org

Lee McDougal, City Manager, City of Riverside
3900 Main Street, 7th Floor, Riverside, CA 92522
Phone: (951) 826-5553
lmdougal@riversideca.gov

Maureen McGoldrick, Director, City of Simi Valley
Department of Administrative Services, 2929 Tapo Canyon Road, Simi Valley, CA 93063
Phone: (805) 583-6700
mmcgoldrick@simivalley.org

Michael McGrane, Finance Director, City of Imperial Beach
Finance Department, 825 Imperial Beach Blvd., Imperial Beach, CA 91932
Phone: (619) 423-8303
mmcgrane@cityofib.org

Kelly McKinnis, Finance Director, City of Weed
Finance Department, 550 Main Street, Weed, CA 96094
Phone: (530) 938-5020
mckinnis@ci.weed.ca.us

Larry McLaughlin, City Manager, City of Sebastopol
7120 Bodega Avenue, P.O. Box 1776, Sebastopol, CA 95472
Phone: (707) 823-1153
lwmclaughlin@juno.com

Dennis McLean, City of Rancho Palos Verdes
30940 Hawthorne Blvd., Rancho Palos Verdes, CA 90275
Phone: N/A
dennism@rpv.com

Rachelle McQuiston, Finance Director, City of Ridgecrest
Finance Department, 100 W CALIFORNIA AVE, RIDGECREST, CA 93555
Phone: (760) 499-5020
rmcquiston@ridgecrest-ca.gov

Donald McVey, Director of Finance, City of Daly City
Finance Department, 333 90th Street, Daly City, CA 94015
Phone: (650) 991-8127
dmcvey@dalycity.org

Paul Melikian, City of Reedley
1717 Ninth Street, Reedley, CA 93654
Phone: (559) 637-4200
paul.melikian@reedley.ca.gov

Joe Mellett, County of Humboldt
825 Fifth Street, Room 126, Eureka, CA 95501
Phone: (707) 476-2452
jmellett@co.humboldt.ca.us

Rebecca Mendenhall, City of San Carlos
600 Elm Street, P.O. Box 3009, San Carlos, CA 94070-1309
Phone: (650) 802-4205
rmendenhall@cityofsanCarlos.org

Michelle Mendoza, MAXIMUS
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michelleMendOza@Maximus.com

Dawn Merchant, City of Antioch
P.O. Box 5007, Antioch, CA 94531
Phone: (925) 779-7055
dmerchant@ci.antioch.ca.us

Yazmin Meza, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Joan Michaels Aguilar, City of Dixon
600 East A Street, Dixon, CA 95620
Phone: N/A
jmichaelsaguilar@ci.dixon.ca.us

Ron Millard, Interim Finance Director, City of Vallejo
Finance Department, 555 Santa Clara Street, 3rd Floor, Vallejo, CA 94590
Phone: (707) 648-4592
Ikimura@ci.vallejo.ca.us

Michael Miller, County of Monterey
168 W. Alisal Street, 3rd floor, Salinas, CA 93901
Phone: (831) 755-4500
millem@co.monterey.ca.us

Meredith Miller, Director of SB90 Services, MAXIMUS
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithmiller@maximus.com

Todd Miller, County of Madera
Auditor-Controller, 200 W Fourth Street, 2nd Floor, Madera, CA 93637
Phone: (559) 675-7707
Todd.Miller@co.madera.ca.gov

David Millican, Interim Chief Financial Officer, City of Oxnard
300 West Third Street, Suite 302, Oxnard, CA 93030
Phone: (805) 385-7466
Tamara.Reese@ci.oxnard.ca.us

Leyne Milstein, Director of Finance, City of Sacramento
915 I Street, 5th Floor, Sacramento, CA 95814
Phone: (916) 808-5845
lmilstein@cityofsacramento.org

Robert Miyashiro, Education Mandated Cost Network
Kevin Mizuno, Finance Director, City of Clayton
Finance Department, 600 Heritage Trail, Clayton, CA 94517
Phone: (925) 673-7309
kmizuno@ci.clayton.ca.us

Bruce Moe, City of Manhattan Beach
1400 Highland Ave., Manhattan Beach, CA 90266
Phone: N/A
bmoe@citymb.info

Minnie Moreno, City of Patterson
1 Plaza Circle, Patterson, CA 95363
Phone: N/A
mmoreno@ci.patterson.ca.us

Debbie Moreno, City of Anaheim
200 S. Anaheim Boulevard, Anaheim, CA 92805
Phone: (714) 765-5192
DMoreno@anaheim.net

Russell Morreale, Finance Director, City of Palos Verdes Estates
Finance Department, 340 Palos Verdes Dr West, Palos Verdes Estates, CA 90274
Phone: (310) 378-0383
rmorreale@pvestates.org

Russell Morreale, City of Los Altos
One North San Antonio Road, Los Altos, CA 94022
Phone: N/A
rmorreale@losaltosca.gov

Cindy Mosser, City Treasurer/Finance Director, City of San Rafael
1400 Fifth Avenue, PO Box 151560, San Rafael, CA 94915
Phone: (415) 458-5001
cindy.mosser@cityofsanrafael.org

Brian Muir, County of Shasta
1450 Court St., Suite 238, Redding, CA 96001
Phone: (530) 225-5541
bmuir@co.shasta.ca.us

walter Munchheimer, Interim Administrative Services Manager, City of Marysville
Administration and Finance Department, 526 C Street, Marysville, CA 95901
Phone: (530) 749-3901
wmunchheimer@marysville.ca.us

Bill Mushallo, Finance Director, City of Petaluma
Finance Department, 11 English St., Petaluma, CA 94952
Phone: (707) 778-4352
financeemail@ci.petaluma.ca.us

Renee Nagel, Finance Director, City of Visalia
707 W. Acequia Avenue, City Hall West, Visalia, CA 93291
Phone: (559) 713-4375
RNagel@ci.visalia.ca.us

Jameel Naqvi, Analyst, Legislative Analyst’s Office
Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8331
Jameel.naqvi@lao.ca.gov

Tim Nash, City of Encinitas
505 S Vulcan Avenue, Encinitas, CA 92054
Phone: N/A
finmail@encinitasca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, California State Association of Counties (CSAC)
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Keith Neves, Director of Finance/City Treasurer, City of Lake Forest
Finance Department, 25550 Commercentre Drive, Lake Forest, CA 92630
Phone: (949) 461-3430
kneves@lakeforestca.gov

Howard Newens, County of Yolo
625 Court Street, Room 102, Woodland, CA 95695
Phone: (530) 666-8625
howard.newens@yolocounty.org

Doug Newland, County of Imperial
940 Main Street, Ste 108, El Centro, CA 92243
Phone: (760) 482-4556
dougnewland@co.imperial.ca.us

Keith Nezaam, Department of Finance
915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-8913
Keith.Nezaam@dof.ca.gov

Andy Nichols, Nichols Consulting
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Dale Nielsen, Director of Finance/Treasurer, City of Vista
Finance Department, 200 Civic Center Drive, Vista, CA 92084
Phone: (760) 726-1340
dnielsen@ci.vista.ca.us

Marianne O’Malley, Legislative Analyst’s Office (B-29)
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8315
marianne.O’malley@lao.ca.gov
Patrick OConnell, County of Alameda  
1221 Oak Street, Room 249, Oakland, CA 94512  
Phone: (510) 272-6565  
pat.oconnell@acgov.org  

Andy Okoro, City of Norco  
2870 Clark Avenue, Norco, CA 92860  
Phone: N/A  
aokoro@ci.norco.ca.us  

Cathy Orme, Finance Director, City of Larkspur  
Finance Department, 400 Magnolia Ave, Larkspur, CA 94939  
Phone: (415) 927-5019  
corme@cityoflarkspur.org  

John Ornelas, Interim City Manager, City of Huntington Park  
6550 Miles Avenue, Huntington Park, CA 90255  
Phone: (323) 584-6223  
scrum@hpca.gov  

Odi Ortiz, Assistant City Manager/Finance Director, City of Livingston  
Administrative Services, 1416 C Street, Livingston, CA 95334  
Phone: (209) 394-8041  
oortiz@livingstoncity.com  

Christian Osmena, Department of Finance  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-0328  
christian.osmena@dof.ca.gov  

Wayne Padilla, Interim Director, City of San Luis Obispo  
Finance & Information Technology Department, 990 Palm Street, San Luis Obispo, CA 93401  
Phone: (805) 781-7125  
wpadilla@slocity.org  

Simona Padilla-Scholtens, Auditor-Controller, County of Solano  
675 Texas Street, Suite 2800, Fairfield, CA 94533  
Phone: (707) 784-6282  
sjpadilla@solanocounty.com  

Arthur Palkowitz, Stutz Artiano Shinoff & Holtz  
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106  
Phone: (619) 232-3122  
apalkowitz@sashlaw.com  

Deborah Paolinelli, County of Tulare  
411 East Kern Ave, Tulare, CA 93274  
Phone: N/A  
dpaolinelli@co.tulare.ca.us  

Susan Paragas, City of Azusa  
PO Box 1395, Azusa, CA 91702  
Phone: N/A
sparagas@ci.azusa.ca.us

Alice Park-Renzie, County of Alameda
CAO, 1221 Oak Street, Oakland, CA 94612
Phone: (510) 272-3873
Alice.Park@acgov.org

Donald Parker, City of Montclair
5111 Benito St., Montclair, CA 91763
Phone: N/A
dparker@cityofmontclair.org

Stephen Parker, Administrative Services Director, City of Stanton
Administrative Services and Finance Department, 7800 Katella Avenue, Stanton, CA 90680
Phone: (714) 379-9222
sparker@ci.stanton.ca.us

Lalo Perez, City of Palo Alto
P.O. Box 10250, Palo Alto, CA 94303
Phone: N/A
lalo.perez@cityofpaloalto.org

Diane Perkin, City of Lakewood
5050 Clark Avenue, Lakewood, CA 90712
Phone: (562) 866-9771
dperkin@lakewoodcity.org

Keith Petersen, SixTen & Associates
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@aol.com

Eva Phelps, City of San Ramon
2226 Camino Ramon, San Ramon, CA 94583
Phone: N/A
ephelps@sanramon.ca.gov

Marcus Pimentel, City of Santa Cruz
809 Center Street, Rm 101, Santa Cruz, CA 95060
Phone: N/A
dl_Finance@cityofsantacruz.com

Adam Pirrie, City of Claremont
207 Harvard Ave, Claremont, CA 91711
Phone: (909) 399-5328
apirrie@ci.claremont.ca.us

Ruth Piyaman, Finance / Accounting Manager, City of Malibu
Administrative Services / Finance, 23825 Stuart Ranch Road, Malibu, CA 90265
Phone: (310) 456-2489
RPiyaman@malibucity.org

Bret M. Plumlee, City Manager, City of Los Alamitos
3191 Katella Ave., Los Alamitos, CA 90720
Phone: (562) 431-3538 ext.
bplumlee@cityoflosalamitos.org

**Mike Podegracz**, City Manager, *City of Hesperia*
Finance Department, 9700 Seventh Ave, Hesperia, CA 92345
Phone: (760) 947-1025
mpodegracz@cityofhesperia.us

**Brian Ponty**, *City of Redwood City*
1017 Middlefield Road, Redwood City, CA 94063
Phone: (650) 780-7300
finance@redwoodcity.org

**Michael Powers**, City Manager, *City of King City*
212 South Vanderhurst Avenue, King City, CA 93930
Phone: 831-386-5925
mpowers@kingcity.com

**Jai Prasad**, County of San Bernardino
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

**Matt Pressey**, Director, *City of Salinas*
Finance Department, 200 Lincoln Ave., Salinas, CA 93901
Phone: (831) 758-7211
mattp@ci.salinas.ca.us

**Tom Prill**, Finance Director, *City of San Jacinto*
Finance Department, 595 S. San Jacinto Ave., Building B, San Jacinto, CA 92583
Phone: (951) 487-7340
TPrill@sanjaciitoca.us

**Cindy Prothro**, Finance Director, *City of Barstow*
Finance Department, 220 East Mountain View Street, Barstow, CA 92311
Phone: (760) 255-5115
cprothro@barstowca.org

**Tim Przybyla**, Finance Director, *City of Madera*
Finance Department, 205 West Fourth Street, Madera, CA 93637
Phone: (559) 661-5454
tprzybyla@cityofmadera.com

**Marc Puckett**, Assistant Town Manager of Finance & Administration, *Town of Apple Valley*
Finance Department, 14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
finance@applevalley.org

**Raul Purificacion**, Finance Manager, *City of La Puente*
Finance Department, 15900 E. Main Street, La Puente, CA 91744
Phone: (626) 855-1500
rpurificacion@lapuente.org

**John Quinn**, City of Calexico
608 Heber Ave., Calexico, CA 92231
Frank Quintero, City of Merced
678 West 18th Street, Merced, CA 95340
Phone: N/A
quinterof@cityofmerced.org

Yvonne Quiring, City of Davis
23 Russell Blvd., Davis, CA 95616
Phone: N/A
yquiring@cityofdavis.org

Sean Rabe, City Manager, City of Colma
1198 El Camino Real, Colma, CA 94014
Phone: (650) 997-8318
sean.rabe@colma.ca.gov

Juan Raigoza, Auditor-Controller, County of San Mateo
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 363-4777
jraigoza@smcgov.org

Roberta Raper, Finance Director, City of Napa
Finance Department, P.O. Box 660, Napa, CA 94559-0660
Phone: (707) 257-9510
rraper@cityofnapa.org

Roberta Reed, County of Mono
P.O. Box 556, Bridgeport, CA 93517
Phone: (760) 932-5490
RReed@mono.ca.gov

Karan Reid, Finance Director, City of Concord
1950 Parkside Drive, Concord, CA 94519
Phone: (925) 671-3178
karan.reid@cityofconcord.org

Sandra Repede, Principal Financial Analyst, City of San Buenaventura
Finance & Technology, 501 Poli St. Room 101, Ventura, CA 93001
Phone: (805) 654-7728
srepede@cityofventura.net

Mark Rewolinski, MAXIMUS
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845
markrewolinski@maximus.com

Sandra Reynolds, Reynolds Consulting Group, Inc.
P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrea.reynolds_30@msn.com

Tina Reza, Interim Finance Director, City of Morgan Hill
Finance Department, 17575 Peak Ave., Morgan Hill, CA 95037
Phone: (408) 779-7237
Tina.Reza@morgan-hill.ca.gov

Tae G. Rhee, Finance Director, City of Bellflower
Finance Department, 16600 Civic Center Dr, Bellflower, CA 90706
Phone: (562) 804-1424
trhee@bellflower.org

Robert Richardson, City Manager, City of Grass Valley
Finance Department, 125 East Main Street, Grass Valley, CA 95945
Phone: (530) 274-4312
r.richardson@cityofgrassvalley.com

Rachelle Rickard, City Manager, City of Atascadero
Finance Department, 6500 Palma Ave, Atascadero, CA 93422
Phone: (805) 461-7612
rickard@atascadero.org

Jorge Rifa, City Administrator, City of Commerce
Finance Department, 2535 Commerce Way, Commerce, CA 90040
Phone: (323) 722-4805
jorger@ci.commerce.ca.us

James Riley, Administrative Services Director, City of Lake Elsinore
130 South Main Street, Lake Elsinore, CA 92530
Phone: N/A
jriley@lake-elsinore.org

Kathy Rios, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Rosa Rios, City of Delano
1015 11th Ave., Delano, CA 93216
Phone: N/A
rios@cityofdelano.org

Mark Roberts, City of National City
1243 National City Blvd., National City, CA 91950
Phone: N/A
finance@nationalcityca.gov

Laura Rocha, City of San Marcos
1 Civic Center Drive, San Marcos, CA 92069
Phone: (760) 744-1050
Lrocha@san-marcos.net

Rob Rockwell, Director of Finance, City of Indio
Finance Department, 100 Civic Center Mall, Indio, CA 92201
Phone: (760) 391-4029
rockwell@indio.org

Paul Rodriguez, City Manager, City of Eureka
531 K Street, Eureka, CA 95501
Phone: (707) 441-4144
webmaster@ci.eureka.ca.gov

Benjamin Rosenfield, City Controller, City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, CA 94102
Phone: (415) 554-7500
ben.rosenfield@sfgov.org

Tacy Oneto Rouen, Auditor, County of Amador
810 Court Street, Jackson, CA 95642-2131
Phone: (209) 223-6357
trouen@amadorgov.org

Linda Ruffing, City Manager, City of Fort Bragg
Finance Department, 416 N Franklin Street, Fort Bragg, CA 94537
Phone: (707) 961-2823
lruffing@fortbragg.com

Cynthia Russell, Chief Financial Officer/City Treasurer, City of San Juan Capistrano
Finance Department, 32400 Paseo Adelante, San Juan Capistrano, CA 92675
Phone: (949) 443-6343
crussell@sanjuancapistrano.org

Joan Ryan, Finance Director, City of Escondido
201 N. Broadway, Escondido, CA 92025
Phone: N/A
jryan@ci.escondido.ca.us

Cathy Saderlund, County of Lake
255 N. Forbes Street, Lakeport, CA 95453
Phone: (707) 263-2311
cathy.saderlund@lakecountyca.gov

Leticia Salcido, City of El Centro
1275 Main Street, El Centro, CA 92243
Phone: N/A
lsalcido@ci.el-centro.ca.us

Marcia Salter, County of Nevada
950 Maidu Avenue, Nevada City, CA 95959
Phone: (530) 265-1244
marcia.salter@co.nevada.ca.us

Robert Samario, City of Santa Barbara
P.O. Box 1990, Santa Barbara, CA 93102-1990
Phone: (805) 564-5336
BSamario@SantaBarbaraCA.gov

Kathy Samms, County of Santa Cruz
701 Ocean Street, Room 340, Santa Cruz, CA 95060
Phone: (831) 454-2440
shf735@co.santa-cruz.ca.us

Tracy Sandoval, County of San Diego
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.sandoval@sdcounty.ca.gov

Kimberly Sarkovich, Chief Financial Officer, City of Rocklin
3970 Rocklin Road, Rocklin, CA 95677
Phone: (916) 625-5020
kim.sarkovich@rocklin.ca.us

Clinton Schaad, County of Del Norte
981 H Street, Suite 140, Crescent City, CA 95531
Phone: (707) 464-7202
cschaad@co.del-norte.ca.us

Stuart Schillinger, City of Brisbane
50 Park Place, Brisbane, CA 94005-1310
Phone: N/A
schillinger@ci.brisbane.ca.us

Karin Schnaider, Finance Director, City of Benicia
Finance Department, 250 East L Street, Benicia, CA 94510
Phone: (707) 746-4225
KSchnaider@ci.benicia.ca.us

Tracy Schulze, County of Napa
1195 Third Street, Suite B-10, Napa, CA 94559
Phone: (707) 299-1733
tracy.schulze@countyofnapa.org

Lee Scott, Department of Finance
15 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
lee.scott@dof.ca.gov

Tami Scott, Administrative Services Director, Cathedral City
Administrative Services, 68700 Avenida Lalo Guerrero, Cathedral City, CA 92234
Phone: (760) 770-0356
tscott@cathedralcity.gov

David Scribner, Max8550
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

Peggy Scroggins, County of Colusa
546 Jay Street, Ste 202, Colusa, CA 95932
Phone: (530) 458-0400
pscroggins@countyofcolusa.org

Kelly Sessions, Finance Manager, City of San Pablo
Finance Department, 13831 San Pablo Avenue, Building #2, San Pablo, CA 94806
Phone: (510) 215-3021
kellys@sanpabloca.gov

Mel Shannon, Finance Director, City of La Habra
Finance/Admin. Services, 201 E. La Habra Blvd, La Habra, CA 90633-0337
Phone: (562) 383-4050
mshannon@lahabraca.gov

Amy Shepherd, County of Inyo
Auditor-Controller, P.O. Drawer R, Independence, CA 93526
Phone: (760) 878-0343
ashepherd@inyocounty.us

Steve Shields, Shields Consulting Group, Inc.
1536 36th Street, Sacramento, CA 95816
Phone: (916) 454-7310
steve@shieldscg.com

Ed Shikada, City Manager, City of San Jose
200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-8100
ed.shikada@sanjoseca.gov

Wayne Shimabukuro, County of San Bernadino
Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San Bernadino, CA 92415-0018
Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty.gov

Donna Silva, Finance Director, City of Rancho Cordova
Finance Department, 2729 Prospect Park Drive, Rancho Cordova, CA 95670
Phone: (916) 851-8730
dsilva@cityofranchocordova.org

Lucy Simonson, County of Mendocino
501 Low Gap Road, Rm 1080, Ukiah, CA 95482
Phone: (707) 463-4388
simonsol@co.mendocino.ca.us

Andrew Sisk, County of Placer
2970 Richardson Drive, Auburn, CA 95603
Phone: (530) 889-4026
asisk@placer.ca.gov

Susan Slayton, Administrative Services Director, City of Morro Bay
Administrative Services, 595 Harbor Street, Morro Bay, CA 93442
Phone: (805) 772-6201
sslayton@morro-bay.ca.us

Nelson Smith, City of Bakersfield
1600 Truxtun Avenue, Bakersfield, CA 93301
Phone: N/A
nsmith@bakersfieldcity.us

Margarita Solis, City Treasurer, City of San Fernando
117 Macneil Street, San Fernando, CA 91340
Phone: (818) 898-1218
msolis@sfcity.org

Carla Soracco, Finance Manager, City of Jackson
Finance Department, 33 Broadway, Jackson, CA 95642
Phone: (209) 223-1646
csoracco@ci.jackson.ca.us

Jim Spano, Chief, Mandated Cost Audits Bureau, State Controller's Office
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Cathy Spinella, Finance Manager, City of Martinez
Finance Department, 525 Henrietta Street, Martinez, CA 94553
Phone: (925) 372-3579
cspinella@cityofmartinez.org

Betsy St. John, City of Palmdale
38300 Sierra Highway, Suite D, Palmdale, CA 93550
Phone: N/A
bstjohn@cityofpalmdale.org

Susan A. Stanton, City Manager, City of Greenfield
Finance Department, 599 El Camino Real, Greenfield, CA 93927
Phone: (831) 674-5591
sstanton@ci.greenfield.ca.us

Robert Stark, County of Sutter
463 2nd Street, Suite 117, Yuba City, CA 95991
Phone: (530) 822-7127
rstark@co.sutter.ca.us

Jim Steele, City of South San Francisco
P.O. Box 711, South San Francisco, CA 94083
Phone: N/A
jim.steele@ssf.net

Stephen Strong, Finance Director, City of Redding
Finance Department, 3rd Floor City Hall, 777 Cypress Avenue, Redding, CA 96001
Phone: (530) 225-4079
sstrong@ci.redding.ca.us

Jana Stuard, City of Norwalk
P.O. Box 1030, Norwalk, CA 90650
Phone: N/A
jstuard@norwalkca.gov

Leslie Suelter, City of Coronado
1825 Strand Way, Coronado, CA 92118
Phone: N/A
lsuelter@coronado.ca.us

Edmund Suen, Finance Director, City of East Palo Alto
Finance Department, 2415 University Ave, East Palo Alto, CA 94303
Phone: (650) 853-3122
financedepartment@cityofepa.org

Evelyn Suess, Principal Program Budget Analyst, Department of Finance Requester Representative
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
evelyn.suess@dof.ca.gov

Karen Suiker, City Manager, City of Trinidad
409 Trinity Street, PO Box 390, Trinidad, CA 95570
Phone: (707) 677-3876
citymanager@trinidad.ca.gov

Deborah Sultan, Finance Director, City of Sanger
Finance, 1700 7th Street, Sanger, CA 93657
Phone: (559) 876-6300
dsultan@ci.sanger.ca.us

David Sundstrom, County of Sonoma
585 Fiscal Drive, Room 100, Santa Rosa, CA 95403
Phone: (707) 565-3285
david.sundstrom@sonoma-county.org

David Sung, City of Hawaiian Gardens
21815 Pioneer Boulevard, Hawaiian Gardens, CA 90716
Phone: N/A
dsung@hgcity.org

Meg Svoboda, Senate Office of Research
1020 N Street, Suite 200, Sacramento, CA
Phone: (916) 651-1500
meg.svoboda@sen.ca.gov

Kim Szczurek, Administrative Services Director, Town of Truckee
Administrative Services, 10183 Truckee Airport Road, Truckee, CA 96161
Phone: (530) 582-2913
kszczurek@townoftruckee.com

Jesse Takahashi, City of Campbell
70 North First Street, Campbell, CA 95008
Phone: N/A
jesset@cityofcampbell.com

Amy Tang-Paterno, Educational Fiscal Services Consultant, California Department of Education
Government Affairs, 1430 N Street, Suite 5602, Sacramento, CA 95814
Phone: (916) 322-6630
ATangPaterno@cde.ca.gov

Jill Taura, City of Glendora
116 East Foothill Blvd, Glendora, CA 91741-3380
Phone: N/A
jtaura@ci.glendora.ca.us

**Rick Teichert**, City of Moreno Valley
14177 Frederick Street, Moreno Valley, CA 92552-0805
Phone: N/A
richtard@moval.org

**Gina Tharani**, Finance Director, City of Aliso Viejo
Finance Department, 12 Journey, Suite 100, Aliso Viejo, CA 92656-5335
Phone: (949) 425-2524
financial-services@cityofalisoviejo.com

**Lynn Theissen**, Finance Director, City of Chico
411 Main St., Chico, CA 95927
Phone: (530) 879-7300
ltheisse@ci.chico.ca.us

**Darlene Thompson**, Finance Director / Treasurer, City of Tulare
Finance Department, 411 E Kern Ave., Tulare, CA 93274
Phone: (559) 684-4255
dthompson@ci.tulare.ca.us

**John Thornberry**, Finance Director, City of Carpinteria
Finance Department, 5775 Carpinteria Ave, Carpinteria, CA 93013
Phone: (805) 684-5405
johnt@ci.carpinteria.ca.us

**James Throop**, Finance Director, City of El Paso De Robles
Administrative Services, 1000 Spring Street, Paso Robles, CA 93446
Phone: (805) 227-7276
jthroop@prcity.com

**Sheryl Thur**, County of Glenn
516 West Sycamore Street, Willows, CA 95988
Phone: (530) 934-6402
sthur@countyofglenn.net

**Cathleen Till**, Finance Director, City of Lemon Grove
Finance Department, 3232 Main Street, Lemon Grove, CA 91945
Phone: (619) 825-3803
cstill@lemongrove.ca.gov

**Donna Timmerman**, Financial Manager, City of Ferndale
Finance Department, 834 Main Street, Ferndale, CA 95535
Phone: (707) 786-4224
finance@ci.ferndale.ca.us

**Steve Toler**, Finance Director, City of Millbrae
621 Magnolia Avenue, Millbrae, CA 94030
Phone: (650) 259-2334
stoler@ci.millbrae.ca.us

**Jolene Tollenaar**, MGT of America
2001 P Street, Suite 200, Suite 200, Sacramento, CA 95811
Phone: (916) 443-9136
jolene_tollenaar@mgtamer.com

**Eric Tsao, City of Torrance**  
Finance Department, 3031 Torrance Blvd., Torrance, CA 90503  
Phone: (310) 618-5850  
etso@TorranceCA.gov

**Evelyn Tseng, City of Newport Beach**  
100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3127  
ettseng@newportbeachca.gov

**Stefanie Turner, Finance Director, City of Rancho Santa Margarita**  
Finance Department, 22112 El Pasco, Rancho Santa Margarita, CA 92688  
Phone: (949) 635-1808  
sturner@cityofrsm.org

**Brian Uhler, Legislative Analyst's Office**  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8328  
brian.uhler@lao.ca.gov

**Julie Valverde, County of Sacramento**  
700 H Street, Room 3650, Sacramento, CA 95814  
Phone: (916) 874-7248  
valverdej@saccounty.net

**Sue Vannucci, City of Woodland**  
300 First Street, Woodland, CA 95695  
Phone: N/A  
svannucci@cityofwilliams.org

**Ruby Vasquez, County of Colusa**  
546 Jay Street, Suite 202, Colusa, CA 95932  
Phone: (530) 458-0424  
rvasquez@countyofcolusa.com

**Ezequiel Vega, Director, City of Watsonville**  
250 Main St., Watsonville, CA 95076  
Phone: (831) 768-3450  
ezequiel.vega@cityofwatsonville.org

**Patty Virto, Finance Manager, City of Fillmore**  
Finance Department, 250 Central Avenue, Fillmore, CA 93015  
Phone: (805) 524-3701  
pvirt@ci.fillmore.ca.us

**Rene Vise, Director of Administrative Services, City of Santa Maria**  
Department of Administrative Services, 110 East Cook Street Room 6, Santa Maria, CA 93454-5190  
Phone: (805) 925-0951  
rvise@ci.santa-maria.ca.us

**Nawel Voelker, Acting Director of Finance (Management Analyst), City of Belmont**  
Finance Department, One Twin Pines Lane, Belmont, CA 94002
Phone: (650) 595-7433
nvoolker@belmont.gov

Mary Jo Walker, County of Santa Cruz
701 Ocean Street, Room 100, Santa Cruz, CA 95060-4073
Phone: (831) 454-2500
Aud002@co.santa-cruz.ca.us

Melinda Wall, City of Lompoc
P.O. Box 8001, Lompoc, CA 93438-8001
Phone: N/A
m_wall@ci.lompoc.ca.us

Sarah Waller-Bullock, City of La Mesa
P.O. Box 937, La Mesa, CA 91944-0937
Phone: N/A
sbullock@ci.la-mesa.ca.us

George Warman Jr., City of Corte Madera
P.O. Box 159, Corte Madera, CA 94976-0159
Phone: N/A
gwarman@ci.corte-madera.ca.us

Dave Warren, Director of Finance, City of Placerville
Finance Department, 3101 Center Street, Placerville, CA 95667
Phone: (530) 642-5223
dwarren@cityofplacerville.org

Tara Webley, County of Tulare
411 East Kern Ave., Tulare, CA 93274
Phone: N/A
twebley@co.tulare.ca.us

Renee Wellhouse, David Wellhouse & Associates, Inc.
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Kevin Werner, City Administrator, City of Ripon
Administrative Staff, 259 N. Wilma Avenue, Ripon, CA 95366
Phone: (209) 599-2108
kwerner@cityofripon.org

David White, City of Fairfield
1000 Webster Street, Fairfield, CA 94533
Phone: N/A
dwhite@fairfield.ca.gov

Michael Whitehead, Administrative Services Director & City Treasurer, City of Rolling Hills Estates
Administrative Services, 4045 Palos Verdes Drive North, Rolling Hills Estates, CA 90274
Phone: (310) 377-1577
MikeW@RollingHillsEstatesCA.gov

Gina Will, Finance Director, City of Paradise
Finance Department, 5555 Skyway, Paradise, CA 95969
Phone: (530) 872-6291
gwill@townofparadise.com

David Wilson, City of West Hollywood
8300 Santa Monica Blvd., West Hollywood, CA 90069
Phone: N/A
dwilson@weho.org

Chris Woidzik, Finance Director, City of Avalon
Finance Department, 410 Avalon Canyon Rd., Avalon, CA 90704
Phone: (310) 510-0220
Scampbell@cityofavalon.com

Jeff Woltkamp, County of San Joaquin
44 N San Joaquin St. Suite 550, Stockton, CA 95202
Phone: (209) 468-3925
jwoltkamp@sjgov.org

Clara Wong, City of West Covina
1444 W. Garvey Ave. South, West Covina, CA 91790
Phone: N/A
clara.wong@westcovina.org

Paul Wood, Director of Finance, City of Carmel
Finance Department, P.O. Box CC, Carmel, CA 93921
Phone: (831) 620-2000
pwood@ci.carmel.ca.us

Rita Woodard, County of Tulare
County Civic Center, 221 South Mooney Blvd, Room 101-E, Visalia, CA 93291-4593
Phone: (559) 636-5200
rwoodard@co.tulare.ca.us

Susie Woodstock, City of Newark
37101 Newark Blvd., Newark, CA 94560
Phone: N/A
susie.woodstock@newark.org

Jane Wright, Finance Manager, City of Ione
Finance Department, 1 East Main Street, PO Box 398, Ione, CA 95640
Phone: (209) 274-2412
JWright@ione-ca.com

Phil Wright, Director of Administrative Services, City of West Sacramento
Finance Division, 1110 West Capitol Avenue, 3rd Floor, West Sacramento, CA 95691
Phone: (916) 617-4575
Philw@cityofwestsacramento.org

Hasmik Yaghobyan, County of Los Angeles
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

Curtis Yakimow, Town Manager, Town of Yucca Valley

http://csm.ca.gov/csmint/cats/print_mailing_list_from_claim.php 166
57090 Twentynine Palms Highway, Yucca Valley, CA 92284
Phone: (760) 369-7207
townmanager@yucca-valley.org

**Annie Yaung, City of Monterey Park**
320 West Newmark Avenue, Monterey Park, CA 91754
Phone: N/A
ayaung@montereypark.ca.gov

**Carl Yeats, City of Burlingame**
501 Primrose Rd., Burlingame, CA 94010
Phone: N/A
cyeats@burlingame.org

**Bobby Young, City of Costa Mesa**
77 Fair Drive, Costa Mesa, CA 92626
Phone: N/A
Bobby.Young@costamesaca.gov
April 3, 2015
Ms. Evelyn Suess
Department of Finance
Local Government Unit
915 L Street
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision, Scheduled for Comments, and Notice of Hearing
Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

Dear Ms. Suess:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by April 24, 2015. You are advised that comments filed with the Commission on State Mandates (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. However, this requirement may also be satisfied by electronically filing your documents. Please see http://www.csm.ca.gov/dropbox.shtml on the Commission’s website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission’s regulations.

Hearing

This matter is set for hearing on Friday, May 29, 2015, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about May 15, 2015. 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 1187.9(b) of the Commission’s regulations.

Sincerely,

[Signature]
Heather Halsey
Executive Director
ITEM __

MANDATE REDETERMINATION
FIRST HEARING: ADEQUATE SHOWING

DRAFT PROPOSED DECISION

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014

*California Public Records Act (02-TC-10 and 02-TC-51)*

14-MR-02

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On May 26, 2011, the Commission on State Mandates (Commission) adopted the *California Public Records Act* (*CPRA*) test claim decision, 02-TC-10 and 02-TC-51, approving reimbursement for activities related to the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education.

The mandate redetermination request in this matter is based upon changes in law made by Proposition 42. On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.”¹ The proposition amended Section 6(a) of Article XIII B of the California Constitution, adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for… Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."²

Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies…each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that

¹ Exhibit X, Text of Proposition 42, at p. 42. Excerpt from [insert name of publication].
² Exhibit X, Text of Proposition 42, at p. 43.
contains findings demonstrating that the statutory enactment furthers the purposes of this section.\(^3\)

**Procedural History**

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the *CPRA* test claim, 02-TC-10 and 02-TC-51.\(^4\) Finance asserts the passage of Proposition 42 constituted a “subsequent change in law” and the “state's obligation to reimburse affected local agencies has ceased.”\(^5\) On February 17, 2015, the State Controller’s Office (Controller) submitted comments, concurring with Finance's request to adopt a new test claim decision.

**Commission Responsibilities**

Government Code section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission’s regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.\(^6\)

The regulations further state:

If the Commission proceeds to the second hearing, it shall consider whether the state’s liability…has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.\(^7\)

Therefore, the sole issue before the Commission at this first hearing is whether Finance, as the requester, has made an adequate showing that the state’s liability has been modified pursuant to a subsequent change in law, as defined in section 17570.

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\(^3\) Article I, section 3(b), paragraph 7 (added June 3, 2014).

\(^4\) Exhibit A, Request for Redetermination, at p. 1.

\(^5\) Based on the January 21, 2015 filing date, the potential period of reimbursement affected by this redetermination begins July 1, 2014.

\(^6\) Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

\(^7\) Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).
Staff Analysis

Staff finds that Finance has made an adequate showing that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for the CPRA mandate has been modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added and paragraph 4 to article XIII B, section 6(a) of the California Constitution which, together with article I, section 3(b), paragraph 7, expressly declares that activities under Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in CPRA are imposed by Government Code provisions within chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision and, pursuant to Government Code section 17570(b)(d)(4), direct staff to notice the request for a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision. If the Commission adopts the attached proposed decision, the second hearing for this matter will be set for July 24, 2015.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed statement of decision following the hearing.
BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
FIRST HEARING: ADEQUATE SHOWING ON:

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040);
Statutes 2000, Chapter 982 (AB 2799); and
Statutes 2001, Chapter 355 (AB 1014)
As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014
Filed on January 21, 2015
By the Department of Finance, Requester.

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on May 29, 2015. [Witness list will be included in the adopted decision.] Government Code section 17570 and section 1190 et seq. of the Commission’s regulations establish the mandate redetermination process. In addition, 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., title 2, California Code of Regulations 1190 et seq., and related case law.

The Commission [adopted/modified] the proposed decision at the hearing by a vote of [vote count will be included in the adopted decision], and [directed/did not direct] staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision.

Summary of Findings

The Commission finds that the Department of Finance (Finance) has made an adequate showing that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for the California Public Records Act (CPRA), 02-TC-10 and 02-TC-51 mandate has been modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added and paragraph 4 to article XIII B, section 6(a) of the California Constitution which, together with article I, section 3(b), paragraph 7, expressly declares that activities under
Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in CPRA are imposed by Government Code provisions within chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

COMMISSION FINDINGS

I. Chronology

5/26/2011 The Commission adopted the test claim statement of decision.\(^8\)

4/19/2013 The Commission adopted the parameters and guidelines.\(^9\)

6/3/2014 The voters adopted Proposition 42, which added article I, section 3(b), paragraph 7 and article XIII B, section 6, paragraph 4 to the California Constitution.\(^10\)

1/21/2015 Finance filed a request for redetermination on California Public Records Act, 02-TC-10 and 02-TC-51.\(^11\)

2/17/2015 The State Controller’s Office (Controller) submitted written comments on the redetermination request.\(^12\)

4/3/2015 Commission staff issued the draft proposed decision for the first hearing on the request.

II. Background

The California Public Records Act Program

Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014) amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 to the Government Code, which require a local agency to (1) provide copies of public records with portions exempted from disclosure redacted; (2) notify a person making a public records request whether the requested records are disclosable; (3) assist members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) make disclosable public records in electronic formats available in electronic formats; and (5) remove an employee’s home address and home telephone number from any mailing list maintained by

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\(^8\) Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

\(^9\) Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

\(^10\) Exhibit X, Text of Ballot Measure, Proposition 42, at p. 2.

\(^11\) Exhibit A, Request for Redetermination.

\(^12\) Exhibit D, Controller’s Comments on Request for Redetermination.
the agency when requested by the employee. The Commission found these statutes to impose reimbursable costs mandated by the state.\textsuperscript{13}

In the parameters and guidelines for \textit{CPRA}, the reimbursable activities are described as follows:

**A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate**

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

   This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

   This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

**B. Ongoing Activities**

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

   This activity includes:

   a. Computer programming, extraction, or compiling necessary to produce disclosable records.

   b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

   Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

   Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

\textsuperscript{13} See Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.
2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
   a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

   This activity includes, where applicable:
   1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
   2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
   3) Sending or transmitting the notice to the requestor.

   b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

   This activity includes, where applicable:
   1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
   2) Obtaining agency head, or his or her designee, approval and signature of the notice of determination or notice of extension.
   3) Sending or transmitting the notice to the requestor.

   c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

   This activity includes, where applicable:
   1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
   2) Obtaining agency head, or his or her designee, approval and signature of the notice of determination.
   3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining
whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

   a. Conferring with the requestor if clarification is needed to identify records requested.
   b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
   c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

   a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

   This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a
health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

The Alleged Subsequent Change in Law

Proposition 42, adopted by the voters on June 3, 2014, added paragraph 4 to article XIII B, section 6 which states that “...the Legislature may, but need not provide subvention for... (4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3(b) of article I.”

Additionally, the Proposition added article I, section 3(b), paragraph 7 to the California Constitution which provides:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. The redetermination process calls for a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution.”14

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a

14 Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).
“subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551. ¹⁵

An “adequate showing” is determined in the Commission’s regulations as follows:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing. ¹⁶

If the Commission finds, at the first hearing, that:

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision. ¹⁷

III. Positions of the Parties, Interested Parties, and Interested Persons

A. Department of Finance, Requester

Finance argues that Proposition 42 “specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance” with the California Public Records Act. ¹⁸

B. State Controller

The Controller states that it “concurs with the Department of Finance's request to adopt a new test claim decision” for the California Public Records Act test claim since Proposition 42 “requires local agencies and K-14 school districts to comply with specific state laws providing for public access to meetings of local government bodies and records of government officials.” ¹⁹

¹⁵ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).
¹⁶ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).
¹⁷ California Code of Regulations, Title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).
¹⁸ Exhibit A, Request for Redetermination, at p. 1.
¹⁹ Exhibit D, Controller’s Comments on Request for Redetermination.
IV. Discussion

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability.

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission’s regulations, only whether the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law, as defined. Therefore, the analysis will be limited to whether the request, when considered in light of all of the written comments and supporting documentation in the records of this request, has a substantial possibility of prevailing at the second hearing.”20 A thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

A. Proposition 42 Constitutes a Subsequent Change in Law, Within the Meaning of Government Code Section 17570.

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. Pursuant to section 17570, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state pursuant to section 17556; or (3) is another change in mandates law. This request for redetermination is based on a change in mandates law, which includes “amendments to Section 6 of article XIII B of the California Constitution.”21 Specifically, the request is based on Proposition 42, which added paragraph 4 to article XIII B section 6 to add the following to the list of exemptions from the subvention requirement:

“Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.”

20 Code of Regulations, Title 2, section 1190.5 (Register 2014, No. 21). This regulation describes the standard for the first hearing as follows:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.

21 Government Code section 17570(a)(1).
The plain language exception to reimbursement adopted in Proposition 42 is alleged as a subsequent change in mandates law. Further, article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The test claim statement of decision and parameters and guidelines for CPRA, 02-TC-10 and 02-TC-51 found reimbursable activities imposed by Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. Chapter 3.5, Division 7 of title 1 of the Government Code includes sections 6250 through 6270.

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6. Article XIII B, section 6(a) paragraph 4 in turn references another constitutional provision, Article I, section 3(b), paragraph 7, which requires local government to comply with the “California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) . . .” and any subsequent amendments thereto or reenactments thereof.

B. The Requester Has Made an Adequate Showing that the State’s Liability Has Been Modified Based on a Subsequent Change in Law.

At this hearing the Commission is required to determine whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.” If the Commission determines that the request has a substantial possibility of prevailing at the second hearing, the Government Code provides that the Commission shall notice a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

Since all of the code sections found to impose mandated activities in CPRA, 02-TC-10 and 02-TC-51 are within Chapter 3.5, with which local governments are required to comply pursuant to Article I, section 3(b), paragraph 7, and which is exempted from the subvention requirement by the plain language of XIII B section 6(a) paragraph 4, the Commission finds that there is a substantial possibility that the request for a new test claim decision will prevail at the second hearing on this matter.

22 Code of Regulations, title 2, section 1190.5 (Register 2014, No. 21).
23 Government Code section 17570(d)(4) (Stats. 2010, ch. 719 (SB 856)).
V. Conclusion

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law. The Commission hereby directs Commission staff to notice the second hearing to determine whether to adopt a new test claim decision to supersede the Commission’s previously adopted test claim decision on CPRA, 02-TC-10 and 02-TC-51.
DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 3, 2015, I served the:

- Draft Proposed Decision, Scheduled for Comments, and Notice of Hearing
- Mandate Redetermination Request, 14-MR-02
- California Public Records Act (02-TC-10 and 02-TC-51)
- Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
- Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
- As Alleged to be Modified by Proposition 42, adopted June 3, 2014
- California Department of Finance, Requester

by making it available on the Commission’s website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 April 3, 2015 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/2/15
Claim Number: 14-MR-02

Matter: California Public Records Act (02-TC-10 and 02-TC-51)
Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

Paul Abelson, Finance Director, City of Oakley
Finance Department, 3231 Main Street, Oakley, CA 94561
Phone: (925) 625-7010
abelson@ci.oakley.ca.us

John Adams, Finance Director, City of Thousand Oaks
Finance Department, 2100 Thousand Oaks Blvd., Thousand Oaks, CA 91362
Phone: (805) 449-2200
jadams@toaks.org

Joe Aguilar, Finance Director, City of Live Oak
Finance, 9955 Live Oak Blvd, Live Oak, CA 95953
Phone: (530) 695-2112
jaguilar@liveoakcity.org

Ron Ahlers, Finance Director / City Treasurer, City of Moorpark
Finance Department, 799 Moorpark Ave., Moorpark, CA 93021
Phone: (805) 517-6249
RAhlers@MoorparkCA.gov

Douglas Alessio, Administrative Services Director, City of Livermore
Finance Department, 1052 South Livermore Avenue, Livermore, CA 94550
Phone: (925) 960-4300
finance@cityoflivermore.net

Roberta Allen, County of Plumas
520 Main Street, Room 205, Quincy, CA 95971
Phone: (530) 283-6246
robertaallen@countyofplumas.com

Mark Alvarado, City of Monrovia
415 S. Ivy Avenue, Monrovia, CA 91016
Phone: N/A
malvarado@ci.monrovia.ca.us

LeRoy Anderson, County of Tehama
444 Oak Street, Room J, Red Bluff, CA 96080
Phone: (530) 527-3474
landerson@tehama.net

Paul Angulo, Auditor-Controller, County of Riverside
4080 Lemon Street, 11th Floor, Riverside, CA 92501
Phone: (951) 955-3800
pangulo@co.riverside.ca.us

Socorro Aquino, State Controller's Office
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Debra Auker, Administrative Services Director, City of Emeryville
Administrative Services, 1333 Park Ave, Emeryville, CA 94608
Phone: (510) 596-4300
finance@ci.emeryville.ca.us

Lisa Bailey, City of San Marino
2200 Huntington Dr., San Marino, CA 91108
Phone: N/A
lbailey@cityofsanmarino.org

Harmeet Barkschat, Mandate Resource Services, LLC
5325 Elkhorn Blvd. #307, Sacramento, CA 95842
Phone: (916) 727-1350
harmeet@calsdrc.com

Mary Barnhart, Interim Chief Fiscal Officer, City of Gardena
Department of Finance, 1700 West 162nd Street, Gardena, CA 90247
Phone: (310) 217-9516
mbarnhart@ci.gardena.ca.us

Robert Barron III, Finance Director, City of Atherton
Finance Department, 91 Ashfield Rd, Atherton, CA 94027
Phone: (650) 752-0552
rbarron@ci.atherton.ca.us

Timothy Barry, County of San Diego
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101-2469
Phone: (619) 531-6259
timothy.barry@sdcounty.ca.gov

David Batt, Finance Director, City of South Pasadena
Finance Department, 1414 Mission Street, South Pasadena, CA 91030
Phone: (626) 403-7250
dbatt@southpasadenaca.gov

**David Baum**, Finance Director, *City of San Leandro*
835 East 14th St., San Leandro, CA 94577
Phone: (510) 577-3376
dbaum@sanleandro.org

**Deborah Bautista**, *County of Tuolumne*
2 South Green St., Sonora, CA 95370
Phone: (209) 533-5551
dbautista@co.tuolumne.ca.us

**Lacey Baysinger**, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
lbaysinger@sco.ca.gov

**Mary Bedard**, *County of Kern*
1115 Truxtun Avenue, 2nd Floor, Bakersfield, CA 93301
Phone: (805) 868-3599
bedardm@co.kern.ca.us

**John Beiers**, *County of San Mateo*
Office of the County Counsel, 400 County Center, Redwood City, CA 94063
Phone: (650) 363-4775
jbeiers@smcgov.org

**Maria Bemis**, *City of Porterville*
291 North Main Street, Porterville, CA 93257
Phone: N/A
mbemis@ci.porterville.ca.us

**Paul Benoit**, City Administrator, *City of Piedmont*
120 Vista Avenue, Piedmont, CA 94611
Phone: (510) 420-3042
pbenoit@ci.piedmont.ca.us

**Richard Benson**, Assessor - Recorder - County Clerk, *County of Marin*
3501 Civic Center Drive, Room 208, San Rafael, CA 94903
Phone: (415) 499-7215
rbenson@co.marin.ca.us

**Robin Bertagna**, *City of Yuba City*
1201 Civic Center Blvd, Yuba City, CA 95993
Phone: N/A
rbertagn@yubacity.net

**Angela Bickle**, Interim Auditor-Controller, *County of Trinity*
11 Court Street, P.O. Box 1230, Weaverville, CA 96093
Phone: (530) 623-1317
abickle@trinitycounty.org

**Heidi Bigall**, Director of Admin Services, *City of Tiburon*
Administration, 1505 Tiburon Blvd., Tiburon, CA 94920
Phone: (415) 435-7373
hbigall@townoftiburon.org

**Teresa Binkley**, Director of Finance, *City of Taft*
Finance Department, 209 E. Kern St., Taft, CA 93268
Phone: (661) 763-1350
tbinkley@cityoftaft.org

**Barbara Bishop**, Finance Manager, *City of San Dimas*
Finance Division, 245 East Bonita Avenue, San Dimas, CA 91773
Phone: (909) 394-6220
administration@ci.san-dimas.ca.us

**Rene Bobadilla**, City Manager, *City of Pico Rivera*
Administration, 6615 Passons Boulevard, Pico Rivera, CA 90660
Phone: (562) 801-4379
rbobadilla@pico-rivera.org

**Chris Bonvenuto**, *Santa Monica Community College District*
1900 Pico Blvd., Santa Monica, CA 90405-1628
Phone: (310) 434-4201
Bonvenuto_chris@smc.edu

**Emily Boyd**, Finance Director, *City of Crescent City*
Finance Department, 377 J Street, Crescent City, CA 95531
Phone: (707) 464-7483
eboyd@crescentcity.org

**Karen Bradley**, *City of Fresno*
2600 Fresno St. Rm. 2157, Fresno, CA 93721
Phone: N/A
karen.brady@fresno.gov

**Diane Brady**, *California Community Colleges*
Chancellor's Office, 1102 Q Street, 1102 Q Street, Sacramento, CA 95814-6511
Phone: (916) 324-2564
dbrady@cccco.edu

**Danielle Brandon**, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.ca.gov

**David Brandt**, City Manager, *City of Cupertino*
10300 Torre Avenue, Cupertino, CA 95014-3202
Phone: 408.777.3212
manager@cupertino.org

**Rob Braulik**, Town Manager, *City of Ross*
P.O. Box 320, Ross, CA 94957
Phone: (415) 453-1453
rbraulik@townofross.org

**Robert Bravo**, Finance Director, *City of Port Hueneme*
Finance Department, 250 N. Ventura Road, Port Hueneme, CA 93041
Phone: (805) 986-6524
rbravo@cityofporthueneme.org

**John Brewer**, Finance Director, *City of Corning*
Finance Department, 794 Third Street, Corning, CA 96021
Phone: (530) 824-7033
jbrewer@corning.org

**Daryl Brock**, Finance Director, *City of Orland*
Finance Department, P.O. Box 547, Orland, CA 95963
Phone: (530) 865-1602
dbrock@cityoforland.com

**Dawn Brooks**, *City of Fontana*
8353 Sierra Way, Fontana, CA 92335
Phone: N/A
dbrooks@fontana.org

**Ken Brown**, Acting Director of Administrative Services, *City of Irvine*
One Civic Center Plaza, Irvine, CA 92606
Phone: (949) 724-6255
Kbrown@cityofirvine.org

**Mike Brown**, *School Innovations & Advocacy*
5200 Golden Foothill Parkway, El Dorado Hills, CA 95762
Phone: (916) 669-5116
mikeb@sia-us.com

**Daniel Buffalo**, Finance Director, *City of Lakeport*
Finance Department, 225 Park Street, Lakeport, CA 95453
Phone: (707) 263-5615
dbuffalo@cityoflakeport.com

**Allan Burdick**,  
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

**J. Bradley Burgess**, *MGT of America*  
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916)595-2646
Bburgess@mgtamer.com

**Jeff Burgh**, *County of Ventura*  
County Auditor's Office, 800 S. Victoria Avenue, Ventura, CA 93009-1540
Phone: (805) 654-3152
jeff.burgh@ventura.org

**Vanessa Burke**, Chief Financial Officer, *City of Stockton*
425 N. El Dorado St., Stockton, CA 95202
Phone: (209) 937-8460
vanessa.burke@stocktongov.com

**Rob Burns**, *City of Chino*
13220 Central Avenue, Chino, CA 91710
Phone: N/A
rbums@cityofchino.org

**Regan M Cadelario**, City Manager, *City of Fortuna*
Finance Department, 621 11th Street, Fortuna, CA 95540
Phone: (707) 725-1409
c@ci.fortuna.ca.us

**David Cain**, Director of Finance, *City of Fountain Valley*
10200 Slater Ave, Fountain Valley, CA 92646
Phone: N/A
david.cain@fountainvalley.org

**Rebecca Callen**, *County of Calaveras*
891 Mountain Ranch Road, San Andreas, CA 95249
Phone: (209) 754-6343
rcallen@co.calaveras.ca.us

**Ronnie Campbell**, Finance Director, *City of Camarillo*
Finance Department, 601 Carmen Drive, Camarillo, CA 93010
Phone: (805) 388-5320
rcampbell@ci.camarillo.ca.us

**Robert Campbell**, *County of Contra Costa*
625 Court Street, Room 103, Martinez, CA 94553
Phone: (925) 646-2181
bob.campbell@ac.cccounty.us

**Joy Canfield**, *City of Murrieta*
1 Town Square, Murreita, CA 92562
Phone: N/A
jcanfield@murrieta.org

**Lisa Cardella-Presto**, *County of Merced*
2222 M Street, Merced, CA 95340
Phone: (209) 385-7511
LCardella-presto@co.merced.ca.us

**Gwendolyn Carlos**, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

**Rebecca Carr**, *County of Kings*
1400 West Lacey Blvd, Hanford, CA 93230
Phone: (559) 582-1236
becky.carr@co.kings.ca.us

**Daria Carrillo**, Finance & Administrative Director, *City of San Anselmo*
Administration & Finance, 525 San Anselmo Ave., San Anselmo, CA 94960
Phone: (415) 258-4678
dcarrillo@townofsananselmo.org

**Roger Carroll**, Finance Director/Treasurer, *Town of Loomis*
Finance Department, 3665 Taylor Road, Loomis, CA 95650
Phone: (916) 652-1840
rcarroll@loomis.ca.gov

**Susan Casey**, *City of American Canyon*
4381 Broadway, Suite 201, American Canyon, CA 94503
Phone: (707) 647-4360
scasey@cityofamericancanyon.org

**Jack Castro**, Director of Finance, *City of Huron*
Finance Department, 36311 Lassen Avenue, PO Box 339, Huron, CA 93234
Phone: (559) 945-3020
findir@cityofhuron.com

**Karen Chang**, Interim Finance Director, *City of Pittsburg*
Finance Department, 65 Civic Avenue, Pittsburg, CA 94565-3814
Phone: (925) 252-4872
kchang@ci.pittsburg.ca.us

**Rolando Charvel**, City Comptroller, *City of San Diego*
202 C Street, MS-6A, San Diego, CA 92101
Phone: (619) 236-6060
comptroller@sandiego.gov

**Lin-Lin Cheng**, *City of Foster City*
610 Foster City Blvd, Foster City, CA 94404
Phone: N/A
lcheng@fostercity.org

**Erick Cheung**, Director of Finance/Human Resources, *City of Piedmont*
120 Vista Avenue, Piedmont, CA 94611
Phone: (510) 420-3040
echeung@ci.piedmont.ca.us

**Annette Chinn**, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

**Lawrence Chiu**, Director of Finance & Administrative Services, *City of Daly City*
Finance and Administrative Services, 333 90th Street, Daly City, CA 94015
Phone: (650) 991-8049
lchiu@dalycity.org

**Doug Chotkevys**, City Manager, *City of Dana Point*
Finance Department, 33282 Golden Lantern, Dana Point, CA 92629
Phone: (949) 248-3513
dchotkevys@danapoint.org

**Carmen Chu**, Assessor-Recorder, *City and County of San Francisco*
1 Dr. Carlton B. Goodlett Place, City Hall, Room 190, San Francisco, CA 94102-4698
Phone: (415) 554-5596
assessor@sfgov.org

**Hannah Chung**, Finance Director, *City of Tehachapi*
Finance Department, 115 S. Robinson St., Tehachapi, CA 93561
Phone: (661) 822-2200
hchung@tehachapicityhall.com

**David Cichella, California School Management Group**  
3130-C Inland Empire Blvd., Ontario, CA 91764  
Phone: (209) 834-0556  
dcichella@csmcentral.com

**Geoffrey Cobbett, Treasurer, City of Covina**  
Finance Department, 125 E. College Street, Covina, CA 91723  
Phone: (626) 384-5506  
gcobbett@covinaca.gov

**Brian Cochran, Finance Manager, City of Novato**  
75 Rowland Way #200, Novato, CA 94945  
Phone: (415) 899-8912  
bcocchran@novato.org

**Russell Cochran Branson, City of Roseville**  
311 Vemon Street, Roseville, CA 95678-2649  
Phone: N/A  
rbranson@roseville.ca.us

**Dennis Coleman, Finance Director/Treasurer, City of Solana Beach**  
Finance Department, City Hall 635 S. HWY 101, Solana Beach, CA 92075  
Phone: (858) 720-2431  
finance@cosb.org

**Shannon Collins, Finance Manager, City of El Cerrito**  
10890 San Pablo Avenue, El Cerrito, CA 94530-2392  
Phone: N/A  
scollins@ci.el-cerrito.ca.us

**Harriet Commons, City of Fremont**  
P.O. Box 5006, Fremont, CA 94537  
Phone: N/A  
hcommons@fremont.gov

**Stephen Conway, City of Los Gatos**  
110 E. Main Street, Los Gatos, CA 95031  
Phone: N/A  
sconway@losgatosca.gov

**Julia Cooper, City of San Jose**  
Finance, 200 East Santa Clara Street, San Jose, CA 95113  
Phone: (408) 535-7000  
Finance@sanjoseca.gov

**Viki Copeland, City of Hermosa Beach**  
1315 Valley Drive, Hermosa Beach, CA 90254  
Phone: N/A  
vocopeland@hermosabch.org

**Drew Corbett, Finance Director, City of Menlo Park**  
Finance Department, 701 Laurel St, Menlo Park, CA 94025  
Phone: (650) 330-6640
dcorbett@menlopark.org

**Lis Cottrell**, Finance Director, *City of Anderson*
Finance Department, 1887 Howard Street, Anderson, CA 96007
Phone: (530) 378-6626
lcottrell@ci.anderson.ca.us

**Jeremy Craig**, Finance Director, *City of Vacaville*
Finance Department, 650 Merchant Street, Vacaville, CA 95688
Phone: (707) 449-5128
jcraig@cityofvacaville.com

**Vicki Crow**, Auditor-Controller/Treasurer-Tax Collector, *County of Fresno*
2281 Tulare Street, Room 105, Fresno, CA 93721
Phone: (559) 600-3487
vcrow@co.fresno.ca.us

**Deborah Cullen**, *City of El Segundo*
350 Main Street, El Segundo, CA 90245-3813
Phone: N/A
dcullen@elsegundo.org

**David Culver**, *City of San Mateo*
330 West 20th Avenue, San Mateo, CA 94403-1388
Phone: (650) 522-7100
dculver@cityofsanmateo.org

**Gavin Curran**, *City of Laguna Beach*
505 Forest Avenue, Laguna Beach, CA 92651
Phone: N/A
gcurran@lagunabeachcity.net

**Stefani Daniell**, Finance Director, *City of Citrus Hts*
Finance Department, 6237 Fountain Square Dr, Citrus Heights, CA 95621
Phone: (916) 725-2448
sdaniell@citrusheights.net

**Joshua Daniels**, Attorney, *California School Boards Association*
3251 Beacon Blvd, West Sacramento, CA 95691
Phone: (916) 669-3266
jdaniels@csba.org

**Chuck Dantuono**, Director of Administrative Services, *City of Highland*
Administrative Services, 27215 Base Line, Highland, CA 92346
Phone: (909) 864-6861
cdantuono@cityofhighland.org

**Fran David**, City Manager, *City of Hayward*
Finance Department, 777 B Street, Hayward, CA 94541
Phone: (510) 583-4000
citymanager@hayward-ca.gov

**William Davis**, *County of Mariposa*
Auditor, P.O. Box 729, Mariposa, CA 95338
Phone: (209) 966-7606
wdavis@mariposacounty.org

**Daniel Dawson**, City Manager, *City of Del Rey Oaks*
Finance Department, 650 Canyon Del Rey Rd, Del Rey Oaks, CA 93940
Phone: (831) 394-8511
cityhall@delreyoaks.org

**Dilu DeAlwis**, *City of Colton*
125 E. College Street, Covina, CA 91723
Phone: N/A
ddealwis@covinaca.gov

**Suzanne Dean**, Deputy Finance Director, *City of Ceres*
Finance Department, 2220 Magnolia Street, Ceres, CA 95307
Phone: (209) 538-5757
Suzanne.Dean@ci.ceres.ca.us

**Gigi Decavalles-Hughes**, Director of Finance, *City of Santa Monica*
Finance, 1717 4th Street, Suite 250, Santa Monica, CA 90401
Phone: (310) 458-8281
gigi.decavalles@smgov.net

**Marieta Delfin**, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

**Brent Dennis**, *County of Tuolumne*
1021 Harvard Way, El Dorado Hills, CA 95762
Phone: (916) 614-3237
Bdennis@edhcsd.org

**Leticia Dias**, Accountant, *City of Ceres*
2720 Second Street, Ceres, CA 95307-3292
Phone: (209) 538-5764
leticia.dias@ci.ceres.ca.us

**Tom Dibble**, *City of Hanford*
315 North Douty Street, Hanford, CA 93230
Phone: (559) 585-2525
tdibble@ci.hanford.ca.us

**Steve Diels**, City Treasurer, *City of Redondo Beach*
City Treasurer's Department, 415 Diamond Street, Redondo Beach, CA 90277
Phone: (310) 318-0652
steven.diels@redondo.org

**Richard Digre**, *City of Union City*
34009 Alvarado-Niles Road, Union City, CA 94587
Phone: N/A
rdigre@ci.union-city.ca.us

**Andra Donovan**, *San Diego Unified School District*
Legal Services Office, 4100 Normal Street, Room 2148, San Diego, CA 92103
Phone: (619) 725-5630
adonovan@sandi.net

Richard Doyle, City Attorney, City of San Jose
200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1900
richard.doyle@sanjoseca.gov

Randall L. Dunn, City Manager, City of Colusa
Finance Department, 425 Webster St., Colusa, CA 95932
Phone: (530) 458-4740
citymanager@cityofcolusa.com

Cheryl Dyas, City of Mission Viejo
200 Civic Center, Mission Viejo, CA 92691
Phone: N/A
cdyas@cityofmissionviejo.org

Jennie Ebejer, County of Siskiyou
311 Fourth Street, Room 101, Yreka, CA 96097
Phone: (530) 842-8030
Jebejer@co.siskiyou.ca.us

Richard Eberle, County of Yuba
915 8th Street, Suite 105, Marysville, CA 95901
Phone: (530) 749-7810
reberle@co.yuba.ca.us

Kerry Eden, City of Corona
400 S. Vicentia Avenue, Suite 320, Corona, CA 92882
Phone: (951) 817-5740
kerry.eden@ci.corona.ca.us

Scott Edwards, City of Poway
PO Box 789, Poway, CA 92074
Phone: N/A
sedwards@poway.org

Pamela Ehler, City of Brentwood
150 City Park Way, Brentwood, CA 94513
Phone: N/A
pehlser@brentwoodca.gov

Bob Elliot, City of Glendale
141 North Glendale Ave, Ste. 346, Glendale, CA 91206-4998
Phone: N/A
belliot@ci.glendale.ca.us

Edwin Eng, State Center Community College District
1525 East Weldon Avenue, Fresno, CA 93704-6398
Phone: (559) 244-5910
ed.eng@scccd.edu

Kelly Ent, Director of Admin Services, City of Big Bear Lake
Finance Department, 39707 Big Bear Blvd, Big Bear Lake, CA 92315
Phone: (909) 866-5831
kent@citybigbearlake.com

**Tina Envia**, Finance Manager, *City of Waterford*
Finance Department, 101 E Street, Waterford, CA 95386
Phone: (209) 874-2328
finance@cityofwaterford.org

**James Erb**, County of San Luis Obispo
1055 Monterey Street, Room D222, San Luis Obispo, CA 93408
Phone: (805) 781-5040
jerb@co.slo.ca.us

**Vic Erganian**, Deputy Finance Director, *City of Pasadena*
Finance Department, 100 N. Garfield Ave, Room S348, Pasadena, CA 91109-7215
Phone: (626) 744-4355
verganian@cityofpasadena.net

**Eric Erickson**, Director of Finance and Human Resources, *City of Mill Valley*
Department of Finance and Human Resources, 26 Corte Madera Avenue, Mill Valley, CA 94941
Phone: (415) 388-4033
finance@cityofmillvalley.org

**Steve Erlandson**, Finance Director/City Treasurer, *City of Laguna Niguel*
Finance Director/City Treasurer, 30111 Crown Valley Parkway, Laguna Niguel, CA 92677
Phone: (949) 362-4300
serlandson@cityoflagunaniqel.org

**Gary Ernst**, City Treasurer, *City of Oceanside*
City Treasurer, 300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3553
gemst@ci.oceanside.ca.us

**Jennifer Erwin**, Assistant Finance Director, *City of Perris*
Finance Department, 101 N. D Street, Perris, CA 92570
Phone: (951) 943-4610
jerwin@cityofperris.org

**Paul Espinoza**, City of Alhambra
111 South First Street, Alhambra, CA 91801
Phone: N/A
pespinoza@cityofalhambra.org

**Lori Ann Farrell**, Finance Director, *City of Huntington Beach*
2000 Main St., Huntington Beach, CA 92648
Phone: (714) 536-5630
loriann.farrell@surfcity-hb.org

**Sandra Featherson**, Administrative Services Director, *City of Solvang*
Finance, 1644 Oak Street, Solvang, CA 93463
Phone: (805) 688-5575
sandraf@cityofsolvang.com

**Nadia Feeser**, Administrative Services Director, *City of Pismo Beach*
Finance Department, 760 Mattie Road, Pismo Beach, CA 93449
Phone: (805) 773-7010
nfeeser@pismobeach.org

**Donna Ferebee, Department of Finance**
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

**Chris Ferguson, Department of Finance**
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Ferguson@dof.ca.gov

**Matthew Fertal, City Manager, City of Garden Grove**
Finance Department, 11222 Acacia Parkway, Garden Grove, CA 92840
Phone: (714) 741-5000
CityManager@ci.garden-grove.ca.us

**Jimmy Forbis, Finance Director, City of Monterey**
Finance Department, 735 Pacific Street, Suite A, Monterey, CA 93940
Phone: (831) 646-3940
forbis@monterey.org

**Karen Fouch, County of Lassen**
221 S. Roop Street, Ste 1, Susanville, CA 96130
Phone: (530) 251-8233
kfouch@co.lassen.ca.us

**James Francis, City of Folsom**
50 Natoma Street, Folsom, CA 95630
Phone: N/A
jfrancis@folsom.ca.us

**Charles Francis, Administrative Services Director/Treasurer, City of Sausalito**
Finance, 420 Litho Street, Sausalito, CA 94965
Phone: (415) 289-4105
cfrancis@ci.sausalito.ca.us

**Eric Frost, Deputy City Manager, City of Visalia**
707 West Acequia, Visalia, CA 93291
Phone: (559) 713-4474
efrost@ci.visalia.ca.us

**Harold Fujita, City of Los Angeles**
Department of Recreation and Parks, 211 N. Figueroa Street, 7th Floor, Los Angeles, CA 90012
Phone: (213) 202-3222
harold.fujita@lacity.org

**Mary Furey, City of Saratoga**
13777 Fruitvale Avenue, Saratoga, CA 95070
Phone: N/A
mfurey@saratoga.ca.us
Carolyn Galloway-Cooper, Finance Director, City of Buellton
Finance Department, 107 West Highway 246, Buellton, CA 93427
Phone: (805) 688-5177
carolync@cityofbuellton.com

Robert Galvan, Director of Administrative Services, City of Hollister
Administrative Services, 375 Fifth Street, Hollister, CA 95023
Phone: (831) 636-4300
robert.galvan@hollister.ca.gov

Jason Garben, Financial Services Manager, City of Suisun City
Administrative Services, 701 Civic Center Blvd., Suisun City, CA 94585
Phone: (707) 421-7320
jgarben@suisun.com

Marisela Garcia, Finance Director, City of Riverbank
Finance Department, 6707 Third Street, Riverbank, CA 95367
Phone: (209) 863-7109
mhgarcia@riverbank.org

Henry Garcia, Interim Finance Director, City of Cudahy
Finance Department, 5220 Santa Ana Street, Cudahy, CA 90201
Phone: (323) 733-5143
hgaricia@cityofcudahyca.gov

Rebecca Garcia, City of San Bernardino
300 North, San Bernardino, CA 92418-0001
Phone: (909) 384-7272
garcia_re@sbcity.org

Jeffry Gardner, City Manager & Finance Director, City of Plymouth
P.O. Box 429, Plymouth, CA 95669
Phone: (209) 245-6941
jgardner@ci.plymouth.ca.us

George Gascon, District Attorney, City and County of San Francisco
850 Bryant Street, Room 322, San Francisco, CA 94103
Phone: (415) 553-1751
robyn.burke@sfgov.org

Susan Geanacou, Department of Finance
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Robert Geis, County of Santa Barbara
Auditor-Controller, 105 E Anapamu St, Room 303, Santa Barbara, CA 93101
Phone: (805) 568-2100
geis@co.santa-barbara.ca.us

Gloriette Genereux, Finance Director, City of Modesto
Finance Department, 1010 10th Street, P.O. Box 642 Modesto, CA 95353, Modesto, CA 95354
Phone: (209) 577-5371
ggenereux@modestogov.com

Laura S. Gill, City Manager, City of Elk Grove
Finance Department, 8401 Laguna Palms Way, Elk Grove, CA 95758
Phone: (916) 478-2201
Lgill@elkgrovecity.org

Jeri Gilley, Finance Director, City of Turlock
156 S. Broadway, Ste 230, Turlock, CA 95380
Phone: (209) 668-5570
jgilley@turlock.ca.us

Cindy Giraldo, City of Burbank
301 E. Olive Avenue, Financial Services Department, Burbank, CA 91502
Phone: N/A
cgiraldo@ci.burbank.ca.us

James Goins, City of Richmond
1401 Marina Way South, P.O. Box 4046, Richmond, CA 94804
Phone: N/A
james_goins@ci.richmond.ca.us

Paul Golaszewski, Legislative Analyst’s Office
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8341
Paul.Golaszewski@lao.ca.gov

Donna Goldsmith, Finance Manager, City of Santee
Finance Department, 10601 Magnolia Avenue, Building #3, Santee, CA 92071
Phone: (619) 258-4100
dgoldsmith@ci.santee.ca.us

Jose Gomez, Director of Finance and Administrative Services, City of Santa Fe Springs
Finance and Administrative Services, 11710 E. Telegraph Road, Santa Fe Springs, CA 90670
Phone: (562) 868-0511
josegomez@santafesprings.org

Jesus Gomez, City Manager, City of El Monte
Finance Department, 11333 Valley Blvd, El Monte, CA 91731-3293
Phone: (626) 580-2001
citymanager@elmonteca.gov

Vivian Gong, City of Dublin
100 Civic Plaza, Dublin, CA 94568
Phone: N/A
vivian.gong@ci.dublin.ca.us

Adela Gonzalez, City Manager, City of Soledad
248 Main St., PO Box 156, Soledad, CA 93960
Phone: (831) 223-5014
adelag@cityofsoledad.com

Joe Gonzalez, County of San Benito
440 Fifth Street Room 206, Hollister, CA 95023
Phone: (831) 636-4090
jgonzalez@auditor.co.san-benito.ca.us

**Mike Goodson**, City Manager, *City of Hawthorne*
Finance Department, 4455 W. 126th Street, Hawthorne, CA 90250
Phone: (310) 349-2901
mgoodson@hawthorneCA.gov

**Jim Goodwin**, City Manager, *City of Live Oak*
9955 Live Oak Blvd., Live Oak, CA 95953
Phone: (530) 695-2112
liveoak@liveoakcity.org

**Craig Graves**, Finance Director, *City of Baldwin Park*
14403 East Pacific Avenue, Baldwin Park, CA 91706
Phone: N/A
cgraves@baldwinpark.com

**Michelle Green**, Admin Service Director, *City of Banning*
Administrative Services, 99 E. Ramsey St., Banning, CA 92220
Phone: (951) 922-3105
mgreen@ci.banning.ca.us

**Michelle Greene**, City Manager, *City of Goleta*
130 Cremona Drive, Suite B, Goleta, CA 93117
Phone: (805) 961-7500
mgreene@cityofgoleta.org

**Nancy Greenhalgh**, Accounting Specialist, *City of Canyon Lake*
Finance Department, 31516 Railroad Canyon Rd, Canyon Lake, CA 92587
Phone: (951) 244-2955
ngreenhalgh@cityofcanyonlake.com

**Jan Grimes**, *County of Orange*
P.O. Box 567, Santa Ana, CA 92702
Phone: (714) 834-2459
jan.grimes@ac.oegov.com

**John Gross**, *City of Long Beach*
333 W. Ocean Blvd., 6th Floor, Long Beach, CA 90802
Phone: N/A
john.gross@longbeach.gov

**Shelly Gunby**, Director of Financial Management, *City of Winters*
Finance, 318 First Street, Winters, CA 95694
Phone: (530) 795-4910
shelly.gunby@cityofwinters.org

**Francisco Gutierrez**, Finance Director, *City of Santa Ana*
20 Civic Center Plaza, Santa Ana, CA 92701
Phone: (714) 647-5400
fgutierrez@santa-ana.org

**Thomas J. Haglund**, City Administrator, *City of Gilroy*
Finance Department, 7351 Rosanna Street, Gilroy, CA 95020
Phone: (408) 846-0202
Tom.Haglund@ci.gilroy.ca.us
Amanda Hall, City of Lynwood
11330 Bullis Road, Lynwood, CA 90262
Phone: (310) 603-0220
ahall@lynwood.ca.us

Ed Hanson, Department of Finance
Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
ed.hanson@dof.ca.gov

Anne Haraksin, City of La Mirada
13700 La Mirada Blvd., La Mirada, CA 90638
Phone: N/A
aharaksin@cityoflamirada.org

Joe Harn, County of El Dorado
360 Fair Lane, Placerville, CA 95667
Phone: (530) 621-5633
joe.ham@edcgov.us

George Harris, City of Rialto
150 South Palm ave., Rialto, CA 92376
Phone: N/A
gharris@rialto.ca.gov

Emily Harrison, Interim Finance Director, County of Santa Clara
70 West Hedding Street, San Jose, CA 95110
Phone: (408) 299-5205
emily.harrison@ceo.sccgov.org

Jenny Haruyama, Director of Finance & Administrative Services, City of Tracy
Finance Department, 333 Civic Center Plaza, Tracy, CA 95376
Phone: (209) 831-6800
financedept@ci.tracy.ca.us

Jone Hayes, Administrative Services Director, City of Healdsburg
Administrative Services, 401 Grove Street, Healdsburg, CA 95448
Phone: (707) 431-3317
jhayes@ci.healdsburg.ca.us

Jim Heller, City Treasurer, City of Atwater
Finance Department, 750 Bellevue Rd, Atwater, CA 95301
Phone: (209) 357-6310
finance@atwater.org

Jennifer Hennessy, City of Temecula
41000 Main St., Temecula, CA 92590
Phone: N/A
Jennifer.Hennessy@cityoftemecula.org

Darren Hernandez, City of Santa Clarita
23920 Valencia Blvd., Suite 295, Santa Clarita, CA 91355
Phone: N/A
dhernandez@santa-clarita.com

**John Herrera**, Interim Finance Director, *City of Goleta*
Finance Department, 130 Cremona Drive, Suite B, Goleta, CA 93117
Phone: (805) 961-7500
Jherrera@cityofgoleta.org

**Dennis Herrera**, City Attorney, *City and County of San Francisco*
Office of the City Attorney, 1 Dr. Carton B. Goodlett Place, Rm. 234, San Francisco, CA 94102
Phone: (415) 554-4700
brittany.feitelberg@sfgov.org

**Robert Hicks**, *City of Berkeley*
2180 Milvia Street, Berkeley, CA 94704
Phone: N/A
finance@ci.berkeley.ca.us

**Rod Hill**, *City of Whittier*
13230 Penn Street, Whittier, CA 90602
Phone: N/A
rhill@cityofwhittier.org

**Wally Hill**, City Manager, *City of Hemet*
Finance Department, 445 E. Florida Ave, Hemet, CA 92543
Phone: (951) 765-2301
kaguilar@cityofhemet.org

**Lorenzo Hines Jr.**, Assistant City Manager, *City of Pacifica*
170 Santa Maria Avenue, Pacifica, CA 94044
Phone: (650) 738-7409
lhines@ci.pacifica.ca.us

**Daphne Hodgson**, *City of Seaside*
440 Harcourt Avenue, Seaside, CA 93955
Phone: N/A
dhodgson@ci.seaside.ca.us

**S. Rhetta Hogan**, Finance Director, *City of Yreka*
Finance Department, 701 Fourth Street, Yreka, CA 96097
Phone: (530) 841-2386
rhetta@ci.yreka.ca.us

**Victoria Holthaus**, Finance Officer, *City of Clearlake*
Finance Department, 7684 1st Avenue, Clear Lake, CA 55319
Phone: (320) 743-3111
administrator@clearlake.ca.us

**Dorothy Holzem**, *California Special Districts Association*
1112 1st Street, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dorothyh@csda.net

**David Houser**, *County of Butte*
25 County Center Drive, Suite 120, Oroville, CA 95965
Phone: (530) 538-7607
dhouser@buttecounty.net

Justyn Howard, Program Budget Manager, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Shannon Huang, City of Arcadia
240 West Huntington Drive, Arcadia, CA 91007
Phone: N/A
shuang@ci.arcadia.ca.us

Elizabeth Hudson, City of Danville
510 La Gonda Way, Danville, CA 94526
Phone: N/A
ehudson@danville.ca.gov

Jamie Hughson, Finance Director/City Treasurer, City of Clovis
1033 Fifth St., Clovis, CA 93611
Phone: (559) 324-2130
jamieh@ci.clovis.ca.us

Lewis Humphries, Finance Director, City of Newman
Finance Department, 938 Fresno Street, Newman, CA 95360
Phone: (209) 862-3725
lhumphries@cityofnewman.com

Mark Ibele, Senate Budget & Fiscal Review Committee
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Cheryl Ide, Associate Finance Budget Analyst, Department of Finance
Education Systems Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Cheryl.ide@dof.ca.gov

Julia James, City of Fullerton
303 W. Commonwealth Ave., Fullerton, CA 92832
Phone: N/A
juliaj@ci.fullerton.ca.us

Dennis Jaw, Senior Accountant, City of Huntington Beach
2000 Main Street, Huntington Beach, CA 92648
Phone: N/A
dennis.jaw@surfcity-hb.org

Edward Jewik, County of Los Angeles
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Scott Johnson, Assistant City Manager, City of Oakland
1 Frank H. Ogawa Plaza, Oakland, CA 94612
Phone: N/A
sjohnson@oaklandnet.com

Rochelle Johnson, Acting Accounting Manager, City of Wildomar
Finance Department, 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595
Phone: (951) 677-7751
rjohnson@cityofwildomar.org

Onyx Jones, Interim Finance Director, City of Adelanto
Finance Department, 11600 Air Expressway, Adelanto, CA 92301
Phone: (760) 246-2300
ojones@ci.adelanto.ca.us

Toni Jones, Finance Director, City of Kerman
Finance Department, 850 S. Madera Avenue, Kerman, CA 93630
Phone: (559) 846-4682
tjones@cityofkerman.org

Ferlyn Junio, Nimbus Consulting Group, LLC
2386 Fair Oaks Boulevard, Suite 104, Sacramento, CA 95825
Phone: (916) 480-9444
fjunio@nimbusconsultinggroup.com

Kim Juran, Finance Director, City of San Bruno
Finance Department, 567 El Camino Real, San Bruno, CA 94066
Phone: (650) 616-7080
Finance-Web@sanbruno.ca.gov

Maria Kachadoorian, Director of Finance, City of Chula Vista
276 Fourth Avenue, Chula Vista, CA 91910
Phone: (619) 691-5250
mkachadoorian@ci.chula-vista.ca.us

Will Kaholokula, City of Bell Gardens
7100 S. Garfield Avenue, Bell Gardens, CA 90201
Phone: (562) 806-7700
wkaholokula@bellgardens.org

Harshil Kanakia, County of San Mateo
Controller's Office, 555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1080
hkanakia@smcgov.org

Jill Kanemasu, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Emma Karlen, Finance Director, City of Milpitas
Finance Department, 455 East Calaveras Boulevard, Milpitas, CA 95035
Phone: (408) 586-3145
ekarlen@ci.milpitas.ca.gov

Naomi Kelly, City Administrator, City and County of San Francisco
City Hall, Room 362, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
Phone: (415) 554-4851
city.administrator@sfgov.org

Anita Kerezi, AK & Company
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Nancy Kerry, City of South Lake Tahoe
1901 Airport Road, South Lake Tahoe, CA 96150
Phone: N/A
nkerry@cityofslt.us

Geoffrey Kiehl, Director of Finance and Treasurer, City of Palm Springs
Finance & Treasury, 3200 E. Tahquitz Canyon Way, P.O. Box 2743, Palm Springs, CA 92262
Phone: (760) 323-8229
Geoffrey.Kiehl@palmspringsca.gov

Jillian Kissee, Department of Finance
915 L Street, Sacramento, Ca
Phone: (916) 445-0328
jillian.kissee@dof.ca.gov

Lauren Klein, County of Stanislaus
1010 Tenth Street, Suite 5100, Modesto, CA 95353
Phone: (209) 525-6398
kleinl@stancounty.com

Will Kolbow, Finance Director, City of Orange
300 E. Chapman Avenue, Orange, CA 92866-1508
Phone: (714) 744-2234
WKolbow@cityoforange.org

Patty Kong, City of Mountain View
P.O. Box 7540, Mountain View, CA 94039-7540
Phone: N/A
patty.kong@mountainview.gov

Cathy Krysyna, Assistant Finance Officer, City of Pacific Grove
Finance Department, 300 Forest Ave., Pacific Grove, CA 93950
Phone: (831) 648-3102
ckrysyna@ci.pg.ca.us

Jennifer Kuhn, Deputy, Legislative Analyst's Office
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8332
Jennifer.kuhn@lao.ca.gov

Tina Kundig, City of Redlands
P.O. Box 3005, Redlands, CA 92373
Phone: N/A
tkundig@cityofredlands.org

Ana Kwong, City of Rohnert Park
Finance, P.O. Box 1489, Rohnert Park, CA 94928  
Phone: (707) 585-6722  
akwong@rpcity.org

**Lauren Lai**, Finance Director, *City of Marina*  
Finance Department, 211 Hillcrest Ave, Marina, CA 93933  
Phone: (831) 884-1274  
llai@ci.marina.ca.us

**Jay Lal**, State Controller's Office (B-08)  
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0256  
JLal@sco.ca.gov

**Karina Lam**, City of Paramount  
16400 Colorado Avenue, Paramount, CA 90723  
Phone: N/A  
klam@paramountcity.com

**Judy Lancaster**, City of Chino Hills  
14000 City Center Drive, Chino Hills, CA 91709  
Phone: N/A  
jlancaster@chinohills.org

**Ramon Lara**, City Administrator, *City of Woodlake*  
350 N. Valencia Blvd., Woodlake, CA 93286  
Phone: (559) 564-8055  
rlara@ci.woodlake.ca.us

**Israel Lara Jr.**, City Manager, *City of Parlier*  
Administration, 1100 E. Parlier Avenue, Parlier, CA 93648  
Phone: (559) 646-3545  
ilara@parlier.ca.us

**Nancy Lassey**, Finance Administrator, *City of Lake Elsinore*  
130 South Main Street, Lake Elsinore, CA 92530  
Phone: N/A  
nlassey@lake-elsinore.org

**Tamara Layne**, City of Rancho Cucamonga  
10500 Civic Center Drive, Rancho Cucamonga, CA 91730  
Phone: (909) 477-2700  
Tamara.Layne@cityofrc.us

**Gloria Leon**, Admin Services Director, *City of Calistoga*  
Administrative Services, 1232 Washington Street, Calistoga, CA 94515  
Phone: (707) 942-2802  
GLeon@ci.calistoga.ca.us

**Grace Leung**, City of Sunnyvale  
Sunnyvale City Hall, 456 W. Olive Ave., Sunnyvale, CA 94086  
Phone: (408) 730-7284  
gleung@ci.sunnyvale.ca.us

**Mark Lewis**, City Administrator, *City of Chowchilla*
Finance Department, 130 S. Second Street Civic Center Plaza, Chowchilla, CA 93610
Phone: (559) 665-8615
mlewis@ci.chowchilla.ca.us

Gilbert A. Livas, City Manager, City of Downey
11111 Brookshire Ave, Downey, CA 90241
Phone: (562) 904-7284
CityManager@downeyca.org

Rudolph Livingston, Finance Director, City of Ojai
PO Box 1570, Ojai, CA 93024
Phone: N/A
livingston@ojaicity.org

Darcy Locken, County of Modoc
204 S. Court Street, Alturas, CA 96101
Phone: (530) 233-6204
darcycloken@co.modoc.ca.us

Kenneth Louie, City of Lawndale
14717 Burin Avenue, Lawndale, CA 90260
Phone: N/A
klouie@lawndalecity.org

Linda Lowry, City Manager, City of Pomona
City Manager's Office, 505 South Garey Ave., Pomona, CA 91766
Phone: (909) 620-2051
linda_lowry@ci.pomona.ca.us

Janet Luzzi, Finance Director, City of Arcata
Finance Department, 736 F Street, Arcata, CA 95521
Phone: (707) 822-5951
finance@cityofarcata.org

Kathleen Lynch, Department of Finance (A-15)
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
kathleen.lynch@dof.ca.gov

Gary J. Lysik, Chief Financial Officer, City of Calabasas
100 Civic Center Waya, Calabasas, CA 91302
Phone: (818) 224-1600
glysk@cityofcalabasas.com

Van Maddox, County of Sierra
211 Nevada Street, 2nd Floor, P.O. Box 425, Downieville, CA 95936
Phone: (530) 289-3273
vmaddox@sierracounty.ws

Martin Magana, City Manager/Finance Director, City of Desert Hot Springs
Finance Department, 65-950 Pierson Blvd, Desert Hot Springs, CA 92240
Phone: (760) 329-6411, Ext.
CityManager@cityofdhs.org

Susan Mahoney, City of Orinda

http://csm.ca.gov/csmint/cats/print_mailing_list_from_claim.php
22 Orinda Way, Orinda, CA 94563
Phone: N/A
smahoney@cityoforinda.org

Imran Majid, Student Assistant, Commission on State Mandates
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
imran.majid@csm.ca.gov

James Makshanoff, City Manager, City of San Clemente
100 Avenida Presidio, San Clemente, CA 92672
Phone: N/A
makshanofffl@san-clemente.org

Debbie Malicoat, Director of Admin Services, City of Arroyo Grande
Finance Department, 300 E. Branch Street, Arroyo Grande, CA 93420
Phone: (804) 473-5410
dmalicoat@arroyogrande.org

Suzanne Mallory, City of Manteca
1001 W Center Street, Manteca, CA 95337
Phone: N/A
smallory@ci.manteca.ca.us

Eddie Manfr, City of Westminster
8200 Westminster Blvd., Westminster, CA 92683
Phone: N/A
emanfr@westminster-ca.gov

Denise Manoogian, City of Cerritos
P.O. Box 3130, Cerritos, CA 90703-3130
Phone: N/A
dmanoogian@cerritos.us

Noel Marquis, City of Beverly Hills
455 N. Rexford Dr., Beverly Hills, CA 90210
Phone: N/A
nmarquis@beverlyhills.org

Terri Marsh, Finance Director, City of Signal Hill
Finance, 2175 Cherry Ave., Signal Hill, CA 90755
Phone: (562) 989-7319
Finance1@cityofsignalhill.org

Thomas Marston, City of San Gabriel
425 South Mission Drive, San Gabriel, CA 91776
Phone: N/A
tmarston@sgch.org

Pio Martin, Finance Manager, City of Firebaugh
Finance Department, 1133 P Street, Firebaugh, CA 93622
Phone: (559) 659-2043
financedirector@ci.firebaugh.ca.us

Janice Mateo-Reyes, Finance Manager, City of Laguna Hills
Administrative Services Department, 24035 El Toro Rd., Laguna Hills, CA 92653
Phone: (949) 707-2623
jreyes@ci.laguna-hills.ca.us

**Hortensia Mato, City of Newport Beach**
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

**Mike Matsumoto, City of South Gate**
8650 California Ave, South Gate, CA 90280
Phone: N/A
zmaltitla@pico-rivera.org

**Dan Matusiewicz, City of Newport Beach**
3300 Newport Blvd, Newport Beach, CA 92663
Phone: N/A
danm@newportbeachca.gov

**Charles McBride, City of Carlsbad**
1635 Faraday Avenue, Carlsbad, CA 92008-7314
Phone: N/A
chuck.mcbride@carlsbadca.gov

**Teresa McBroome, Finance Director/City Treasurer, City of Del Mar**
Finance Department, 1050 Camino Del Mar, Del Mar, CA 92014
Phone: (858) 755-9313
tmcbroome@delmar.ca.us

**Mary McCarthy, Finance Manager, City of Pleasant Hill**
Finance Division, 100 Gregory Lane, Pleasant Hill, CA 94523
Phone: (925) 671-5231
Mmccarthy@ci.pleasant-hill.ca.us

**Kevin McCarthy, Director of Finance, City of Indian Wells**
Finance Department, 44-950 Eldorado Drive, Indian Wells, CA 92210-7497
Phone: (760) 346-2489
kmccarthy@indianwells.com

**Michelle McClelland, County of Alpine**
P.O. Box 266, Markleeville, CA 96120
Phone: (530) 694-2284
mcclelland@alpinecountyca.gov

**Sheila McCrory, Interim Finance Director / Treasurer, City of St. Helena**
Finance, 1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2751
sheilam@cityofsthelena.org

**Lee McDougal, City Manager, City of Riverside**
3900 Main Street, 7th Floor, Riverside, CA 92522
Phone: (951) 826-5553
lmcdougal@riversideca.gov

**Maureen McGoldrick, Director, City of Simi Valley**

207
Department of Administrative Services, 2929 Tapo Canyon Road, Simi Valley, CA 93063
Phone: (805) 583-6700
mmcgoldrick@simivalley.org

Michael McGrane, Finance Director, *City of Imperial Beach*
Finance Department, 825 Imperial Beach Blvd., Imperial Beach, CA 91932
Phone: (619) 423-8303
mmcgrane@cityofib.org

Kelly McKinnis, Finance Director, *City of Weed*
Finance Department, 550 Main Street, Weed, CA 96094
Phone: (530) 938-5020
mckinnis@ci.weed.ca.us

Larry McLaughlin, City Manager, *City of Sebastopol*
7120 Bodega Avenue, P.O. Box 1776, Sebastopol, CA 95472
Phone: (707) 823-1153
lwmclaughlin@juno.com

Dennis McLean, *City of Rancho Palos Verdes*
30940 Hawthorne Blvd., Rancho Palos Verdes, CA 90275
Phone: N/A
dennism@rpv.com

Rachelle McQuiston, Finance Director, *City of Ridgecrest*
Finance Department, 100 W CALIFORNIA AVE, RIDGECREST, CA 93555
Phone: (760) 499-5020
rmquiston@ridgecrest-ca.gov

Donald McVey, Director of Finance, *City of Daly City*
Finance Department, 333 90th Street, Daly City, CA 94015
Phone: (650) 991-8127
dmcvey@dalycity.org

Paul Melikian, *City of Reedley*
1717 Ninth Street, Reedley, CA 93654
Phone: (559) 637-4200
paul.melikian@reedley.ca.gov

Joe Mellett, *County of Humboldt*
825 Fifth Street, Room 126, Eureka, CA 95501
Phone: (707) 476-2452
jmellett@co.humboldt.ca.us

Rebecca Mendenhall, *City of San Carlos*
600 Elm Street, P.O. Box 3009, San Carlos, CA 94070-1309
Phone: (650) 802-4205
rmendenhall@cityofsancarlos.org

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michelle.mendoza@maximus.com

Dawn Merchant, *City of Antioch*
P.O. Box 5007, Antioch, CA 94531
Phone: (925) 779-7055
dmerchant@ci.antioch.ca.us

Yazmin Meza, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Joan Michaels Aguilar, City of Dixon
600 East A Street, Dixon, CA 95620
Phone: N/A
jmichaelsaguilar@ci.dixon.ca.us

Ron Millard, Interim Finance Director, City of Vallejo
Finance Department, 555 Santa Clara Street, 3rd Floor, Vallejo, CA 94590
Phone: (707) 648-4592
Ikimura@ci.vallejo.ca.us

Michael Miller, County of Monterey
168 W. Alisal Street, 3rd floor, Salinas, CA 93901
Phone: (831) 755-4500
millerm@co.monterey.ca.us

Todd Miller, County of Madera
Auditor-Controller, 200 W Fourth Street, 2nd Floor, Madera, CA 93637
Phone: (559) 675-7707
Todd.Miller@co.madera.ca.gov

Meredith Miller, Director of SB90 Services, MAXIMUS
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

David Millican, Interim Chief Financial Officer, City of Oxnard
300 West Third Street, Suite 302, Oxnard, CA 93030
Phone: (805) 385-7466
Tamara.Reese@ci.oxnard.ca.us

Leyne Milstein, Director of Finance, City of Sacramento
915 I Street, 5th Floor, Sacramento, CA 98514
Phone: (916) 808-5845
lmilstein@cityofsacramento.org

Robert Miyashiro, Education Mandated Cost Network
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Kevin Mizuno, Finance Director, City of Clayton
Finance Department, 600 Heritage Trail, Clayton, CA 94517
Phone: (925) 673-7309
kmizuno@ci.clayton.ca.us

Bruce Moe, City of Manhattan Beach
1400 Highland Ave., Manhattan Beach, CA 90266
Phone: N/A
bmoe@citymb.info

Debbie Moreno, City of Anaheim
200 S. Anaheim Boulevard, Anaheim, CA 92805
Phone: (716) 765-5192
DMoreno@anaheim.net

Minnie Moreno, City of Patterson
1 Plaza Circle, Patterson, CA 95363
Phone: N/A
mmoreno@ci.patterson.ca.us

Russell Morreale, City of Los Altos
One North San Antonio Road, Los Altos, CA 94022
Phone: N/A
rmorreale@losaltosca.gov

Russell Morreale, Finance Director, City of Palos Verdes Estates
Finance Department, 340 Palos Verdes Dr West, Palos Verdes Estates, CA 90274
Phone: (310) 378-0383
rmorreale@pvstates.org

Cindy Mosser, City Treasurer/Finance Director, City of San Rafael
1400 Fifth Avenue, PO Box 151560, San Rafael, CA 94915
Phone: (415) 458-5001
cindy.mosser@cityofsanrafael.org

Brian Muir, County of Shasta
1450 Court St., Suite 238, Redding, CA 96001
Phone: (530) 225-5541
bmuir@co.shasta.ca.us

walter Munchheimer, Interim Administrative Services Manager, City of Marysville
Administration and Finance Department, 526 C Street, Marysville, CA 95901
Phone: (530) 749-3901
wmunchheimer@marysville.ca.us

Bill Mushallo, Finance Director, City of Petaluma
Finance Department, 11 English St., Petaluma, CA 94952
Phone: (707) 778-4352
financeemail@ci.petaluma.ca.us

Renee Nagel, Finance Director, City of Visalia
707 W. Acequia Avenue, City Hall West, Visalia, CA 93291
Phone: (559) 713-4375
RNagel@ci.visalia.ca.us

Jameel Naqvi, Analyst, Legislative Analyst’s Office
Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8331
Jameel.naqvi@lao.ca.gov

Tim Nash, City of Encinitas
505 S Vulcan Avenue, Encinitas, CA 92054
Phone: N/A
finmail@encinitasca.gov

**Geoffrey Neill**, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

**Keith Neves**, Director of Finance/City Treasurer, *City of Lake Forest*
Finance Department, 25550 Commercentre Drive, Lake Forest, CA 92630
Phone: (949) 461-3430
kneves@lakeforestca.gov

**Howard Newens**, *County of Yolo*
625 Court Street, Room 102, Woodland, CA 95695
Phone: (530) 666-8625
howard.newens@yolocounty.org

**Doug Newland**, *County of Imperial*
940 Main Street, Ste 108, El Centro, CA 92243
Phone: (760) 482-4556
dougnewland@co.imperial.ca.us

**Keith Nezaam**, *Department of Finance*
915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-8913
Keith.Nezaam@dof.ca.gov

**Andy Nichols**, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

**Dale Nielsen**, Director of Finance/Treasurer, *City of Vista*
Finance Department, 200 Civic Center Drive, Vista, CA 92084
Phone: (760) 726-1340
dnielsen@ci.vista.ca.us

**David Noce**, Accounting Division Manager, *City of Santa Clara*
1500 Warburton Ave, Santa Clara, CA 95050
Phone: (408) 615-2341
dnoce@santaclaraca.gov

**Marianne O'Malley**, Legislative Analyst's Office (B-29)
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8315
marianne.O'malley@lao.ca.gov

**Patrick O'Connell**, *County of Alameda*
1221 Oak Street, Room 249, Oakland, CA 94512
Phone: (510) 272-6565
pat.oconnell@acgov.org
Andy Okoro, City Manager, City of Norco
2870 Clark Avenue, Norco, CA 92860
Phone: N/A
aokoro@ci.norco.ca.us

Cathy Orme, Finance Director, City of Larkspur
Finance Department, 400 Magnolia Ave, Larkspur, CA 94939
Phone: (415) 927-5019
corme@cityoflarkspur.org

John Ornelas, Interim City Manager, City of Huntington Park
, 6550 Miles Avenue, Huntington Park, CA 90255
Phone: (323) 584-6223
scrum@hpca.gov

Odi Ortiz, Assistant City Manager/Finance Director, City of Livingston
Administrative Services, 1416 C Street, Livingston, CA 95334
Phone: (209) 394-8041
oortiz@livingstoncity.com

Christian Osmena, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Wayne Padilla, Interim Director, City of San Luis Obispo
Finance & Information Technology Department, 990 Palm Street, San Luis Obispo, CA 93401
Phone: (805) 781-7125
wpadilla@slocity.org

Simona Padilla-Scholtens, Auditor-Controller, County of Solano
675 Texas Street, Suite 2800, Fairfield, CA 94533
Phone: (707) 784-6282
sjpadilla@solanocounty.com

Arthur Palkowitz, Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@sashlaw.com

Deborah Paolinelli, County of Tulare
411 East Kern Ave, Tulare, CA 93274
Phone: N/A
dpaolinelli@co.tulare.ca.us

Susan Paragas, City of Azusa
PO Box 1395, Azusa, CA 91702
Phone: N/A
sparagas@ci.azusa.ca.us

Alice Park-Renzie, County of Alameda
CAO, 1221 Oak Street, Oakland, CA 94612
Phone: (510) 272-3873
Alice.Park@acgov.org

Stephen Parker, Administrative Services Director, City of Stanton
Administrative Services and Finance Department, 7800 Katella Avenue, Stanton, CA 90680
Phone: (714) 379-9222
sparker@ci.stanton.ca.us

Donald Parker, City of Montclair
5111 Benito St., Montclair, CA 91763
Phone: N/A
dparker@cityofmontclair.org

Lalo Perez, City of Palo Alto
P.O. Box 10250, Palo Alto, CA 94303
Phone: N/A
lalo.perez@cityofpaloalto.org

Diane Perkin, City of Lakewood
5050 Clark Avenue, Lakewood, CA 90712
Phone: (562) 866-9771
dperkin@lakewoodcity.org

Keith Petersen, SixTen & Associates
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@aol.com

Eva Phelps, City of San Ramon
2226 Camino Ramon, San Ramon, CA 94583
Phone: N/A
ephelps@sanramon.ca.gov

Marcus Pimentel, City of Santa Cruz
809 Center Street, Rm 101, Santa Cruz, CA 95060
Phone: N/A
dl_Finance@cityofsantacruz.com

Adam Pirrie, City of Claremont
207 Harvard Ave, Claremont, CA 91711
Phone: (909) 399-5328
apirrie@ci.claremont.ca.us

Ruth Piyaman, Finance / Accounting Manager, City of Malibu
Administrative Services / Finance, 23825 Stuart Ranch Road, Malibu, CA 90265
Phone: (310) 456-2489
RPIyaman@malibucity.org

Bret M. Plumlee, City Manager, City of Los Alamitos
3191 Katella Ave., Los Alamitos, CA 90720
Phone: (562) 431-3538 ext.
bplumlee@cityoflosalamitos.org

Mike Podegracz, City Manager, City of Hesperia
Finance Department, 9700 Seventh Ave, Hesperia, CA 92345
Phone: (760) 947-1025
mpodegracz@cityofhesperia.us

**Brian Ponty**, *City of Redwood City*
1017 Middlefield Road, Redwood City, CA 94063
Phone: (650) 780-7300
finance@redwoodcity.org

**Michael Powers**, City Manager, *City of King City*
212 South Vanderhurst Avenue, King City, CA 93930
Phone: 831-386-5925
mpowers@kingcity.com

**Jai Prasad**, County of San Bernardino
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

**Matt Pressey**, Director, *City of Salinas*
Finance Department, 200 Lincoln Ave., Salinas, CA 93901
Phone: (831) 758-7211
mattp@ci.salinas.ca.us

**Tom Prill**, Finance Director, *City of San Jacinto*
Finance Department, 595 S. San Jacinto Ave., Building B, San Jacinto, CA 92583
Phone: (951) 487-7340
TPrill@sanjacintoca.us

**Cindy Prothro**, Finance Director, *City of Barstow*
Finance Department, 220 East Mountain View Street, Barstow, CA 92311
Phone: (760) 255-5115
cprothro@barstowca.org

**Tim Przybyla**, Finance Director, *City of Madera*
Finance Department, 205 West Fourth Street, Madera, CA 93637
Phone: (559) 661-5454
tprzybyla@cityofmadera.com

**Marc Puckett**, Assistant Town Manager of Finance & Administration, *Town of Apple Valley*
Finance Department, 14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
finance@applevalley.org

**Raul Purificacion**, Finance Manager, *City of La Puente*
Finance Department, 15900 E. Main Street, La Puente, CA 91744
Phone: (626) 855-1500
rpurificacion@lapuente.org

**John Quinn**, *City of Calexico*
608 Heber Ave., Calexico, CA 92231
Phone: N/A
jquinn@calexico.ca.gov

**Frank Quintero**, *City of Merced*
678 West 18th Street, Merced, CA 95340
Phone: N/A
quinterof@cityofmerced.org

Yvonne Quiring, City of Davis
23 Russell Blvd., Davis, CA 95616
Phone: N/A
yquiring@cityofdavis.org

Sean Rabe, City Manager, City of Colma
1198 El Camino Real, Colma, CA 94014
Phone: (650) 997-8318
sean.rabe@colma.ca.gov

Juan Raigoza, Auditor-Controller, County of San Mateo
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 363-4777
jraigoza@smcgov.org

Roberta Raper, Finance Director, City of Napa
Finance Department, P.O. Box 660, Napa, CA 94559-0660
Phone: (707) 257-9510
rraper@cityofnapa.org

Roberta Reed, County of Mono
P.O. Box 556, Bridgeport, CA 93517
Phone: (760) 932-5490
RReed@mono.ca.gov

Karan Reid, Finance Director, City of Concord
1950 Parkside Drive, Concord, CA 94519
Phone: (925) 671-3178
karan.reid@cityofconcord.org

Sandra Repede, Principal Financial Analyst, City of San Buenaventura
Finance & Technology, 501 Poli St. Room 101, Ventura, CA 93001
Phone: (805) 654-7728
srepede@cityofventura.net

Mark Rewolinski, MAXIMUS
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845
markrewolinski@maximus.com

Sandra Reynolds, Reynolds Consulting Group, Inc.
P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrareynolds_30@msn.com

Tina Reza, Interim Finance Director, City of Morgan Hill
Finance Department, 17575 Peak Ave., Morgan Hill, CA 95037
Phone: (408) 779-7237
Tina.Reza@morgan-hill.ca.gov

Tae G. Rhee, Finance Director, City of Bellflower
Finance Department, 16600 Civic Center Dr, Bellflower, CA 90706
Robert Richardson, City Manager, City of Grass Valley
Finance Department, 125 East Main Street, Grass Valley, CA 95945
Phone: (530) 274-4312
r.richardson@cityofgrassvalley.com

Rachelle Rickard, City Manager, City of Atascadero
Finance Department, 6500 Palma Ave, Atascadero, CA 93422
Phone: (805) 461-7612
rrickard@atascadero.org

Jorge Rifa, City Administrator, City of Commerce
Finance Department, 2535 Commerce Way, Commerce, CA 90040
Phone: (323) 722-4805
jorger@ci.commerce.ca.us

Kathy Rios, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Rosa Rios, City of Delano
1015 11th Ave., Delano, CA 93216
Phone: N/A
rrios@cityofdelano.org

Nicole Rizzo, Operations Manager, City of Lancaster
Finance Department, 44933 N. Fern Avenue, Lancaster, CA 93534
Phone: (661) 723-5893
nrizzo@cityoflancasterca.org

Mark Roberts, City of National City
1243 National City Blvd., National City, CA 91950
Phone: N/A
finance@nationalcityca.gov

Laura Rocha, City of San Marcos
1 Civic Center Drive, San Marcos, CA 92069
Phone: (760) 744-1050
Lrocha@san-marcos.net

Rob Rockwell, Director of Finance, City of Indio
Finance Department, 100 Civic Center Mall, Indio, CA 92201
Phone: (760) 391-4029
rrockwell@indio.org

Paul Rodriguez, City Manager, City of Eureka
531 K Street, Eureka, CA 95501
Phone: (707) 441-4144
webmaster@ci.eureka.ca.gov

Benjamin Rosenfield, City Controller, City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, CA 94102

Phone: (562) 804-1424
trhee@bellflower.org

http://csm.ca.gov/csmint/cats/print_mailing_list_from_claim.php
Phone: (415) 554-7500
ben.rosenfield@sfgov.org

Tacy Oneto Rouen, Auditor, County of Amador
810 Court Street, Jackson, CA 95642-2131
Phone: (209) 223-6357
trouen@amadorgov.org

Linda Ruffing, City Manager, City of Fort Bragg
Finance Department, 416 N Franklin Street, Fort Bragg, CA 94537
Phone: (707) 961-2823
lruffing@fortbragg.com

Cynthia Russell, Chief Financial Officer/City Treasurer, City of San Juan Capistrano
Finance Department, 32400 Paseo Adelanto, San Juan Capistrano, CA 92675
Phone: (949) 443-6343
cruссell@sanjuancapistrano.org

Joan Ryan, Finance Director, City of Escondido
201 N. Broadway, Escondido, CA 92025
Phone: N/A
jryan@ci.escondido.ca.us

Cathy Saderlund, County of Lake
255 N. Forbes Street, Lakeport, CA 95453
Phone: (707) 263-2311
cathy.saderlund@lakecountyca.gov

Leticia Salcido, City of El Centro
1275 Main Street, El Centro, CA 92243
Phone: N/A
lsalcido@ci.el-centro.ca.us

Marcia Salter, County of Nevada
950 Maidu Avenue, Nevada City, CA 95959
Phone: (530) 265-1244
marcia.salter@co.nevada.ca.us

Robert Samario, City of Santa Barbara
P.O. Box 1990, Santa Barbara, CA 93102-1990
Phone: (805) 564-5336
BSamario@SantaBarbaraCA.gov

Kathy Samms, County of Santa Cruz
701 Ocean Street, Room 340, Santa Cruz, CA 95060
Phone: (831) 454-2440
shf735@co.santa-cruz.ca.us

Tony Sandhu, Interim Finance Director, City of Capitola
Finance Department, 480 Capitola Ave, Capitola, CA 95010
Phone: (831) 475-7300
tsandhu@ci.capitola.ca.us

Tracy Sandoval, County of San Diego
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tray.sandoval@sdcounty.ca.gov

Kimberly Sarkovich, Chief Financial Officer, City of Rocklin
3970 Rocklin Road, Rocklin, CA 95677
Phone: (916) 625-5020
kim.sarkovich@rocklin.ca.us

Clinton Schaad, County of Del Norte
981 H Street, Suite 140, Crescent City, CA 95531
Phone: (707) 464-7202
cschaad@co.del-norte.ca.us

Stuart Schillinger, City of Brisbane
50 Park Place, Brisbane, CA 94005-1310
Phone: N/A
schillinger@ci.brisbane.ca.us

Karin Schnaider, Finance Director, City of Benicia
Finance Department, 250 East L Street, Benicia, CA 94510
Phone: (707) 746-4225
KSchnaider@ci.benicia.ca.us

Tracy Schulze, County of Napa
1195 Third Street, Suite B-10, Napa, CA 94559
Phone: (707) 299-1733
tracy.schulze@countyofnapa.org

Lee Scott, Department of Finance
15 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
lee.scott@dof.ca.gov

Tami Scott, Administrative Services Director, Cathedral City
Administrative Services, 68700 Avenida Lalo Guerrero, Cathedral City, CA 92234
Phone: (760) 770-0356
tscott@cathedralcity.gov

David Scribner, Max8550
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

Peggy Scroggins, County of Colusa
546 Jay Street, Ste 202, Colusa, CA 95932
Phone: (530) 458-0400
pscroggins@countyofcolusa.org

Kelly Sessions, Finance Manager, City of San Pablo
Finance Department, 13831 San Pablo Avenue, Building #2, San Pablo, CA 94806
Phone: (510) 215-3021
kellys@sanpabloca.gov

Mel Shannon, Finance Director, City of La Habra
Finance/Admin. Services, 201 E. La Habra Blvd, La Habra, CA 90633-0337
Phone: (562) 383-4050
mshannon@lahabra.ca.gov

Amy Shepherd, County of Inyo
Auditor-Controller, P.O. Drawer R, Independence, CA 93526
Phone: (760) 878-0343
ashepherd@inyo county.us

Steve Shields, Shields Consulting Group, Inc.
1536 36th Street, Sacramento, CA 95816
Phone: (916) 454-7310
steve@shieldscg.com

Ed Shikada, City Manager, City of San Jose
200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-8100
ed.shikada@sanjose.ca.gov

Wayne Shimabukuro, County of San Bernardino
Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty .gov

Donna Silva, Finance Director, City of Rancho Cordova
Finance Department, 2729 Prospect Park Drive, Rancho Cordova, CA 95670
Phone: (916) 851-8730
dsilva@cityof ranchocordova.org

Lucy Simonson, County of Mendocino
501 Low Gap Road, Rm 1080, Ukiah, CA 95482
Phone: (707) 463-4388
simonsol@co.mendocino.ca.us

Andrew Sisk, County of Placer
2970 Richardson Drive, Auburn, CA 95603
Phone: (530) 889-4026
asisk@placer.ca.gov

Susan Slayton, Administrative Services Director, City of Morro Bay
Administrative Services, 595 Harbor Street, Morro Bay, CA 93442
Phone: (805) 772-6201
sslayton@morro-bay.ca.us

Nelson Smith, City of Bakersfield
1600 Truxtun Avenue, Bakersfield, CA 93301
Phone: N/A
nsmith@bakersfieldcity.us

Margarita Solis, City Treasurer, City of San Fernando
117 Macneil Street, San Fernando, CA 91340
Phone: (818) 898-1218
msolis@sfcity.org

Carla Soracco, Finance Manager, City of Jackson
Finance Department, 33 Broadway, Jackson, CA 95642
Phone: (209) 223-1646
csoracco@ci.jackson.ca.us

Jim Spano, Chief, Mandated Cost Audits Bureau, State Controller's Office
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Cathy Spinella, Finance Manager, City of Martinez
Finance Department, 525 Henrietta Street, Martinez, CA 94553
Phone: (925) 372-3579
cspinella@cityofmartinez.org

Betsy St. John, City of Palmdale
38300 Sierra Highway, Suite D, Palmdale, CA 93550
Phone: N/A
bstjohn@cityofpalmdale.org

Susan A. Stanton, City Manager, City of Greenfield
Finance Department, 599 El Camino Real, Greenfield, CA 93927
Phone: (831) 674-5591
sstanton@ci.greenfield.ca.us

Robert Stark, County of Sutter
463 2nd Street, Suite 117, Yuba City, CA 95991
Phone: (530) 822-7127
rstark@co.sutter.ca.us

Jim Steele, City of South San Francisco
P.O. Box 711, South San Francisco, CA 94083
Phone: N/A
jim.steele@ssf.net

Stephen Strong, Finance Director, City of Redding
Finance Department, 3rd Floor City Hall, 777 Cypress Avenue, Redding, CA 96001
Phone: (530) 225-4079
sstrong@ci.redding.ca.us

Jana Stuard, City of Norwalk
P.O. Box 1030, Norwalk, CA 90650
Phone: N/A
jstuard@norwalkca.gov

Leslie Suelter, City of Coronado
1825 Strand Way, Coronado, CA 92118
Phone: N/A
lsuelter@coronado.ca.us

Edmund Suen, Finance Director, City of East Palo Alto
Finance Department, 2415 University Ave, East Palo Alto, CA 94303
Phone: (650) 853-3122
financedepartment@cityofepa.org

Evelyn Suess, Principal Program Budget Analyst, Department of Finance Requester Representative
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
evelyn.suess@dof.ca.gov

Karen Suiker, City Manager, City of Trinidad
409 Trinity Street, PO Box 390, Trinidad, CA 95570
Phone: (707) 677-3876
citymanager@trinidad.ca.gov

Deborah Sultan, Finance Director, City of Sanger
Finance, 1700 7th Street, Sanger, CA 93657
Phone: (559) 876-6300
dsultan@ci.sanger.ca.us

David Sundstrom, County of Sonoma
585 Fiscal Drive, Room 100, Santa Rosa, CA 95403
Phone: (707) 565-3285
david.sundstrom@sonoma-county.org

David Sung, City of Hawaiian Gardens
21815 Pioneer Boulevard, Hawaiian Gardens, CA 90716
Phone: N/A
dsung@hgcity.org

Meg Svoboda, Senate Office of Research
1020 N Street, Suite 200, Sacramento, CA
Phone: (916) 651-1500
meg.svoboda@sen.ca.gov

Kim Szczurek, Administrative Services Director, Town of Truckee
Administrative Services, 10183 Truckee Airport Road, Truckee, CA 96161
Phone: (530) 582-2913
kszczurek@townoftruckee.com

Jesse Takahashi, City of Campbell
70 North First Street, Campbell, CA 95008
Phone: N/A
jesset@cityofcampbell.com

Amy Tang-Paterno, Educational Fiscal Services Consultant, California Department of Education
Government Affairs, 1430 N Street, Suite 5602, Sacramento, CA 95814
Phone: (916) 322-6630
ATangPaterno@cde.ca.gov

Jill Taura, City of Glendora
116 East Foothill Blvd, Glendora, CA 91741-3380
Phone: N/A
jtaura@ci.glendora.ca.us

**Rick Teichert**, *City of Moreno Valley*
14177 Frederick Street, Moreno Valley, CA 92552-0805
Phone: N/A
richardt@moval.org

**Gina Tharani**, Finance Director, *City of Aliso Viejo*
Finance Department, 12 Journey, Suite 100, Aliso Viejo, CA 92656-5335
Phone: (949) 425-2524
financial-services@cityofalisoviejo.com

**Lynn Theissen**, Finance Director, *City of Chico*
411 Main St., Chico, CA 95927
Phone: (530) 879-7300
lynn.theissen@chicoca.gov

**Darlene Thompson**, Finance Director / Treasurer, *City of Tulare*
Finance Department, 411 E Kern Ave., Tulare, CA 93274
Phone: (559) 684-4255
dthompson@ci.tulare.ca.us

**John Thornberry**, Finance Director, *City of Carpinteria*
Finance Department, 5775 Carpinteria Ave, Carpinteria, CA 93013
Phone: (805) 684-5405
johnt@ci.carpinteria.ca.us

**James Throop**, Finance Director, *City of El Paso De Robles*
Administrative Services, 1000 Spring Street, Paso Robles, CA 93446
Phone: (805) 227-7276
jthroop@prcity.com

**Sheryl Thur**, County of Glenn
516 West Sycamore Street, Willows, CA 95988
Phone: (530) 934-6402
sthur@countyofglenn.net

**Cathleen Till**, Finance Director, *City of Lemon Grove*
Finance Department, 3232 Main Street, Lemon Grove, CA 91945
Phone: (619) 825-3803
cstill@lemongrove.ca.gov

**Donna Timmerman**, Financial Manager, *City of Ferndale*
Finance Department, 834 Main Street, Ferndale, CA 95535
Phone: (707) 786-4224
finance@ci.ferndale.ca.us

**Steve Toler**, Finance Director, *City of Millbrae*
621 Magnolia Avenue, Millbrae, CA 94030
Phone: (650) 259-2334
stoler@ci.millbrae.ca.us

**Jolene Tollenaar**, *MGT of America*
2001 P Street, Suite 200, Suite 200, Sacramento, CA 95811
Phone: (916) 443-9136
jolene_tollenaar@mgtamer.com

**Eric Tsao, City of Torrance**
Finance Department, 3031 Torrance Blvd., Torrance, CA 90503
Phone: (310) 618-5850
etsao@TorranceCA.gov

**Evelyn Tseng, City of Newport Beach**
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

**Stefanie Turner, Finance Director, City of Rancho Santa Margarita**
Finance Department, 22112 El Paseo, Rancho Santa Margarita, CA 92688
Phone: (949) 635-1808
sturner@cityofrsm.org

**Brian Uhler, Legislative Analyst's Office**
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
brian.uhler@lao.ca.gov

**Marichi Valle, San Jose Unified School District**
855 Lenzen Avenue, San Jose, CA 95126
Phone: (408) 535-6141
mvalle@sjusd.org

**Julie Valverde, County of Sacramento**
700 H Street, Room 3650, Sacramento, CA 95814
Phone: (916) 874-7248
valverdej@saccounty.net

**James Vanderpool, City Manager, City of Buena Park**
6650 Beach Boulevard, Buena Park, CA 90622
Phone: N/A
jvanderpool@buenapark.com

**Sue Vannucci, City of Woodland**
300 First Street, Woodland, CA 95695
Phone: N/A
svannucci@cityofwilliams.org

**Ruby Vasquez, County of Colusa**
546 Jay Street, Suite 202, Colusa, CA 95932
Phone: (530) 458-0424
rvasquez@countyofcolusa.com

**Ezequiel Vega, Director, City of Watsonville**
250 Main St., Watsonville, CA 95076
Phone: (831) 768-3450
ezequiel.vega@cityofwatsonville.org

**Patty Virto, Finance Manager, City of Fillmore**
Finance Department, 250 Central Avenue, Fillmore, CA 93015
Phone: (805) 524-3701
pvirto@ci.fillmore.ca.us

**Rene Vise**, Director of Administrative Services, *City of Santa Maria*
Department of Administrative Services, 110 East Cook Street Room 6, Santa Maria, CA 93454-5190
Phone: (805) 925-0951
rvise@ci.santa-maria.ca.us

**Nawel Voelker**, Acting Director of Finance (Management Analyst), *City of Belmont*
Finance Department, One Twin Pines Lane, Belmont, CA 94002
Phone: (650) 595-7433
nvoelker@belmont.gov

**Mary Jo Walker**, *County of Santa Cruz*
701 Ocean Street, Room 100, Santa Cruz, CA 95060-4073
Phone: (831) 454-2500
Aud002@co.santa-cruz.ca.us

**Melinda Wall**, *City of Lompoc*
P.O. Box 8001, Lompoc, CA 93438-8001
Phone: N/A
m_wall@ci.lompoc.ca.us

**Sarah Waller-Bullock**, *City of La Mesa*
P.O. Box 937, La Mesa, CA 91944-0937
Phone: N/A
sbullock@ci.la-mesa.ca.us

**George Warman Jr.**, *City of Corte Madera*
P.O. Box 159, Corte Madera, CA 94976-0159
Phone: N/A
gwarman@ci.corte-madera.ca.us

**Dave Warren**, Director of Finance, *City of Placerville*
Finance Department, 3101 Center Street, Placerville, CA 95667
Phone: (530) 642-5223
dwarren@cityofplacerville.org

**Tara Webley**, *County of Tulare*
411 East Kern Ave., Tulare, CA 93274
Phone: N/A
twebley@co.tulare.ca.us

3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

**Kevin Werner**, City Administrator, *City of Ripon*
Administrative Staff, 259 N. Wilma Avenue, Ripon, CA 95366
Phone: (209) 599-2108
kwerner@cityofripon.org

**David White**, *City of Fairfield*
1000 Webster Street, Fairfield, CA 94533
Phone: N/A
dwhite@fairfield.ca.gov

**Michael Whitehead**, Administrative Services Director & City Treasurer, *City of Rolling Hills Estates*
Administrative Services, 4045 Palos Verdes Drive North, Rolling Hills Estates, CA 90274
Phone: (310) 377-1577
MikeW@RollingHillsEstatesCA.gov

**Gina Will**, Finance Director, *City of Paradise*
Finance Department, 5555 Skyway, Paradise, CA 95969
Phone: (530) 872-6291
gwill@townofparadise.com

**David Wilson**, *City of West Hollywood*
8300 Santa Monica Blvd., West Hollywood, CA 90069
Phone: N/A
dwilson@weho.org

**Chris Woidzik**, Finance Director, *City of Avalon*
Finance Department, 410 Avalon Canyon Rd., Avalon, CA 90704
Phone: (310) 510-0220
Scampbell@cityofavalon.com

**Jeff Woltkamp**, *County of San Joaquin*
44 N San Joaquin St. Suite 550, Stockton, CA 95202
Phone: (209) 468-3925
jwoltkamp@sjgov.org

**Clara Wong**, *City of West Covina*
1444 W. Garvey Ave. South, West Covina, CA 91790
Phone: N/A
clama.wong@westcovina.org

**Paul Wood**, Director of Finance, *City of Carmel*
Finance Department, P.O. Box CC, Carmel, CA 93921
Phone: (831) 620-2000
pwood@ci.carmel.ca.us

**Rita Woodard**, *County of Tulare*
County Civic Center, 221 South Mooney Blvd, Room 101-E, Visalia, CA 93291-4593
Phone: (559) 636-5200
rwoodard@co.tulare.ca.us

**Susie Woodstock**, *City of Newark*
37101 Newark Blvd., Newark, CA 94560
Phone: N/A
susie.woodstock@newark.org

**Jane Wright**, Finance Manager, *City of Ione*
Finance Department, 1 East Main Street, PO Box 398, Ione, CA 95640
Phone: (209) 274-2412
JWright@ione-ca.com

**Phil Wright**, Director of Administrative Services, *City of West Sacramento*
Finance Division, 1110 West Capitol Avenue, 3rd Floor, West Sacramento, CA 95691
Phone: (916) 617-4575
Philw@cityofwestsacramento.org

Hasmik Yaghobyan, County of Los Angeles
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

Curtis Yakimow, Town Manager, Town of Yucca Valley
57090 Twentynine Palms Highway, Yucca Valley, CA 92284
Phone: (760) 369-7207
townmanager@yucca-valley.org

Annie Yaung, City of Monterey Park
320 West Newmark Avenue, Monterey Park, CA 91754
Phone: N/A
ayaung@montereypark.ca.gov

Carl Yeats, City of Burlingame
501 Primrose Rd., Burlingame, CA 94010
Phone: N/A
cyeats@burlingame.org

Bobby Young, City of Costa Mesa
77 Fair Drive, Costa Mesa, CA 92626
Phone: N/A
Bobby.Young@costamesaca.gov
April 23, 2015

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

Re: Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office has no comments on the draft proposed decision for the California Public Records Act program.

Should you have any questions regarding the above, please contact Steve Purser at (916) 324-5729 or e-mail spurser@sco.ca.gov.

Sincerely,

JAY LAL, Manager
Local Reimbursements Section
Division of Accounting and Reporting
DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 23, 2015, I served the:

SCO Comments
Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

By making it available on the Commission’s website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 April 23, 2015 at Sacramento, California.

[Signature]

Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/20/15
Claim Number: 14-MR-02

Matter: California Public Records Act (02-TC-10 and 02-TC-51)
Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

Paul Abelson, Finance Director, City of Oakley
Finance Department, 3231 Main Street, Oakley, CA 94561
Phone: (925) 625-7010
abelson@ci.oakley.ca.us

John Adams, Finance Director, City of Thousand Oaks
Finance Department, 2100 Thousand Oaks Blvd., Thousand Oaks, CA 91362
Phone: (805) 449-2200
jadams@toaks.org

Joe Aguilar, Finance Director, City of Live Oak
Finance, 9955 Live Oak Blvd, Live Oak, CA 95953
Phone: (530) 695-2112
jaguilar@liveoakcity.org

Ron Ahlers, Finance Director / City Treasurer, City of Moorpark
Finance Department, 799 Moorpark Ave., Moorpark, CA 93021
Phone: (805) 517-6249
RAhlers@MoorparkCA.gov

Douglas Alessio, Administrative Services Director, City of Livermore
Finance Department, 1052 South Livermore Avenue, Livermore, CA 94550
Phone: (925) 960-4300
finance@cityoflivermore.net

Tiffany Allen, Treasury Manager, City of Chula Vista
Finance Department, 276 Fourth Avenue, Chula Vista, CA 91910
Phone: (619) 691-5250
tallen@chulavistaca.gov

**Roberta Allen, County of Plumas**  
520 Main Street, Room 205, Quincy, CA 95971  
Phone: (530) 283-6246  
robertaallen@countyofplumas.com

**Mark Alvarado, City of Monrovia**  
415 S. Ivy Avenue, Monrovia, CA 91016  
Phone: N/A  
malvarado@ci.monrovia.ca.us

**LeRoy Anderson, County of Tehama**  
444 Oak Street, Room J, Red Bluff, CA 96080  
Phone: (530) 527-3474  
landerson@tehama.net

**Paul Angulo, Auditor-Controller, County of Riverside**  
4080 Lemon Street, 11th Floor, Riverside, CA 92501  
Phone: (951) 955-3800  
pangulo@co.riverside.ca.us

**Socorro Aquino, State Controller's Office**  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-7522  
SAquino@sco.ca.gov

**Debra Auker, Administrative Services Director, City of Emeryville**  
Administrative Services, 1333 Park Ave, Emeryville, CA 94608  
Phone: (510) 596-4300  
finance@ci.emeryville.ca.us

**Lisa Bailey, City of San Marino**  
2200 Huntington Dr., San Marino, CA 91108  
Phone: N/A  
lbailey@cityofsanmarino.org

**Harmeet Barkschat, Mandate Resource Services, LLC**  
5325 Elkhorn Blvd. #307, Sacramento, CA 95842  
Phone: (916) 727-1350  
harmeet@calsdrc.com

**Mary Barnhart, Interim Chief Fiscal Officer, City of Gardena**  
Department of Finance, 1700 West 162nd Street, Gardena, CA 90247  
Phone: (310) 217-9516  
mbarnhart@ci.gardena.ca.us

**Robert Barron III, Finance Director, City of Atherton**  
Finance Department, 91 Ashfield Rd, Atherton, CA 94027  
Phone: (650) 752-0552  
rbarron@ci.atherton.ca.us

**Timothy Barry, County of San Diego**  
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101-2469  
Phone: (619) 531-6259
timothy.barry@sdcounty.ca.gov

**David Batt**, Finance Director, *City of South Pasadena*
Finance Department, 1414 Mission Street, South Pasadena, CA 91030
Phone: (626) 403-7250
dbatt@southpasadenaca.gov

**David Baum**, Finance Director, *City of San Leandro*
835 East 14th St., San Leandro, CA 94577
Phone: (510) 577-3376
dbaum@sanleandro.org

**Deborah Bautista**, *County of Tuolumne*
2 South Green St., Sonora, CA 95370
Phone: (209) 533-5551
dbautista@co.tuolumne.ca.us

**Lacey Baysinger**, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
lbaysinger@sco.ca.gov

**Mary Bedard**, *County of Kern*
1115 Truxtun Avenue, 2nd Floor, Bakersfield, CA 93301
Phone: (805) 868-3599
bedardm@co.kern.ca.us

**John Beiers**, *County of San Mateo*
Office of the County Counsel, 400 County Center, Redwood City, CA 94063
Phone: (650) 363-4775
jbeiers@smcgov.org

**Maria Bemis**, *City of Porterville*
291 North Main Street, Porterville, CA 93257
Phone: N/A
mbemis@ci.porterville.ca.us

**Paul Benoit**, City Administrator, *City of Piedmont*
120 Vista Avenue, Piedmont, CA 94611
Phone: (510) 420-3042
pbenoit@ci.piedmont.ca.us

**Richard Benson**, Assessor - Recorder - County Clerk, *County of Marin*
3501 Civic Center Drive, Room 208, San Rafael, CA 94903
Phone: (415) 499-7215
rbenson@co.marin.ca.us

**Robin Bertagna**, *City of Yuba City*
1201 Civic Center Blvd, Yuba City, CA 95993
Phone: N/A
rbertagn@yubacity.net

**Angela Bickle**, Interim Auditor-Controller, *County of Trinity*
11 Court Street, P.O. Box 1230, Weaverville, CA 96093
Phone: (530) 623-1317
abickle@trinitycounty.org

**Heidi Bigall**, Director of Admin Services, *City of Tiburon*
Administration, 1505 Tiburon Blvd., Tiburon, CA 94920
Phone: (415) 435-7373
hbigall@townoftiburon.org

**Teresa Binkley**, Director of Finance, *City of Taft*
Finance Department, 209 E. Kern St., Taft, CA 93268
Phone: (661) 763-1350
tbinkley@cityoftaft.org

**Barbara Bishop**, Finance Manager, *City of San Dimas*
Finance Division, 245 East Bonita Avenue, San Dimas, CA 91773
Phone: (909) 394-6220
administration@ci.san-dimas.ca.us

**Rene Bobadilla**, City Manager, *City of Pico Rivera*
Administration, 6615 Passons Boulevard, Pico Rivera, CA 90660
Phone: (562) 801-4379
rbobadilla@pico-rivera.org

**Chris Bonvenuto**, *Santa Monica Community College District*
1900 Pico Blvd., Santa Monica, CA 90405-1628
Phone: (310) 434-4201
Bonvenuto_chris@smc.edu

**Emily Boyd**, Finance Director, *City of Crescent City*
Finance Department, 377 J Street, Crescent City, CA 95531
Phone: (707) 464-7483
eboyd@crescentcity.org

**Karen Bradley**, *City of Fresno*
2600 Fresno St. Rm. 2157, Fresno, CA 93721
Phone: N/A
karen.brady@fresno.gov

**Diane Brady**, *California Community Colleges*
Chancellor's Office, 1102 Q Street, 1102 Q Street, Sacramento, CA 95814-6511
Phone: (916) 324-2564
dbrady@cccco.edu

**Danielle Brandon**, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.ca.gov

**David Brandt**, City Manager, *City of Cupertino*
10300 Torre Avenue, Cupertino, CA 95014-3202
Phone: 408.777.3212
manager@cupertino.org

**Rob Braulik**, Town Manager, *City of Ross*
P.O. Box 320, Ross, CA 94957
Phone: (415) 453-1453
rbraulik@townofross.org

**Robert Bravo**, Finance Director, *City of Port Hueneme*
Finance Department, 250 N. Ventura Road, Port Hueneme, CA 93041
Phone: (805) 986-6524
rbravo@cityofporthueneme.org

**John Brewer**, Finance Director, *City of Corning*
Finance Department, 794 Third Street, Corning, CA 96021
Phone: (530) 824-7033
jbreuer@corning.org

**Daryl Brock**, Finance Director, *City of Orland*
Finance Department, P.O. Box 547, Orland, CA 95963
Phone: (530) 865-1602
drock@cityoforland.com

**Dawn Brooks**, *City of Fontana*
8353 Sierra Way, Fontana, CA 92335
Phone: N/A
dbrooks@fontana.org

**Ken Brown**, Acting Director of Administrative Services, *City of Irvine*
One Civic Center Plaza, Irvine, CA 92606
Phone: (949) 724-6255
Kbrown@cityofirvine.org

**Mike Brown**, *School Innovations & Advocacy*
5200 Golden Foothill Parkway, El Dorado Hills, CA 95762
Phone: (916) 669-5116
mikeb@sia-us.com

**Daniel Buffalo**, Finance Director, *City of Lakeport*
Finance Department, 225 Park Street, Lakeport, CA 95453
Phone: (707) 263-5615
dbuffalo@cityoflakeport.com

**Allan Burdick**, 7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

**J. Bradley Burgess**, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916)595-2646
Bburgess@mgtamer.com

**Jeff Burgh**, *County of Ventura*
County Auditor's Office, 800 S. Victoria Avenue, Ventura, CA 93009-1540
Phone: (805) 654-3152
jeff.burgh@ventura.org

**Vanessa Burke**, Chief Financial Officer, *City of Stockton*
425 N. El Dorado St., Stockton, CA 95202
Phone: (209) 937-8460
vanessa.burke@stocktongov.com

Rob Burns, City of Chino
13220 Central Avenue, Chino, CA 91710
Phone: N/A
rburns@cityofchino.org

Regan M Cadelario, City Manager, City of Fortuna
Finance Department, 621 11th Street, Fortuna, CA 95540
Phone: (707) 725-1409
rc@ci.fortuna.ca.us

David Cain, Director of Finance, City of Fountain Valley
10200 Slater Ave, Fountain Valley, CA 92646
Phone: N/A
david.cain@fountainvalley.org

Rebecca Callen, County of Calaveras
891 Mountain Ranch Road, San Andreas, CA 95249
Phone: (209) 754-6343
rcallen@co.calaveras.ca.us

Robert Campbell, County of Contra Costa
625 Court Street, Room 103, Martinez, CA 94553
Phone: (925) 646-2181
bob.campbell@ac.cccounty.us

Ronnie Campbell, Finance Director, City of Camarillo
Finance Department, 601 Carmen Drive, Camarillo, CA 93010
Phone: (805) 388-5320
rcampbell@ci.camarillo.ca.us

Joy Canfield, City of Murrieta
1 Town Square, Murreita, CA 92562
Phone: N/A
jcanfield@murrieta.org

Lisa Cardella-Presto, County of Merced
2222 M Street, Merced, CA 95340
Phone: (209) 385-7511
LCardella-presto@co.merced.ca.us

Gwendolyn Carlos, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Rebecca Carr, County of Kings
1400 West Lacey Blvd, Hanford, CA 93230
Phone: (559) 582-1236
becky.carr@co.kings.ca.us

Daria Carrillo, Finance & Administrative Director, City of San Anselmo
Administration & Finance, 525 San Anselmo Ave., San Anselmo, CA 94960
Phone: (415) 258-4678
dcarrillo@townofsananselmo.org

Roger Carroll, Finance Director/Treasurer, Town of Loomis
Finance Department, 3665 Taylor Road, Loomis, CA 95650
Phone: (916) 652-1840
rcarroll@loomis.ca.gov

Susan Casey, City of American Canyon
4381 Broadway, Suite 201, American Canyon, CA 94503
Phone: (707) 647-4360
scasey@cityofamerican-canyon.org

Jack Castro, Director of Finance, City of Huron
Finance Department, 36311 Lassen Avenue, PO Box 339, Huron, CA 93234
Phone: (559) 945-3020
findir@cityofhuron.com

Karen Chang, Interim Finance Director, City of Pittsburg
Finance Department, 65 Civic Avenue, Pittsburg, CA 94565-3814
Phone: (925) 252-4872
kchang@ci.pittsburg.ca.us

Rolando Charvel, City Comptroller, City of San Diego
202 C Street, MS-6A, San Diego, CA 92101
Phone: (619) 236-6060
comptroller@sandiego.gov

Lin-Lin Cheng, City of Foster City
610 Foster City Blvd, Foster City, CA 94404
Phone: N/A
lcheng@foster-city.org

Erick Cheung, Director of Finance/Human Resources, City of Piedmont
120 Vista Avenue, Piedmont, CA 94611
Phone: (510) 420-3040
echeung@ci.piedmont.ca.us

Annette Chinn, Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Lawrence Chiu, Director of Finance & Administrative Services, City of Daly City
Finance and Administrative Services, 333 90th Street, Daly City, CA 94015
Phone: (650) 991-8049
lchiu@daly-city.org

Doug Chotkevys, City Manager, City of Dana Point
Finance Department, 33282 Golden Lantern, Dana Point, CA 92629
Phone: (949) 248-3513
dchotkevys@danapoint.org

Carmen Chu, Assessor-Recorder, City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, City Hall, Room 190, San Francisco, CA 94102-4698
Phone: (415) 554-5596
assessor@sfgov.org

**Hannah Chung**, Finance Director, *City of Tehachapi*
Finance Department, 115 S. Robinson St., Tehachapi, CA 93561
Phone: (661) 822-2200
hchung@tehachapicityhall.com

**David Cichella**, *California School Management Group*
3130-C Inland Empire Blvd., Ontario, CA 91764
Phone: (209) 834-0556
dcichella@csmcentral.com

**Geoffrey Cobbett**, Treasurer, *City of Covina*
Finance Department, 125 E. College Street, Covina, CA 91723
Phone: (626) 384-5506
gcobbett@covinaca.gov

**Brian Cochran**, Finance Manager, *City of Novato*
75 Rowland Way #200, Novato, CA 94945
Phone: (415) 899-8912
bcochran@novato.org

**Russell Cochran Branson**, *City of Roseville*
311 Vemon Street, Roseville, CA 95678-2649
Phone: N/A
rbranson@roseville.ca.us

**Dennis Coleman**, Finance Director/Treasurer, *City of Solana Beach*
Finance Department, City Hall 635 S. HWY 101, Solana Beach, CA 92075
Phone: (858) 720-2431
finance@cosb.org

**Shannon Collins**, Finance Manager, *City of El Cerrito*
10890 San Pablo Avenue, El Cerrito, CA 94530-2392
Phone: N/A
scollins@ci.el-cerrito.ca.us

**Harriet Commons**, *City of Fremont*
P.O. Box 5006, Fremont, CA 94537
Phone: N/A
hcommons@fremont.gov

**Stephen Conway**, *City of Los Gatos*
110 E. Main Street, Los Gatos, CA 95031
Phone: N/A
sconway@losgatosca.gov

**Julia Cooper**, *City of San Jose*
Finance, 200 East Santa Clara Street, San Jose, CA 95113
Phone: (408) 535-7000
Finance@sanjoseca.gov

**Viki Copeland**, *City of Hermosa Beach*
1315 Valley Drive, Hermosa Beach, CA 90254
Phone: N/A
vcopeland@hermosabch.org

Drew Corbett, Finance Director, City of Menlo Park
Finance Department, 701 Laurel St, Menlo Park, CA 94025
Phone: (650) 330-6640
dcorbett@menlopark.org

Lis Cottrell, Finance Director, City of Anderson
Finance Department, 1887 Howard Street, Anderson, CA 96007
Phone: (530) 378-6626
lcottrell@ci.anderson.ca.us

Jeremy Craig, Finance Director, City of Vacaville
Finance Department, 650 Merchant Street, Vacaville, CA 95688
Phone: (707) 449-5128
j craig@cityofvacaville.com

Vicki Crow, Auditor-Controller/Treasurer-Tax Collector, County of Fresno
2281 Tulare Street, Room 105, Fresno, CA 93721
Phone: (559) 600-3487
vcrow@co.fresno.ca.us

Deborah Cullen, City of El Segundo
350 Main Street, El Segundo, CA 90245-3813
Phone: N/A
dcullen@elsegundo.org

David Culver, City of San Mateo
330 West 20th Avenue, San Mateo, CA 94403-1388
Phone: (650) 522-7100
dculver@cityofsanmateo.org

Gavin Curran, City of Laguna Beach
505 Forest Avenue, Laguna Beach, CA 92651
Phone: N/A
gcurran@lagunabeachcity.net

Stefani Daniell, Finance Director, City of Citrus Hts
Finance Department, 6237 Fountain Square Dr, Citrus Heights, CA 95621
Phone: (916) 725-2448
sdaniell@citrusheights.net

Joshua Daniels, Attorney, California School Boards Association
3251 Beacon Blvd, West Sacramento, CA 95691
Phone: (916) 669-3266
jdaniels@csba.org

Chuck Dantuono, Director of Administrative Services, City of Highland
Administrative Services, 27215 Base Line, Highland, CA 92346
Phone: (909) 864-6861
cdantuono@cityofhighland.org

Fran David, City Manager, City of Hayward
Finance Department, 777 B Street, Hayward, CA 94541
Phone: (510) 583-4000
citymanager@hayward-ca.gov

**William Davis, County of Mariposa**
Auditor, P.O. Box 729, Mariposa, CA 95338
Phone: (209) 966-7606
wdavis@mariposacounty.org

**Daniel Dawson, City Manager, City of Del Rey Oaks**
Finance Department, 650 Canyon Del Rey Rd, Del Rey Oaks, CA 93940
Phone: (831) 394-8511
ddawson@delreyoaks.org

**Dilu DeAlwis, City of Colton**
125 E. College Street, Covina, CA 91723
Phone: N/A
ddealwis@covinaca.gov

**Suzanne Dean, Deputy Finance Director, City of Ceres**
Finance Department, 2220 Magnolia Street, Ceres, CA 95307
Phone: (209) 538-5757
Suzanne.Dean@ci.ceres.ca.us

**Gigi Decavalles-Hughes, Director of Finance, City of Santa Monica**
Finance, 1717 4th Street, Suite 250, Santa Monica, CA 90401
Phone: (310) 458-8281
gigi.decavalles@smgov.net

**Marieta Delfin, State Controller's Office**
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

**Brent Dennis, County of Tuolumne**
1021 Harvard Way, El Dorado Hills, CA 95762
Phone: (916) 614-3237
Bdennis@edhcsd.org

**Leticia Dias, Accountant, City of Ceres**
2720 Second Street, Ceres, CA 95307-3292
Phone: (209) 538-5764
leticia.dias@ci.ceres.ca.us

**Tom Dibble, City of Hanford**
315 North Douty Street, Hanford, CA 93230
Phone: (559) 585-2525
tdibble@ci.hanford.ca.us

**Steve Diels, City Treasurer, City of Redondo Beach**
City Treasurer's Department, 415 Diamond Street, Redondo Beach, CA 90277
Phone: (310) 318-0652
steven.diels@redondo.org

**Richard Digre, City of Union City**
34009 Alvarado-Niles Road, Union City, CA 94587
Phone: N/A
rdigre@ci.union-city.ca.us

**Andra Donovan, San Diego Unified School District**  
Legal Services Office, 4100 Normal Street, Room 2148, , San Diego, CA 92103  
Phone: (619) 725-5630  
adonovan@sandi.net

**Richard Doyle, City Attorney, City of San Jose**  
200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113  
Phone: (408) 535-1900  
richard.doyle@sanjoseca.gov

**Randall L. Dunn, City Manager, City of Colusa**  
Finance Department, 425 Webster St. , Colusa, CA 95932  
Phone: (530) 458-4740  
citymanager@cityofcolusa.com

**Cheryl Dyas, City of Mission Viejo**  
200 Civic Center, Mission Viejo, CA 92691  
Phone: N/A  
cdyas@cityofmissionviejo.org

**Jennie Ebeger, County of Siskiyou**  
311 Fourth Street, Room 101, Yreka, CA 96097  
Phone: (530) 842-8030  
Jebejer@co.siskiyou.ca.us

**Richard Eberle, County of Yuba**  
915 8th Street, Suite 105, Marysville, CA 95901  
Phone: (530) 749-7810  
reberle@co.yuba.ca.us

**Kerry Eden, City of Corona**  
400 S. Vicentia Avenue. Suite 320, Corona, CA 92882  
Phone: (951) 817-5740  
kerry.eden@ci.corona.ca.us

**Scott Edwards, City of Poway**  
PO Box 789, Poway, CA 92074  
Phone: N/A  
sedwards@poway.org

**Pamela Ehler, City of Brentwood**  
150 City Park Way, Brentwood, CA 94513  
Phone: N/A  
pehler@brentwoodca.gov

**Bob Elliot, City of Glendale**  
141 North Glendale Ave, Ste. 346, Glendale, CA 91206-4998  
Phone: N/A  
belliot@ci.glendale.ca.us

**Edwin Eng, State Center Community College District**  
1525 East Weldon Avenue, Fresno, CA 93704-6398  
Phone: (559) 244-5910
ed.eng@scccd.edu

Kelly Ent, Director of Admin Services, City of Big Bear Lake
Finance Department, 39707 Big Bear Blvd, Big Bear Lake, CA 92315
Phone: (909) 866-5831
kent@citybigbearlake.com

Tina Envía, Finance Manager, City of Waterford
Finance Department, 101 E Street, Waterford, CA 95386
Phone: (209) 874-2328
finance@cityofwaterford.org

James Erb, County of San Luis Obispo
1055 Monterey Street, Room D222, San Luis Obispo, CA 93408
Phone: (805) 781-5040
jerb@co.slo.ca.us

Vic Erganian, Deputy Finance Director, City of Pasadena
Finance Department, 100 N. Garfield Ave, Room S348, Pasadena, CA 91109-7215
Phone: (626) 744-4355
verganian@cityofpasadena.net

Eric Erickson, Director of Finance and Human Resources, City of Mill Valley
Department of Finance and Human Resources, 26 Corte Madera Avenue, Mill Valley, CA 94941
Phone: (415) 388-4033
finance@cityofmillvalley.org

Steve Erlandson, Finance Director/City Treasurer, City of Laguna Niguel
Finance Director/City Treasurer, 30111 Crown Valley Parkway, Laguna Niguel, CA 92677
Phone: (949) 362-4300
serlandson@cityoflagunaniguel.org

Gary Ernst, City Treasurer, City of Oceanside
City Treasurer, 300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3553
gernst@ci.oceanside.ca.us

Jennifer Erwin, Assistant Finance Director, City of Perris
Finance Department, 101 N. D Street, Perris, CA 92570
Phone: (951) 943-4610
jerwin@cityofperris.org

Paul Espinoza, City of Alhambra
111 South First Street, Alhambra, CA 91801
Phone: N/A
pespinoza@cityofalhambra.org

Lori Ann Farrell, Finance Director, City of Huntington Beach
2000 Main St., Huntington Beach, CA 92648
Phone: (714) 536-5630
loriann.farrell@surfcity-hb.org

Sandra Featherson, Administrative Services Director, City of Solvang
Finance, 1644 Oak Street, Solvang, CA 93463
Phone: (805) 688-5575
sandraf@cityofsolvang.com

Nadia Feeser, Administrative Services Director, City of Pismo Beach
Finance Department, 760 Mattie Road, Pismo Beach, CA 93449
Phone: (805) 773-7010
nfeeser@pismobeach.org

Donna Ferebee, Department of Finance
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Chris Ferguson, Department of Finance
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Ferguson@dof.ca.gov

Matthew Fertal, City Manager, City of Garden Grove
Finance Department, 11222 Acacia Parkway, Garden Grove, CA 92840
Phone: (714) 741-5000
CityManager@ci.garden-grove.ca.us

Jimmy Forbis, Finance Director, City of Monterey
Finance Department, 735 Pacific Street, Suite A, Monterey, CA 93940
Phone: (831) 646-3940
forbis@monterey.org

Karen Fouch, County of Lassen
221 S. Roop Street, Ste 1, Susanville, CA 96130
Phone: (530) 251-8233
kfouch@co.lassen.ca.us

James Francis, City of Folsom
50 Natoma Street, Folsom, CA 95630
Phone: N/A
jfrancis@folsom.ca.us

Charles Francis, Administrative Services Director/Treasurer, City of Sausalito
Finance, 420 Litho Street, Sausalito, CA 94965
Phone: (415) 289-4105
cfrancis@ci.sausalito.ca.us

Eric Frost, Deputy City Manager, City of Visalia
707 West Acequia, Visalia, CA 93291
Phone: (559) 713-4474
efrost@ci.visalia.ca.us

Harold Fujita, City of Los Angeles
Department of Recreation and Parks, 211 N. Figueroa Street, 7th Floor, Los Angeles, CA 90012
Phone: (213) 202-3222
harold.fujita@lacity.org
Mary Furey, City of Saratoga
13777 Fruitvale Avenue, Saratoga, CA 95070
Phone: N/A
mfurey@saratoga.ca.us

Carolyn Galloway-Cooper, Finance Director, City of Buellton
Finance Department, 107 West Highway 246, Buellton, CA 93427
Phone: (805) 688-5177
carolync@cityofbuellton.com

Robert Galvan, Director of Administrative Services, City of Hollister
Administrative Services, 375 Fifth Street, Hollister, CA 95023
Phone: (831) 636-4300
robert.galvan@hollister.ca.gov

Jason Garben, Financial Services Manager, City of Suisun City
Administrative Services, 701 Civic Center Blvd., Suisun City, CA 94585
Phone: (707) 421-7320
jgarben@suisun.com

Rebecca Garcia, City of San Bernardino
300 North , San Bernardino, CA 92418-0001
Phone: (909) 384-7272
garcia_re@sbcity.org

Marisela Garcia, Finance Director, City of Riverbank
Finance Department, 6707 Third Street, Riverbank, CA 95367
Phone: (209) 863-7109
mhgarcia@riverbank.org

Henry Garcia, Interim Finance Director, City of Cudahy
Finance Department, 5220 Santa Ana Street, Cudahy, CA 90201
Phone: (323) 733-5143
hgarcia@cityofcudahyca.gov

Jeffry Gardner, City Manager & Finance Director, City of Plymouth
P.O. Box 429, Plymouth, CA 95669
Phone: (209) 245-6941
jgardner@ci.plymouth.ca.us

George Gascon, District Attorney, City and County of San Francisco
850 Bryant Street, Room 322, San Francisco, CA 94103
Phone: (415) 553-1751
robyn.burke@sfgov.org

Susan Geanacou, Department of Finance
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Robert Geis, County of Santa Barbara
Auditor-Controller, 105 E Anapamu St, Room 303, Santa Barbara, CA 93101
Phone: (805) 568-2100
geis@co.santa-barbara.ca.us
Gloriette Genereux, Finance Director, City of Modesto
Finance Department, 1010 10th Street, P.O. Box 642 Modesto, CA 95353, Modesto, CA 95354
Phone: (209) 577-5371
ggenereux@modestogov.com

Laura S. Gill, City Manager, City of Elk Grove
Finance Department, 8401 Laguna Palms Way, Elk Grove, CA 95758
Phone: (916) 478-2201
Lgill@elkgrovecity.org

Jeri Gilley, Finance Director, City of Turlock
156 S. Broadway, Ste 230, Turlock, CA 95380
Phone: (209) 668-5570
jgilley@turlock.ca.us

Cindy Giraldo, City of Burbank
301 E. Olive Avenue, Financial Services Department, Burbank, CA 91502
Phone: N/A
cgiraldo@ci.burbank.ca.us

James Goins, City of Richmond
1401 Marina Way South, P.O. Box 4046, Richmond, CA 94804
Phone: N/A
james_goins@ci.richmond.ca.us

Paul Golaszewski, Legislative Analyst's Office
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8341
Paul.Golaszewski@lao.ca.gov

Donna Goldsmith, Finance Manager, City of Santee
Finance Department, 10601 Magnolia Avenue, Building #3, Santee, CA 92071
Phone: (619) 258-4100
dgoldsmith@ci.santee.ca.us

Jesus Gomez, City Manager, City of El Monte
Finance Department, 11333 Valley Blvd, El Monte, CA 91731-3293
Phone: (626) 580-2001
citymanager@elmonteca.gov

Jose Gomez, Director of Finance and Administrative Services, City of Santa Fe Springs
Finance and Administrative Services, 11710 E. Telegraph Road, Santa Fe Springs, CA 90670
Phone: (562) 868-0511
josegomez@santafesprings.org

Vivian Gong, City of Dublin
100 Civic Plaza, Dublin, CA 94568
Phone: N/A
vivian.gong@ci.dublin.ca.us

Joe Gonzalez, County of San Benito
440 Fifth Street Room 206, Hollister, CA 95023
Phone: (831) 636-4090
jgonzalez@auditor.co.san-benito.ca.us

**Adela Gonzalez**, City Manager, *City of Soledad*
248 Main St., PO Box 156, Soledad, CA 93960
Phone: (831) 223-5014
adelag@cityofsoledad.com

**Mike Goodson**, City Manager, *City of Hawthorne*
Finance Department, 4455 W. 126th Street, Hawthorne, CA 90250
Phone: (310) 349-2901
mgoodson@hawthorneCA.gov

**Jim Goodwin**, City Manager, *City of Live Oak*
9955 Live Oak Blvd., Live Oak, CA 95953
Phone: (530) 695-2112
liveoak@liveoakcity.org

**Craig Graves**, Finance Director, *City of Baldwin Park*
14403 East Pacific Avenue, Baldwin Park, CA 91706
Phone: N/A
cgraves@baldwinpark.com

**Michelle Green**, Admin Service Director, *City of Banning*
Administrative Services, 99 E. Ramsey St., Banning, CA 92220
Phone: (951) 922-3105
mgreen@ci.banning.ca.us

**Michelle Greene**, City Manager, *City of Goleta*
130 Cremona Drive, Suite B, Goleta, CA 93117
Phone: (805) 961-7500
mgreene@cityofgoleta.org

**Nancy Greenhalgh**, Accounting Specialist, *City of Canyon Lake*
Finance Department, 31516 Railroad Canyon Rd, Canyon Lake, CA 92587
Phone: (951) 244-2955
ngreenhalgh@cityofcanyonlake.com

**Jan Grimes**, *County of Orange*
P.O. Box 567, Santa Ana, CA 92702
Phone: (714) 834-2459
jan.grimes@ac.ocgov.com

**John Gross**, *City of Long Beach*
333 W. Ocean Blvd., 6th Floor, Long Beach, CA 90802
Phone: N/A
john.gross@longbeach.gov

**Shelly Gunby**, Director of Financial Management, *City of Winters*
Finance, 318 First Street, Winters, CA 95694
Phone: (530) 795-4910
shelly.gunby@cityofwinters.org

**Francisco Gutierrez**, Finance Director, *City of Santa Ana*
20 Civic Center Plaza, Santa Ana, CA 92701
Phone: (714) 647-5400
fgutierrez@santa-ana.org

**Thomas J. Haggund**, City Administrator, *City of Gilroy*
Finance Department, 7351 Rosanna Street, Gilroy, CA 95020
Phone: (408) 846-0202
Tom.Haglund@ci.gilroy.ca.us

**Amanda Hall**, *City of Lynwood*
11330 Bullis Road, Lynwood, CA 90262
Phone: (310) 603-0220
ahall@lynwood.ca.us

**Ed Hanson**, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
ed.hanson@dof.ca.gov

**Anne Haraksin**, *City of La Mirada*
13700 La Mirada Blvd., La Mirada, CA 90638
Phone: N/A
aharaksin@cityoflamirada.org

**Joe Harn**, *County of El Dorado*
360 Fair Lane, Placerville, CA 95667
Phone: (530) 621-5633
joe.harn@edcgov.us

**George Harris**, *City of Rialto*
150 South Palm ave., Rialto, CA 92376
Phone: N/A
gharris@rialtoca.gov

**Emily Harrison**, Interim Finance Director, *County of Santa Clara*
70 West Hedding Street, San Jose, CA 95110
Phone: (408) 299-5205
emily.harrison@ceo.sccgov.org

**Jenny Haruyama**, Director of Finance & Administrative Services, *City of Tracy*
Finance Department, 333 Civic Center Plaza, Tracy, CA 95376
Phone: (209) 831-6800
financedept@ci.tracy.ca.us

**Jone Hayes**, Administrative Services Director, *City of Healdsburg*
Administrative Services , 401 Grove Street, Healdsburg, CA 95448
Phone: (707) 431-3317
jhayes@ci.healdsburg.ca.us

**Jim Heller**, City Treasurer, *City of Atwater*
Finance Department, 750 Bellevue Rd, Atwater, CA 95301
Phone: (209) 357-6310
finance@atwater.org

**Jennifer Hennessy**, *City of Temecula*
41000 Main St., Temecula, CA 92590
Phone: N/A
Jennifer.Hennessy@cityoftemecula.org

**Darren Hernandez, City of Santa Clarita**  
23920 Valencia Blvd., Suite 295, Santa Clarita, CA 91355  
Phone: N/A  
dhernandez@santa-clarita.com

**John Herrera, Interim Finance Director, City of Goleta**  
Finance Department, 130 Cremona Drive, Suite B, Goleta, CA 93117  
Phone: (805) 961-7500  
Jherrera@cityofgoleta.org

**Dennis Herrera, City Attorney, City and County of San Francisco**  
Office of the City Attorney, 1 Dr. Carton B. Goodlett Place, Rm. 234, San Francisco, CA 94102  
Phone: (415) 554-4700  
brittany.feitelberg@sfgov.org

**Robert Hicks, City of Berkeley**  
2180 Milvia Street, Berkeley, CA 94704  
Phone: N/A  
finance@ci.berkeley.ca.us

**Wally Hill, City Manager, City of Hemet**  
Finance Department, 445 E. Florida Ave, Hemet, CA 92543  
Phone: (951) 765-2301  
kaguilar@cityofhemet.org

**Rod Hill, City of Whittier**  
13230 Penn Street, Whittier, CA 90602  
Phone: N/A  
rh@cityofwhittier.org

**Lorenzo Hines Jr., Assistant City Manager, City of Pacifica**  
170 Santa Maria Avenue, Pacifica, CA 94044  
Phone: (650) 738-7409  
lhines@ci.pacifica.ca.us

**Daphne Hodgson, City of Seaside**  
440 Harcourt Avenue, Seaside, CA 93955  
Phone: N/A  
dhodgson@ci.seaside.ca.us

**S. Rhetta Hogan, Finance Director, City of Yreka**  
Finance Department, 701 Fourth Street, Yreka, CA 96097  
Phone: (530) 841-2386  
rhettea@ci.yreka.ca.us

**Victoria Holthaus, Finance Officer, City of Clearlake**  
Finance Department, 7684 1st Avenue, Clear Lake, CA 55319  
Phone: (320) 743-3111  
administrator@clearlake.ca.us

**Dorothy Holzem, California Special Districts Association**  
1112 I Street, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dorothyh@csda.net

David Houser, County of Butte
25 County Center Drive, Suite 120, Oroville, CA 95965
Phone: (530) 538-7607
dhouser@buttecounty.net

Justyn Howard, Program Budget Manager, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Shannon Huang, City of Arcadia
240 West Huntington Drive, Arcadia, CA 91007
Phone: N/A
shuang@ci.arcadia.ca.us

Elizabeth Hudson, City of Danville
510 La Gonda Way, Danville, CA 94526
Phone: N/A
ehudson@danville.ca.gov

Jamie Hughson, Finance Director/City Treasurer, City of Clovis
1033 Fifth St., Clovis, CA 93611
Phone: (559) 324-2130
jamieh@ci.clovis.ca.us

Lewis Humphries, Finance Director, City of Newman
Finance Department, 938 Fresno Street, Newman, CA 95360
Phone: (209) 862-3725
lhumphries@cityofnewman.com

Mark Ibele, Senate Budget & Fiscal Review Committee
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Cheryl Ide, Associate Finance Budget Analyst, Department of Finance
Education Systems Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Cheryl.ide@dof.ca.gov

Julia James, City of Fullerton
303 W. Commonwealth Ave., Fullerton, CA 92832
Phone: N/A
juliaj@ci.fullerton.ca.us

Dennis Jaw, Senior Accountant, City of Huntington Beach
2000 Main Street, Huntington Beach, CA 92648
Phone: N/A
dennis.jaw@surfcity-hb.org

Edward Jewik, County of Los Angeles
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

**Rochelle Johnson**, Acting Accounting Manager, *City of Wildomar*
Finance Department, 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595
Phone: (951) 677-7751
rjohnson@cityofwildomar.org

**Scott Johnson**, Assistant City Manager, *City of Oakland*
1 Frank H. Ogawa Plaza, Oakland, CA 94612
Phone: N/A
sjohnson@oaklandnet.com

**Onyx Jones**, Interim Finance Director, *City of Adelanto*
Finance Department, 11600 Air Expressway, Adelanto, CA 92301
Phone: (760) 246-2300
ojones@ci.adelanto.ca.us

**Toni Jones**, Finance Director, *City of Kerman*
Finance Department, 850 S. Madera Avenue, Kerman, CA 93630
Phone: (559) 846-4682
tjones@cityofkerman.org

**Ferlyn Junio**, *Nimbus Consulting Group, LLC*
2386 Fair Oaks Boulevard, Suite 104, Sacramento, CA 95825
Phone: (916) 480-9444
fjunio@nimbusconsultinggroup.com

**Kim Juran**, Finance Director, *City of San Bruno*
Finance Department, 567 El Camino Real, San Bruno, CA 94066
Phone: (650) 616-7080
Finance-Web@sanbruno.ca.gov

**Will Kaholokula**, *City of Bell Gardens*
7100 S. Garfield Avenue, Bell Gardens, CA 90201
Phone: (562) 806-7700
wkaholokula@bellgardens.org

**Harshil Kanakia**, *County of San Mateo*
Controller's Office, 555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1080
hkanakia@smcgov.org

**Jill Kanemasu**, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

**Emma Karlen**, Finance Director, *City of Milpitas*
Finance Department, 455 East Calaveras Boulevard, Milpitas, CA 95035
Phone: (408) 586-3145
ekarlen@ci.milpitas.ca.gov

**Naomi Kelly**, City Administrator, *City and County of San Francisco*
City Hall, Room 362, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
Phone: (415) 554-4851
city.administrator@sfgov.org

**Anita Kerezsi, AK & Company**
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

**Nancy Kerry, City of South Lake Tahoe**
1901 Airport Road, South Lake Tahoe, CA 96150
Phone: N/A
nkerry@cityofslt.us

**Geoffrey Kiehl, Director of Finance and Treasurer, City of Palm Springs**
Finance & Treasury, 3200 E. Tahquitz Canyon Way, P.O. Box 2743, Palm Springs, CA 92262
Phone: (760) 323-8229
Geoffrey.Kiehl@palmspringsca.gov

**Jillian Kissee, Department of Finance**
915 L Street, Sacramento, Ca
Phone: (916) 445-0328
jillian.kissee@dof.ca.gov

**Lauren Klein, County of Stanislaus**
1010 Tenth Street, Suite 5100, Modesto, CA 95353
Phone: (209) 525-6398
kleinl@stancounty.com

**Will Kolbow, Finance Director, City of Orange**
300 E. Chapman Avenue, Orange, CA 92866-1508
Phone: (714) 744-2234
WKolbow@cityoforange.org

**Patty Kong, City of Mountain View**
P.O. Box 7540, Mountain View, CA 94039-7540
Phone: N/A
patty.kong@mountainview.gov

**Cathy Krysyna, Assistant Finance Officer, City of Pacific Grove**
Finance Department, 300 Forest Ave., Pacific Grove, CA 93950
Phone: (831) 648-3102
ckrysyna@ci.pg.ca.us

**Jennifer Kuhn, Deputy, Legislative Analyst's Office**
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8332
Jennifer.kuhn@lao.ca.gov

**Tina Kundig, City of Redlands**
P.O. Box 3005, Redlands, CA 92373
Phone: N/A
tkundig@cityofredlands.org

**Ana Kwong, City of Rohnert Park**
Finance, P.O. Box 1489, Rohnert Park, CA 94928
Phone: (707) 585-6722
akwong@rpcity.org

Lauren Lai, Finance Director, City of Marina
Finance Department, 211 Hillcrest Ave, Marina, CA 93933
Phone: (831) 884-1274
llai@ci.marina.ca.us

Jay Lal, State Controller's Office (B-08)
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Karina Lam, City of Paramount
16400 Colorado Avenue, Paramount, CA 90723
Phone: N/A
klam@paramountcity.com

Judy Lancaster, City of Chino Hills
14000 City Center Drive, Chino Hills, CA 91709
Phone: N/A
jlancaster@chinohills.org

Ramon Lara, City Administrator, City of Woodlake
350 N. Valencia Blvd., Woodlake, CA 93286
Phone: (559) 564-8055
rlara@ci.woodlake.ca.us

Israel Lara Jr., City Manager, City of Parlier
Administration, 1100 E. Parlier Avenue, Parlier, CA 93648
Phone: (559) 646-3545
ilara@parlier.ca.us

Nancy Lassey, Finance Administrator, City of Lake Elsinore
130 South Main Street, Lake Elsinore, CA 92530
Phone: N/A
nlassey@lake-elsinore.org

Tamara Layne, City of Rancho Cucamonga
10500 Civic Center Drive, Rancho Cucamonga, CA 91730
Phone: (909) 477-2700
Tamara.Layne@cityofrc.us

Gloria Leon, Admin Services Director, City of Calistoga
Administrative Services, 1232 Washington Street, Calistoga, CA 94515
Phone: (707) 942-2802
GLeon@ci.calistoga.ca.us

Grace Leung, City of Sunnyvale
Sunnyvale City Hall, 456 W. Olive Ave., Sunnyvale, CA 94086
Phone: (408) 730-7284
gleung@ci.sunnyvale.ca.us

Mark Lewis, City Administrator, City of Chowchilla
Finance Department, 130 S. Second Street Civic Center Plaza, Chowchilla, CA 93610
Phone: (559) 665-8615
mlewis@ci.chowchilla.ca.us

**Gilbert A. Livas**, City Manager, City of Downey
11111 Brookshire Ave, Downey, CA 90241
Phone: (562) 904-7284
CityManager@downeyca.org

**Rudolph Livingston**, Finance Director, City of Ojai
PO Box 1570, Ojai, CA 93024
Phone: N/A
livingston@ojaicity.org

**Darcy Locken**, County of Modoc
204 S. Court Street, Alturas, CA 96101
Phone: (530) 233-6204
darcylucken@co.modoc.ca.us

**Kenneth Louie**, City of Lawndale
14717 Burin Avenue, Lawndale, CA 90260
Phone: N/A
klouie@lawndalecity.org

**Linda Lowry**, City Manager, City of Pomona
City Manager's Office, 505 South Garey Ave., Pomona, CA 91766
Phone: (909) 620-2051
linda_lowry@ci.pomona.ca.us

**Janet Luzzi**, Finance Director, City of Arcata
Finance Department, 736 F Street, Arcata, CA 95521
Phone: (707) 822-5951
finance@cityofarcata.org

**Kathleen Lynch**, Department of Finance (A-15)
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
kathleen.lynch@dof.ca.gov

**Gary J. Lysik**, Chief Financial Officer, City of Calabasas
100 Civic Center Waya, Calabasas, CA 91302
Phone: (818) 224-1600
glysik@cityofcalabasas.com

**Van Maddox**, County of Sierra
211 Nevada Street, 2nd Floor, P.O. Box 425, Downieville, CA 95936
Phone: (530) 289-3273
vmaddox@sierracounty.ws

**Martin Magana**, City Manager/Finance Director, City of Desert Hot Springs
Finance Department, 65-950 Pierson Blvd, Desert Hot Springs, CA 92240
Phone: (760) 329-6411, Ext.
CityManager@cityofdhs.org

**Susan Mahoney**, City of Orinda

http://csm.ca.gov/csmint/cats/print_mailing_list_from_claim.php
22 Orinda Way, Orinda, CA 94563
Phone: N/A
smahoney@cityoforinda.org

**Imran Majid**, Student Assistant, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
imran.majid@cs.ca.gov

**James Makshanoff**, City Manager, *City of San Clemente*
100 Avenida Presidio, San Clemente, CA 92672
Phone: N/A
makshanoffj@san-clemente.org

**Debbie Malicoat**, Director of Admin Services, *City of Arroyo Grande*
Finance Department, 300 E. Branch Street, Arroyo Grande, CA 93420
Phone: (805) 473-5410
dmalicoat@arroyogrande.org

**Suzanne Mallory**, *City of Manteca*
1001 W Center Street, Manteca, CA 95337
Phone: N/A
smallory@ci.manteca.ca.us

**Eddie Manfro**, *City of Westminster*
8200 Westminster Blvd., Westminster, CA 92683
Phone: N/A
emanfro@westminster-ca.gov

**Denise Manoogian**, *City of Cerritos*
P.O. Box 3130, Cerritos, CA 90703-3130
Phone: N/A
dmanoogian@cerritos.us

**Noel Marquis**, *City of Beverly Hills*
455 N. Rexford Dr., Beverly Hills, CA 90210
Phone: N/A
nmarquis@beverlyhills.org

**Terri Marsh**, Finance Director, *City of Signal Hill*
Finance, 2175 Cherry Ave., Signal Hill, CA 90755
Phone: (562) 989-7319
Finance1@cityofsignalhill.org

**Thomas Marston**, *City of San Gabriel*
425 South Mission Drive, San Gabriel, CA 91776
Phone: N/A
tmarston@sgch.org

**Pio Martin**, Finance Manager, *City of Firebaugh*
Finance Department, 1133 P Street, Firebaugh, CA 93622
Phone: (559) 659-2043
financedirector@ci.firebaugh.ca.us

**Janice Mateo-Reyes**, Finance Manager, *City of Laguna Hills*
Administrative Services Department, 24035 El Toro Rd., Laguna Hills, CA 92653
Phone: (949) 707-2623
jreyes@ci.laguna-hills.ca.us

Hortensia Mato, City of Newport Beach
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Mike Matsumoto, City of South Gate
8650 California Ave, South Gate, CA 90280
Phone: N/A
zcaltitla@pico-rivera.org

Dan Matusiewicz, City of Newport Beach
3300 Newport Blvd, Newport Beach, CA 92663
Phone: N/A
danm@newportbeachca.gov

Denise Maxwell, Finance Director, City of Redding
Finance Department, 3rd Floor City Hall, 777 Cypress Avenue, Redding, CA 96001
Phone: (530) 225-4079
dmaxwell@ci.redding.ca.us

Charles McBride, City of Carlsbad
1635 Faraday Avenue, Carlsbad, CA 92008-7314
Phone: N/A
chuck.mcbride@carlsbadca.gov

Teresa McBroome, Finance Director/City Treasurer, City of Del Mar
Finance Department, 1050 Camino Del Mar, Del Mar, CA 92014
Phone: (858) 755-9313
tmcbroome@delmar.ca.us

Mary McCarthy, Finance Manager, City of Pleasant Hill
Finance Division, 100 Gregory Lane, Pleasant Hill, CA 94523
Phone: (925) 671-5231
Mmccarthy@ci.pleasant-hill.ca.us

Kevin McCarthy, Director of Finance, City of Indian Wells
Finance Department, 44-950 Eldorado Drive, Indian Wells, CA 92210-7497
Phone: (760) 346-2489
kmccarthy@indianwells.com

Michelle McClelland, County of Alpine
P.O. Box 266, Markleeville, CA 96120
Phone: (530) 694-2284
mmclelland@alpinecountyca.gov

Sheila McCrory, Interim Finance Director / Treasurer, City of St. Helena
Finance, 1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2751
sheilam@cityofsthelena.org

Lee McDougal, City Manager, City of Riverside
3900 Main Street, 7th Floor, Riverside, CA 92522  
Phone: (951) 826-5553  
lmcdougal@riversideca.gov

Maureen McGoldrick, Director, City of Simi Valley  
Department of Administrative Services, 2929 Tapo Canyon Road, Simi Valley, CA 93063  
Phone: (805) 583-6700  
mmcgoldrick@simivalley.org

Michael McGrane, Finance Director, City of Imperial Beach  
Finance Department, 825 Imperial Beach Blvd., Imperial Beach, CA 91932  
Phone: (619) 423-8303  
mmcgrane@cityofib.org

Kelly McKinnis, Finance Director, City of Weed  
Finance Department, 550 Main Street, Weed, CA 96094  
Phone: (530) 938-5020  
mckinnis@ci.weed.ca.us

Larry McLaughlin, City Manager, City of Sebastopol  
7120 Bodega Avenue, P.O. Box 1776, Sebastopol, CA 95472  
Phone: (707) 823-1153  
lwmcLaughlin@juno.com

Dennis McLean, City of Rancho Palos Verdes  
30940 Hawthorne Blvd., Rancho Palos Verdes, CA 90275  
Phone: N/A  
dennism@rpv.com

Rachel McQuiston, Finance Director, City of Ridgecrest  
Finance Department, 100 W CALIFORNIA AVE, RIDGECREST, CA 93555  
Phone: (760) 499-5020  
rmQuiston@ridgecrest-ca.gov

Donald McVey, Director of Finance, City of Daly City  
Finance Department, 333 90th Street, Daly City, CA 94015  
Phone: (650) 991-8127  
dmcvey@dalycity.org

Paul Melikian, City of Reedley  
1717 Ninth Street, Reedley, CA 93654  
Phone: (559) 637-4200  
paul.melikian@reedley.ca.gov

Joe Mellett, County of Humboldt  
825 Fifth Street, Room 126, Eureka, CA 95501  
Phone: (707) 476-2452  
jemellett@co.humboldt.ca.us

Rebecca Mendenhall, City of San Carlos  
600 Elm Street, P.O. Box 3009, San Carlos, CA 94070-1309  
Phone: (650) 802-4205  
rMendenhall@cityofsancarlos.org

Michelle Mendoza, MAXIMUS

http://csm.ca.gov/csmint/cats/print_mailing_list_from_claim.php

254
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

**Dawn Merchant, City of Antioch**
P.O. Box 5007, Antioch, CA 94531
Phone: (925) 779-7055
dmerchant@ci.antioch.ca.us

**Yazmin Meza, Department of Finance**
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

**Joan Michaels Aguilar, City of Dixon**
600 East A Street, Dixon, CA 95620
Phone: N/A
jmichaelsaguilar@ci.dixon.ca.us

**Ron Millard, Interim Finance Director, City of Vallejo**
Finance Department, 555 Santa Clara Street, 3rd Floor, Vallejo, CA 94590
Phone: (707) 648-4592
Ikimura@ci.vallejo.ca.us

**Michael Miller, County of Monterey**
168 W. Alisal Street, 3rd floor, Salinas, CA 93901
Phone: (831) 755-4500
millerm@co.monterey.ca.us

**Todd Miller, County of Madera**
Auditor-Controller, 200 W Fourth Street, 2nd Floor, Madera, CA 93637
Phone: (559) 675-7707
Todd.Miller@co.madera.ca.gov

**Meredith Miller, Director of SB90 Services, MAXIMUS**
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9900
meredithc@maximus.com

**David Millican, Interim Chief Financial Officer, City of Oxnard**
300 West Third Street, Suite 302, Oxnard, CA 93030
Phone: (805) 385-7466
Tamara.Reese@ci.oxnard.ca.us

**Leyne Milstein, Director of Finance, City of Sacramento**
915 I Street, 5th Floor, Sacramento, CA 98514
Phone: (916) 808-5845
lmilstein@cityofsacramento.org

**Robert Miyashiro, Education Mandated Cost Network**
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

**Kevin Mizuno, Finance Director, City of Clayton**
Finance Department, 600 Heritage Trail, Clayton, CA 94517
Phone: (925) 673-7309
kmizuno@ci.clayton.ca.us

Bruce Moe, City of Manhattan Beach
1400 Highland Ave., Manhattan Beach, CA 90266
Phone: N/A
bmoe@citymb.info

Minnie Moreno, City of Patterson
1 Plaza Circle, Patterson, CA 95363
Phone: N/A
mmoreno@ci.patterson.ca.us

Debbie Moreno, City of Anaheim
200 S. Anaheim Boulevard, Anaheim, CA 92805
Phone: (714) 765-5192
DMoreno@anaheim.net

Russell Morreale, City of Los Altos
One North San Antonio Road, Los Altos, CA 94022
Phone: N/A
rmorreale@losaltosca.gov

Russell Morreale, Finance Director, City of Palos Verdes Estates
Finance Department, 340 Palos Verdes Dr West, Palos Verdes Estates, CA 90274
Phone: (310) 378-0383
rmorreale@pvestates.org

Cindy Mosser, City Treasurer/Finance Director, City of San Rafael
1400 Fifth Avenue, PO Box 151560, San Rafael, CA 94915
Phone: (415) 458-5001
cindy.mosser@cityofsanrafael.org

Brian Muir, County of Shasta
1450 Court St., Suite 238, Redding, CA 96001
Phone: (530) 225-5541
bmuir@co.shasta.ca.us

walter Munchheimer, Interim Administrative Services Manager, City of Marysville
Administration and Finance Department, 526 C Street, Marysville, CA 95901
Phone: (530) 749-3901
wmunchheimer@marysville.ca.us

Bill Mushallo, Finance Director, City of Petaluma
Finance Department, 11 English St., Petaluma, CA 94952
Phone: (707) 778-4352
financeemail@ci.petaluma.ca.us

Renee Nagel, Finance Director, City of Visalia
707 W. Acequia Avenue, City Hall West, Visalia, CA 93291
Phone: (559) 713-4375
RNagel@ci.visalia.ca.us

Jameel Naqvi, Analyst, Legislative Analyst's Office
Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8331
Jameel.naqvi@lao.ca.gov

Tim Nash, City of Encinitas
505 S Vulcan Avenue, Encinitas, CA 92054
Phone: N/A
finmail@encinitasca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, California State Association of Counties (CSAC)
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Keith Neves, Director of Finance/City Treasurer, City of Lake Forest
Finance Department, 25550 Commercentre Drive, Lake Forest, CA 92630
Phone: (949) 461-3430
kneves@lakeforestca.gov

Howard Newens, County of Yolo
625 Court Street, Room 102, Woodland, CA 95695
Phone: (530) 666-8625
howard.newens@yolocounty.org

Doug Newland, County of Imperial
940 Main Street, Ste 108, El Centro, CA 92243
Phone: (760) 482-4556
dougnewland@co.imperial.ca.us

Keith Nezaam, Department of Finance
915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-8913
Keith.Nezaam@dof.ca.gov

Andy Nichols, Nichols Consulting
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Dale Nielsen, Director of Finance/Treasurer, City of Vista
Finance Department, 200 Civic Center Drive, Vista, CA 92084
Phone: (760) 726-1340
dnielsen@ci.vista.ca.us

David Noce, Accounting Division Manager, City of Santa Clara
1500 Warburton Ave, Santa Clara, CA 95050
Phone: (408) 615-2341
dnoce@santaclaraca.gov

Marianne O'Malley, Legislative Analyst's Office (B-29)
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8315
marianne.O'malley@lao.ca.gov
Patrick O'Connell, County of Alameda
1221 Oak Street, Room 249, Oakland, CA 94512
Phone: (510) 272-6565
pat.oconnell@acgov.org

Andy Okoro, City Manager, City of Norco
2870 Clark Avenue, Norco, CA 92860
Phone: N/A
aokoro@ci.norco.ca.us

Cathy Orme, Finance Director, City of Larkspur
Finance Department, 400 Magnolia Ave, Larkspur, CA 94939
Phone: (415) 927-5019
come@cityoflarkspur.org

John Ornelas, Interim City Manager, City of Huntington Park
6550 Miles Avenue, Huntington Park, CA 90255
Phone: (323) 584-6223
scrum@hpca.gov

Odi Ortiz, Assistant City Manager/Finance Director, City of Livingston
Administrative Services, 1416 C Street, Livingston, CA 95334
Phone: (209) 394-8041
oortiz@livingstoncity.com

Christian Osmena, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Wayne Padilla, Interim Director, City of San Luis Obispo
Finance & Information Technology Department, 990 Palm Street, San Luis Obispo, CA 93401
Phone: (805) 781-7125
wpadilla@slocity.org

Simona Padilla-Scholtens, Auditor-Controller, County of Solano
675 Texas Street, Suite 2800, Fairfield, CA 94533
Phone: (707) 784-6282
sjpadilla@solanocounty.com

Arthur Palkowitz, Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@sashlaw.com

Deborah Paolinelli, County of Tulare
411 East Kern Ave, Tulare, CA 93274
Phone: N/A
dpaolinelli@co.tulare.ca.us

Susan Paragas, City of Azusa
PO Box 1395, Azusa, CA 91702
Phone: N/A
sparagas@ci.azusa.ca.us

Alice Park-Renzie, County of Alameda
CAO, 1221 Oak Street, Oakland, CA 94612
Phone: (510) 272-3873
Alice.Park@acgov.org

Donald Parker, City of Montclair
5111 Benito St., Montclair, CA 91763
Phone: N/A
dparker@cityofmontclair.org

Stephen Parker, Administrative Services Director, City of Stanton
Administrative Services and Finance Department, 7800 Katella Avenue, Stanton, CA 90680
Phone: (714) 379-9222
sparker@ci.stanton.ca.us

Lalo Perez, City of Palo Alto
P.O. Box 10250, Palo Alto, CA 94303
Phone: N/A
lalo.perez@cityofpaloalto.org

Diane Perkin, City of Lakewood
5050 Clark Avenue, Lakewood, CA 90712
Phone: (562) 866-9771
dperkin@lakewoodcity.org

Keith Petersen, SixTen & Associates
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@aol.com

Eva Phelps, City of San Ramon
2226 Camino Ramon, San Ramon, CA 94583
Phone: N/A
ephelps@sanramon.ca.gov

Marcus Pimentel, City of Santa Cruz
809 Center Street, Rm 101, Santa Cruz, CA 95060
Phone: N/A
dl_Finance@cityofsantacruz.com

Adam Pirrie, City of Claremont
207 Harvard Ave, Claremont, CA 91711
Phone: (909) 399-5328
apirrie@ci.claremont.ca.us

Ruth Piyaman, Finance / Accounting Manager, City of Malibu
Administrative Services / Finance, 23825 Stuart Ranch Road, Malibu, CA 90265
Phone: (310) 456-2489
RPiyaman@malibucity.org

Bret M. Plumlee, City Manager, City of Los Alamitos
3191 Katella Ave., Los Alamitos, CA 90720
Phone: (562) 431-3538 ext.
bplumlee@cityoflosalamitos.org

**Mike Podegracz**, City Manager, *City of Hesperia*
Finance Department, 9700 Seventh Ave, Hesperia, CA 92345
Phone: (760) 947-1025
mpodegracz@cityofhesperia.us

**Brian Ponty**, *City of Redwood City*
1017 Middlefield Road, Redwood City, CA 94063
Phone: (650) 780-7300
finance@redwoodcity.org

**Michael Powers**, City Manager, *City of King City*
212 South Vanderhurst Avenue, King City, CA 93930
Phone: 831-386-5925
mpowers@kingcity.com

**Jai Prasad**, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

**Matt Pressey**, Director, *City of Salinas*
Finance Department, 200 Lincoln Ave., Salinas, CA 93901
Phone: (831) 758-7211
mattp@ci.salinas.ca.us

**Tom Prill**, Finance Director, *City of San Jacinto*
Finance Department, 595 S. San Jacinto Ave., Building B, San Jacinto, CA 92583
Phone: (951) 487-7340
TPrill@sanjacintoca.us

**Cindy Prothro**, Finance Director, *City of Barstow*
Finance Department, 220 East Mountain View Street, Barstow, CA 92311
Phone: (760) 255-5115
cprothro@barstowca.org

**Tim Przybyla**, Finance Director, *City of Madera*
Finance Department, 205 West Fourth Street, Madera, CA 93637
Phone: (559) 661-5454
tprzybyla@cityofmadera.com

**Marc Puckett**, Assistant Town Manager of Finance & Administration, *Town of Apple Valley*
Finance Department, 14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
finance@applevalley.org

**Raul Purificacion**, Finance Manager, *City of La Puente*
Finance Department, 15900 E. Main Street, La Puente, CA 91744
Phone: (626) 855-1500
rpurificacion@lapuente.org

**John Quinn**, *City of Calexico*
608 Heber Ave., Calexico, CA 92231
Phone: N/A
jquinn@calexico.ca.gov

**Frank Quintero, City of Merced**
678 West 18th Street, Merced, CA 95340
Phone: N/A
quinterof@cityofmerced.org

**Yvonne Quiring, City of Davis**
23 Russell Blvd., Davis, CA 95616
Phone: N/A
yquiring@cityofdavis.org

**Sean Rabe, City Manager, City of Colma**
1198 El Camino Real, Colma, CA 94014
Phone: (650) 997-8318
sean.rabe@colma.ca.gov

**Juan Raigoza, Auditor-Controller, County of San Mateo**
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 363-4777
jraigoza@smcgov.org

**Roberta Raper, Finance Director, City of Napa**
Finance Department, P.O. Box 660, Napa, CA 94559-0660
Phone: (707) 257-9510
raper@cityofnapa.org

**Roberta Reed, County of Mono**
P.O. Box 556, Bridgeport, CA 93517
Phone: (760) 363-4777
RReed@mono.ca.gov

**Karan Reid, Finance Director, City of Concord**
1950 Parkside Drive, Concord, CA 94519
Phone: (925) 671-3178
karan.reid@cityofconcord.org

**Sandra Repede, Principal Financial Analyst, City of San Buenaventura**
Finance & Technology, 501 Poli St. Room 101, Ventura, CA 93001
Phone: (805) 654-7728
srepede@cityofventura.net

**Mark Rewolinski, MAXIMUS**
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845
markrewolinski@maximus.com

**Sandra Reynolds, Reynolds Consulting Group, Inc.**
P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandra.reynolds_30@msn.com

**Tina Reza, Interim Finance Director, City of Morgan Hill**
Finance Department, 17575 Peak Ave., Morgan Hill, CA 95037
Phone: (408) 779-7237
Tina.Reza@morgan-hill.ca.gov

Tae G. Rhee, Finance Director, City of Bellflower
Finance Department, 16600 Civic Center Dr, Bellflower, CA 90706
Phone: (562) 804-1424
trhee@bellflower.org

Robert Richardson, City Manager, City of Grass Valley
Finance Department, 125 East Main Street, Grass Valley, CA 95945
Phone: (530) 274-4312
r.richardson@cityofgrassvalley.com

Rachelle Rickard, City Manager, City of Atascadero
Finance Department, 6500 Palma Ave, Atascadero, CA 93422
Phone: (805) 461-7612
rickard@atascadero.org

Jorge Rifa, City Administrator, City of Commerce
Finance Department, 2535 Commerce Way, Commerce, CA 90040
Phone: (323) 722-4805
jorger@ci.commerce.ca.us

Kathy Rios, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Rosa Rios, City of Delano
1015 11th Ave., Delano, CA 93216
Phone: N/A
rios@cityofdelano.org

Nicole Rizzo, Operations Manager, City of Lancaster
Finance Department, 44933 N. Fern Avenue, Lancaster, CA 93534
Phone: (661) 723-5893
nrizzo@cityoflancasterca.org

Mark Roberts, City of National City
1243 National City Blvd., National City, CA 91950
Phone: N/A
finance@nationalcityca.gov

Laura Rocha, City of San Marcos
1 Civic Center Drive, San Marcos, CA 92069
Phone: (760) 744-1050
Lrocha@san-marcos.net

Rob Rockwell, Director of Finance, City of Indio
Finance Department, 100 Civic Center Mall, Indio, CA 92201
Phone: (760) 391-4029
rockwell@indio.org

Benjamin Rosenfield, City Controller, City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, CA 94102
Phone: (415) 554-7500
ben.rosenfield@sfgov.org

**Tacy Oneto Rouen**, Auditor, County of Amador
810 Court Street, Jackson, CA 95642-2131
Phone: (209) 223-6357
trouen@amadorgov.org

**Linda Ruffing**, City Manager, City of Fort Bragg
Finance Department, 416 N Franklin Street, Fort Bragg, CA 94537
Phone: (707) 961-2823
lruffing@fortbragg.com

**Cynthia Russell**, Chief Financial Officer/City Treasurer, City of San Juan Capistrano
Finance Department, 32400 Paseo Adelanto, San Juan Capistrano, CA 92675
Phone: (949) 443-6343
crussell@sanjuancapistrano.org

**Joan Ryan**, Finance Director, City of Escondido
201 N. Broadway, Escondido, CA 92025
Phone: N/A
jryan@ci.escondido.ca.us

**Cathy Saderlund**, County of Lake
255 N. Forbes Street, Lakeport, CA 95453
Phone: (707) 263-2311
cathy.saderlund@lakecountyca.gov

**Leticia Salcido**, City of El Centro
1275 Main Street, El Centro, CA 92243
Phone: N/A
lsalcido@ci.el-centro.ca.us

**Marcia Salter**, County of Nevada
950 Maidu Avenue, Nevada City, CA 95959
Phone: (530) 265-1244
marcia.salter@co.nevada.ca.us

**Robert Samario**, City of Santa Barbara
P.O. Box 1990, Santa Barbara, CA 93102-1990
Phone: (805) 564-5336
BSamario@SantaBarbaraCA.gov

**Kathy Samms**, County of Santa Cruz
701 Ocean Street, Room 340, Santa Cruz, CA 95060
Phone: (831) 454-2440
shf735@co.santa-cruz.ca.us

**Tony Sandhu**, Interim Finance Director, City of Capitola
Finance Department, 480 Capitola Ave, Capitola, CA 95010
Phone: (831) 475-7300
tsandhu@ci.capitola.ca.us

**Tracy Sandoval**, County of San Diego
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
t Tracy.sandoval@sdc county.ca.gov

**Kimberly Sarkovich**, Chief Financial Officer, *City of Rocklin*
3970 Rocklin Road, Rocklin, CA 95677
Phone: (916) 625-5020
kim.sarkovich@rocklin.ca.us

**Clinton Schaad**, *County of Del Norte*
981 H Street, Suite 140, Crescent City, CA 95531
Phone: (707) 464-7202
cschaad@co.del-norte.ca.us

**Stuart Schillinger**, *City of Brisbane*
50 Park Place, Brisbane, CA 94005-1310
Phone: N/A
schillinger@ci.brisbane.ca.us

**Karin Schnaider**, Finance Director, *City of Benicia*
Finance Department, 250 East L Street, Benicia, CA 94510
Phone: (707) 746-4225
KSchnaider@ci.benicia.ca.us

**Tracy Schulze**, *County of Napa*
1195 Third Street, Suite B-10, Napa, CA 94559
Phone: (707) 299-1733
tracy.schulze@countyofnapa.org

**Lee Scott**, Department of Finance
15 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
lee.scott@dof.ca.gov

**Tami Scott**, Administrative Services Director, *Cathedral City*
Administrative Services, 68700 Avenida Lalo Guerrero, Cathedral City, CA 92234
Phone: (760) 770-0356
tscott@cathedralcity.gov

**David Scribner**, Max8550
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

**Peggy Scroggins**, *County of Colusa*
546 Jay Street, Ste 202, Colusa, CA 95932
Phone: (530) 458-0400
pscroggins@countyofcolusa.org

**Kelly Sessions**, Finance Manager, *City of San Pablo*
Finance Department, 13831 San Pablo Avenue, Building #2, San Pablo, CA 94806
Phone: (510) 215-3021
kellys@sanpabloca.gov

**Mel Shannon**, Finance Director, *City of La Habra*
Finance/Admin. Services, 201 E. La Habra Blvd, La Habra, CA 90633-0337
Phone: (562) 383-4050
mshannon@lahabraca.gov

Amy Shepherd, County of Inyo
Auditor-Controller, P.O. Drawer R, Independence, CA 93526
Phone: (760) 878-0343
ashepherd@inyocounty.us

Steve Shields, Shields Consulting Group, Inc.
1536 36th Street, Sacramento, CA 95816
Phone: (916) 454-7310
steve@shieldscg.com

Ed Shikada, City Manager, City of San Jose
200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-8100
ed.shikada@sanjoseca.gov

Wayne Shimabukuro, County of San Bernardino
Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty.gov

Donna Silva, Finance Director, City of Rancho Cordova
Finance Department, 2729 Prospect Park Drive, Rancho Cordova, CA 95670
Phone: (916) 851-8730
dsilva@cityofranchoCORDova.org

Lucy Simonson, County of Mendocino
501 Low Gap Road, Rm 1080, Ukiah, CA 95482
Phone: (707) 463-4388
simonsol@co.mendocino.ca.us

Andrew Sisk, County of Placer
2970 Richardson Drive, Auburn, CA 95603
Phone: (530) 889-4026
asisk@placer.ca.gov

Susan Slayton, Administrative Services Director, City of Morro Bay
Administrative Services, 595 Harbor Street, Morro Bay, CA 93442
Phone: (805) 772-6201
sslayton@morro-bay.ca.us

Nelson Smith, City of Bakersfield
1600 Truxtun Avenue, Bakersfield, CA 93301
Phone: N/A
nsmith@bakersfieldcity.us

Margarita Solis, City Treasurer, City of San Fernando
117 Macneil Street, San Fernando, CA 91340
Phone: (818) 898-1218
msolis@sfcity.org

Carla Soracco, Finance Manager, City of Jackson
Finance Department, 33 Broadway, Jackson, CA 95642
Phone: (209) 223-1646
csoracco@ci.jackson.ca.us

Jim Spano, Chief, Mandated Cost Audits Bureau, State Controller's Office
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Greg Sparks, City Manager, City of Eureka
531 K Street, Eureka, CA 95501
Phone: (707) 441-4144
cityclerk@ci.eureka.ca.gov

Dennis Speciale, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Cathy Spinella, Finance Manager, City of Martinez
Finance Department, 525 Henrietta Street, Martinez, CA 94553
Phone: (925) 372-3579
cspinella@cityofmartinez.org

Kenneth Spray, Finance Director, City of Millbrae
621 Magnolia Avenue, Millbrae, CA 94030
Phone: (650) 259-2433
kspray@ci.millbrae.ca.us

Betsy St. John, City of Palmdale
38300 Sierra Highway, Suite D, Palmdale, CA 93550
Phone: N/A
bstjohn@cityofpalmdale.org

Susan A. Stanton, City Manager, City of Greenfield
Finance Department, 599 El Camino Real, Greenfield, CA 93927
Phone: (831) 674-5591
sstanton@ci.greenfield.ca.us

Robert Stark, County of Sutter
463 2nd Street, Suite 117, Yuba City, CA 95991
Phone: (530) 822-7127
rstark@co.sutter.ca.us

Jim Steele, City of South San Francisco
P.O. Box 711, South San Francisco, CA 94083
Phone: N/A
jim.steele@ssf.net

Jana Stuard, City of Norwalk
P.O. Box 1030, Norwalk, CA 90650
Phone: N/A
jstuard@norwalkca.gov

Leslie Suelter, City of Coronado
1825 Strand Way, Coronado, CA 92118  
Phone: N/A  
lssue@coronado.ca.us  

**Edmund Suen**, Finance Director, *City of East Palo Alto*  
Finance Department, 2415 University Ave, East Palo Alto, CA 94303  
Phone: (650) 853-3122  
financedepartment@cityofepa.org  

**Evelyn Suess**, Principal Program Budget Analyst, *Department of Finance Requester Representative*  
Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
evelyn.suess@dof.ca.gov  

**Karen Suiker**, City Manager, *City of Trinidad*  
409 Trinity Street, PO Box 390, Trinidad, CA 95570  
Phone: (707) 677-3876  
citymanager@trinidad.ca.gov  

**Deborah Sultan**, Finance Director, *City of Sanger*  
Finance, 1700 7th Street, Sanger, CA 93657  
Phone: (559) 876-6300  
dsultan@ci.sanger.ca.us  

**David Sundstrom**, County of Sonoma  
585 Fiscal Drive, Room 100, Santa Rosa, CA 95403  
Phone: (707) 565-3285  
david.sundstrom@sonoma-county.org  

**David Sung**, City of Hawaiian Gardens  
21815 Pioneer Boulevard, Hawaiian Gardens, CA 90716  
Phone: N/A  
dsung@hgcity.org  

**Meg Svoboda**, Senate Office of Research  
1020 N Street, Suite 200, Sacramento, CA  
Phone: (916) 651-1500  
meg.svoboda@sen.ca.gov  

**Kim Szczurek**, Administrative Services Director, *Town of Truckee*  
Administrative Services, 10183 Truckee Airport Road, Truckee, CA 96161  
Phone: (530) 582-2913  
kszczurek@townoftruckee.com  

**Jesse Takahashi**, City of Campbell  
70 North First Street, Campbell, CA 95008  
Phone: N/A  
jesset@cityofcampbell.com  

**Amy Tang-Paterno**, Educational Fiscal Services Consultant, *California Department of Education*  
Government Affairs, 1430 N Street, Suite 5602, Sacramento, CA 95814  
Phone: (916) 322-6630
ATangPaterno@cde.ca.gov

**Jill Taura, City of Glendora**
116 East Foothill Blvd, Glendora, CA 91741-3380
Phone: N/A
jtaura@ci.glendora.ca.us

**Rick Teichert, City of Moreno Valley**
14177 Frederick Street, Moreno Valley, CA 92552-0805
Phone: N/A
richardt@moval.org

**Gina Tharani, Finance Director, City of Aliso Viejo**
Finance Department, 12 Journey, Suite 100, Aliso Viejo, CA 92656-5335
Phone: (949) 425-2524
financial-services@cityofalisoviejo.com

**Lynn Theissen, Finance Director, City of Chico**
411 Main St., Chico, CA 95927
Phone: (530) 879-7300
lynn.theissen@chicoca.gov

**Darlene Thompson, Finance Director / Treasurer, City of Tulare**
Finance Department, 411 E Kern Ave., Tulare, CA 93274
Phone: (559) 684-4255
dthompson@ci.tulare.ca.us

**John Thornberry, Finance Director, City of Carpinteria**
Finance Department, 5775 Carpinteria Ave, Carpinteria, CA 93013
Phone: (805) 684-5405
johnt@ci.carpinteria.ca.us

**James Throop, Finance Director, City of El Paso De Robles**
Administrative Services, 1000 Spring Street, Paso Robles, CA 93446
Phone: (805) 227-7276
jthroop@prcity.com

**Sheryl Thur, County of Glenn**
516 West Sycamore Street, Willows, CA 95988
Phone: (530) 934-6402
sthur@countyofglenn.net

**Cathleen Till, Finance Director, City of Lemon Grove**
Finance Department, 3232 Main Street, Lemon Grove, CA 91945
Phone: (619) 825-3803
cstill@lemongrove.ca.gov

**Donna Timmerman, Financial Manager, City of Ferndale**
Finance Department, 834 Main Street, Ferndale, CA 95535
Phone: (707) 786-4224
finance@ci.ferndale.ca.us

**Jolene Tollenaar, MGT of America**
2001 P Street, Suite 200, Suite 200, Sacramento, CA 95811
Phone: (916) 443-9136
jolene_tollenaar@mgtamer.com

**Eric Tsao, City of Torrance**
Finance Department, 3031 Torrance Blvd., Torrance, CA 90503
Phone: (310) 618-5850
eetso@TorranceCA.gov

**Evelyn Tseng, City of Newport Beach**
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

**Stefanie Turner, Finance Director, City of Rancho Santa Margarita**
Finance Department, 22112 El Pasco, Rancho Santa Margarita, CA 92688
Phone: (949) 635-1808
sturner@cityofrsm.org

**Brian Uhler, Legislative Analyst's Office**
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
brian.uhler@lao.ca.gov

**Marichi Valle, San Jose Unified School District**
855 Lenzen Avenue, San Jose, CA 95126
Phone: (408) 535-6141
mvalle@sjusd.org

**Julie Valverde, County of Sacramento**
700 H Street, Room 3650, Sacramento, CA 95814
Phone: (916) 874-7248
valverdej@saccounty.net

**James Vanderpool, City Manager, City of Buena Park**
6650 Beach Boulevard, Buena Park, CA 90622
Phone: N/A
jvanderpool@buenapark.com

**Sue Vannucci, City of Woodland**
300 First Street, Woodland, CA 95695
Phone: N/A
svannucci@cityofwilliams.org

**Ruby Vasquez, County of Colusa**
546 Jay Street, Suite 202, Colusa, CA 95932
Phone: (530) 458-0424
rvasquez@countyofcolusa.com

**Ezequiel Vega, Director, City of Watsonville**
250 Main St., Watsonville, CA 95076
Phone: (831) 768-3450
ezequiel.vega@cityofwatsonville.org

**Patty Virto, Finance Manager, City of Fillmore**
Finance Department, 250 Central Avenue, Fillmore, CA 93015
Phone: (805) 524-3701
pvirto@ci.fillmore.ca.us

**Rene Vise**, Director of Administrative Services, *City of Santa Maria*
Department of Administrative Services, 110 East Cook Street Room 6, Santa Maria, CA 93454-5190
Phone: (805) 925-0951
rvise@ci.santa-maria.ca.us

**Nawel Voelker**, Acting Director of Finance (Management Analyst), *City of Belmont*
Finance Department, One Twin Pines Lane, Belmont, CA 94002
Phone: (650) 595-7433
nvoelker@belmont.gov

**Mary Jo Walker**, *County of Santa Cruz*
701 Ocean Street, Room 100, Santa Cruz, CA 95060-4073
Phone: (831) 454-2500
Aud002@co.santa-cruz.ca.us

**Melinda Wall**, *City of Lompoc*
P.O. Box 8001, Lompoc, CA 93438-8001
Phone: N/A
m_wall@ci.lompoc.ca.us

**Sarah Waller-Bullock**, *City of La Mesa*
P.O. Box 937, La Mesa, CA 91944-0937
Phone: N/A
sbullock@ci.la-mesa.ca.us

**George Warman Jr.**, *City of Corte Madera*
P.O. Box 159, Corte Madera, CA 94976-0159
Phone: N/A
gwarman@ci.corte-madera.ca.us

**Dave Warren**, Director of Finance, *City of Placerville*
Finance Department, 3101 Center Street, Placerville, CA 95667
Phone: (530) 642-5223
dwarren@cityofplacerville.org

**Tara Webley**, *County of Tulare*
411 East Kern Ave., Tulare, CA 93274
Phone: N/A
twbley@co.tulare.ca.us

3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

**Kevin Werner**, City Administrator, *City of Ripon*
Administrative Staff, 259 N. Wilma Avenue, Ripon, CA 95366
Phone: (209) 599-2108
kwerner@cityofripon.org

**David White**, *City of Fairfield*
1000 Webster Street, Fairfield, CA 94533
Phone: N/A
dwhite@fairfield.ca.gov

**Michael Whitehead**, Administrative Services Director & City Treasurer, *City of Rolling Hills Estates*
Administrative Services, 4045 Palos Verdes Drive North, Rolling Hills Estates, CA 90274
Phone: (310) 377-1577
MikeW@RollingHillsEstatesCA.gov

**Gina Will**, Finance Director, *City of Paradise*
Finance Department, 5555 Skyway, Paradise, CA 95969
Phone: (530) 872-6291
gwill@townofparadise.com

**David Wilson**, *City of West Hollywood*
8300 Santa Monica Blvd., West Hollywood, CA 90069
Phone: N/A
dwilson@weho.org

**Chris Woidzik**, Finance Director, *City of Avalon*
Finance Department, 410 Avalon Canyon Rd., Avalon, CA 90704
Phone: (310) 510-0220
Scampbell@cityofavalon.com

**Jeff Woltkamp**, *County of San Joaquin*
44 N San Joaquin St. Suite 550, Stockton, CA 95202
Phone: (209) 468-3925
jwoltkamp@sjgov.org

**Clara Wong**, *City of West Covina*
1444 W. Garvey Ave. South, West Covina, CA 91790
Phone: N/A
clara.wong@westcovina.org

**Paul Wood**, Director of Finance, *City of Carmel*
Finance Department, P.O. Box CC, Carmel, CA 93921
Phone: (831) 620-2000
pwood@ci.carmel.ca.us

**Rita Woodard**, *County of Tulare*
County Civic Center, 221 South Mooney Blvd, Room 101-E, Visalia, CA 93291-4593
Phone: (559) 636-5200
rwoodard@co.tulare.ca.us

**Susie Woodstock**, *City of Newark*
37101 Newark Blvd., Newark, CA 94560
Phone: N/A
susie.woodstock@newark.org

**Jane Wright**, Finance Manager, *City of Ione*
Finance Department, 1 East Main Street, PO Box 398, Ione, CA 95640
Phone: (209) 274-2412
JWright@ione-ca.com

**Phil Wright**, Director of Administrative Services, *City of West Sacramento*
Finance Division, 1110 West Capitol Avenue, 3rd Floor, West Sacramento, CA 95691
Phone: (916) 617-4575
Philw@cityofwestsacramento.org

Hasmik Yaghobyan, County of Los Angeles
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

Curtis Yakimow, Town Manager, Town of Yucca Valley
57090 Twentynine Palms Highway, Yucca Valley, CA 92284
Phone: (760) 369-7207
townmanager@yucca-valley.org

Annie Yaung, City of Monterey Park
320 West Newmark Avenue, Monterey Park, CA 91754
Phone: N/A
ayaung@montereypark.ca.gov

Carl Yeats, City of Burlingame
501 Primrose Rd., Burlingame, CA 94010
Phone: N/A
cyeats@burlingame.org

Bobby Young, City of Costa Mesa
77 Fair Drive, Costa Mesa, CA 92626
Phone: N/A
Bobby.Young@costamesaca.gov
May 29, 2015

Ms. Evelyn Suess  
Department of Finance  
Local Government Unit  
915 L Street  
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing Mandate Redetermination Request, 14-MR-02  
California Public Records Act (02-TC-10 and 02-TC-51)  
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355  
As Alleged to be Modified by Proposition 42, adopted June 3, 2014  
California Department of Finance, Requester

Dear Ms. Suess:

On May 29, 2015 the Commission on State Mandates (Commission) adopted the decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. The adopted decision is enclosed. The draft proposed decision for the second hearing and the draft expedited amendment to parameters and guidelines are enclosed for your review and comment.

Written Comments on Second Hearing Draft Proposed Decision

Written comments may be filed on the draft proposed decision by June 19, 2015. The draft proposed decision is set for hearing on July 24, 2015.

Written Comments on Draft Expedited Amendment to Parameters and Guidelines

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the July Commission hearing. The draft expedited amendment to parameters and guidelines is set for hearing on July 24, 2015 and will only be taken up if the Commission first approves the request for redetermination.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff’s draft proposal by June 19, 2015. (Cal. Code Regs., tit. 2, § 1183.9(e).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.8(f).)

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. However, this requirement may also be satisfied by electronically filing your
Ms. Evelyn Suess  
May 29, 2015  
Page 2


If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission’s regulations.

**Hearing**

The second hearing on the request for a mandate redetermination is set for **Friday, July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the amendment to the parameters and guidelines is also set for hearing on **Friday, July 24, 2015**, but will only be taken up if the Commission first approves the request for redetermination.

The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about July 10, 2015. 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 1187.9(b) of the Commission’s regulations.

Sincerely,

[Signature]

Heather Halsey  
Executive Director
ITEM __

MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION

DRAFT PROPOSED DECISION

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014

California Public Records Act (02-TC-10 and 02-TC-51)

14-MR-02

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On May 26, 2011, the Commission on State Mandates (Commission) adopted the California Public Records Act (CPRA) test claim decisions, 02-TC-10 and 02-TC-51, program. Specifically, the Commission found that Statutes 1992, Chapters 463, Statutes 2000, Chapter 982, and Statutes 2001, Chapter 355 amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 of the Government Code, resulting in an increased level of service related to the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education.\(^1\)

Parameters and guidelines were adopted on April 19, 2013, authorizing reimbursement for the following activities:\(^2\)

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;
- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;
- Making disclosable public records in electronic formats available in electronic formats; and

\(^1\) Exhibit B, Test Claim Statement of Decision 02-TC-10 & 02-TC-51, adopted May 26, 2011.
• Removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee.  

On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.” The proposition amended article XIII B, section 6, of the California Constitution, adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for… Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I." Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies…each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

Procedural History

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the CPRA test claim, 02-TC-10 and 02-TC-51. Finance asserts the passage of Proposition 42 constituted a “subsequent change in law” and the “state's obligation to reimburse affected local agencies has ceased.” On February 17, 2015, the State Controller’s Office (Controller) submitted comments, concurring with Finance's request to adopt a new test claim decision. On April 3, 2015, Commission staff issued the draft proposed decision for the first hearing. On April 23, 2015, the Controller filed comments concurring with the draft proposed decision.

On May 29, 2015, the Commission found that Finance had made an adequate showing that the request had a substantial possibility of prevailing at the second hearing, and the Commission therefore directed staff to set the matter for hearing on whether to adopt a new test claim.

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4 Exhibit X, Text of Ballot Measure, Proposition 42, at p. 42.
5 Exhibit X, Text of Ballot Measure, Proposition 42, at p. 43.
7 Exhibit D, Controller’s Comments on Request for Redetermination.
9 Exhibit F, State Controller’s Comments on Draft Proposed Decision filed April 23, 2015.
decision. On May 29, 2015, Commission staff issued the draft proposed decision and draft expedited parameters and guidelines for the second hearing.

**Commission Responsibilities**

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission’s regulations state:

> The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.\(^{10}\)

The regulations further state:

> If the commission proceeds to the second hearing, it shall consider whether the state’s liability…has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.\(^{11}\)

Therefore, the issue before the Commission at this second hearing is whether the state’s liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.

**Staff Analysis**

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

Moreover, Proposition 42 amended article XIII B, section 6(a) of the California Constitution, by adding paragraph 4, to the list of mandates exempt from reimbursement under the Constitution, to provide "that the Legislature may, but need not, provide a subvention of funds for… Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."

\(^{10}\) Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

\(^{11}\) Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).
Article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies…each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7.

Therefore, article XIII B, section 6(a) paragraph 4 of the California Constitution as amended June 3, 2014 specifically exempts California Public Records Act from the subvention requirement.

Government Code section 17570 provides, with respect to mandate redetermination, that:

“Subsequent change in law” is a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to section 17556, or a change in mandates law…12

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement comes. Moreover, it expressly declares that activities under, Article I, section 3(b), paragraph 7, which include Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code), are not reimbursable state mandates under article XIII B, section 6. Therefore, pursuant to section 17514, the costs for the California Public Records Act (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not costs mandated by the state within the meaning of article XIII B section 6.

Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on January 29, 2015, establishing eligibility beginning July 1, 2013. However, the effective date of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4 is June 4, 2014, the day after the election at which Proposition 42

12 Government Code section 17570(a)(2) (Stats. 2010, ch. 719 (SB 856)).
was approved. Therefore, as a result of this proposed decision, staff finds that the approved activities in the prior test claim decision are no longer reimbursable as of June 4, 2014.

Based on the foregoing, staff finds the CPRA program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning June 4, 2014.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision as its new test claim decision, ending reimbursement for the mandated program beginning June 4, 2014.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new test claim decision following the hearing.

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13 See Exhibit X, Text of Proposed Law, section 5.

14 California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION FOR:

Government Code Sections 6253, 6253.1,
6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040);
Statutes 2000, Chapter 982 (AB 2799); and
Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act, 02-TC-10 and
02-TC-51

As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014

Filed on January 21, 2015
By Department of Finance, Requester.

Case No.: 14-MR-02

California Public Records Act (02-TC-10 & 02-TC-51)

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

(Adopted July 24, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate
redetermination during a regularly scheduled hearing on July 24, 2015. [Witness list will be
included in the adopted decision.]

Government Code section 17570 and section 1190 et seq. of the Commission’s regulations
establish the mandate redetermination process. In addition, 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., title 2, California Code
of Regulations 1181 et seq., and related case law.

The Commission [adopted/modified] the proposed decision as its new test claim decision,
granting the request for redetermination and approving the request to end reimbursement for the
test claim activities by a vote of [vote count will be included in the adopted decision].

SUMMARY OF THE FINDINGS

The Commission finds the state’s liability pursuant to article XIII B, section 6(a) of the
California Constitution, for the 02-TC-10 & 02-TC-51 California Public Records Act (CPRA)
mandate has been modified based on a subsequent change in law. Specifically, Proposition 42,
adopted by the voters on June 3, 2014 added paragraph 4 to article XIII B, section 6(a) of the
California Constitution which, together with article I, section 3(b), paragraph 7, expressly declare that activities under Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in CPRA are imposed by Government Code provisions within chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570, the Commission approves the request for redetermination and concludes that the CPRA program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, effective June 4, 2014.\(^\text{15}\)

**COMMISSION FINDINGS**

I. **Chronology**

5/26/2011 The Commission adopted the test claim statement of decision.\(^\text{16}\)

4/19/2013 The Commission adopted the parameters and guidelines.\(^\text{17}\)

6/3/2014 The voters adopted Proposition 42, which added paragraph 7 of article I, section 3(b), and paragraph 4 of article XIII B, section 6 to the California Constitution.\(^\text{18}\)

1/21/2015 Department of Finance (Finance) filed a request for redetermination on CPRA, 02-TC-10 and 02-TC-51.\(^\text{19}\)

2/17/2015 The State Controller’s Office (Controller) submitted written comments on the redetermination request.\(^\text{20}\)

4/3/2015 Commission staff issued the draft proposed decision for the first hearing on the request.\(^\text{21}\)

4/23/2015 The Controller filed comments on the draft proposed decision.\(^\text{22}\)

\(^\text{15}\) California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

\(^\text{16}\) Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

\(^\text{17}\) Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

\(^\text{18}\) Exhibit X, Text of Ballot Measure, Proposition 42, at p. 2.

\(^\text{19}\) Exhibit A, Request for Redetermination.

\(^\text{20}\) Exhibit D, Controller’s Comments on Request for Redetermination filed September 26, 2014.


\(^\text{22}\) Exhibit F, Controller’s Comments on Draft Proposed Decision filed April 23, 2015.
Commission adopted the decision for the first hearing.\textsuperscript{23}

Commission staff issued the draft proposed decision and the draft expedited amendment to parameters and guidelines for the second hearing.

**Background**

The *California Public Records Act Program*

Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014) amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 to the Government Code, which require a local agency to (1) provide copies of public records with portions exempted from disclosure redacted; (2) notify a person making a public records request whether the requested records are disclosable; (3) assist members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) make disclosable public records in electronic formats available in electronic formats; and (5) remove an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee. The Commission found these statutes to impose reimbursable costs mandated by the state.\textsuperscript{24}

In the parameters and guidelines for *CPRA*, the reimbursable activities are described as follows:

**A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate**

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV B of these parameters and guidelines. The activities in section IV B represent the incremental higher level of service approved by the Commission.

   This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

   This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

\textsuperscript{23} Exhibit H, Decision, First Hearing, adopted May 29, 2015.

\textsuperscript{24} See Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.
B. Ongoing Activities

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)). This activity includes:
   a. Computer programming, extraction, or compiling necessary to produce disclosable records.
   b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
   a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

      This activity includes, where applicable:
      1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
      2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
      3) Sending or transmitting the notice to the requestor.

   b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

      This activity includes, where applicable:
1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
3) Sending or transmitting the notice to the requestor.

c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:
1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

a. Conferring with the requestor if clarification is needed to identify records requested.

b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

   a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

      This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

   b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. The redetermination process calls for

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25 Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.
a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution.”  

A subsequent change in law is defined in section 17570 as follows:

   [A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”

If the Commission finds, at the second hearing, that the state’s liability has been modified based on a subsequent change in law, “it shall adopt a new decision that reflects the modified liability of the state.” If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission “shall adopt new parameters and guidelines or amend existing parameters and guidelines…pursuant to Section 17557.”

II. Positions of the Requester, Test Claimant, and Interested Parties and Persons

A. Department of Finance, Requester

Finance argues that Proposition 42 “specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance” with the California Public Records Act.

B. State Controller

The Controller states that it concurs with Finance's request to adopt a new test claim decision for the CPRA test claim since Proposition 42 “requires local agencies and K-14 school districts to

26 Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).
27 Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).
28 Code of Regulations, Title 2, section 1190. 5(a)(5)(B) (Register 2014, No. 21).
29 Code of Regulations, Title 2, section 1190. 5(b)(1) (Register 2014, No. 21).
30 Government Code section 17570(i) (Stats. 2010, chapter 719 (SB 856).
31 Exhibit A, Request for Redetermination, at p. 1.
comply with specific state laws providing for public access to meetings of local government bodies and records of government officials” and “eliminates the requirement that the State reimburse local agencies and K-14 school districts for compliance with these laws.”

III. Discussion

Pursuant to article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the increased costs of state-mandated new programs or higher levels of service. For local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a successful test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law. 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.”

Government Code section 17570 provides that, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the state’s liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.

A. Proposition 42 Constitutes a Subsequent Change in Law, as Defined.

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. Pursuant to section 17570, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state.

32 Exhibit D, Controller’s Comments on Request for Redetermination, filed February 17, 2015.
36 Government Code section 17570 (Stats. 2010, ch. 719 (SB 856).
pursuant to section 17556; or (3) is another change in mandates law. This request for
redetermination is based on a change in mandates law, which includes “amendments to section 6
of article XIII B of the California Constitution.” Specifically, the request is based on
Proposition 42, which added paragraph 4 to article XIII B section 6 to add the following to the
list of exemptions from the subvention requirement:

“Legislative mandates contained in statutes within the scope of paragraph (7) of
subdivision (b) of Section 3 of Article I.”

The plain language exception to reimbursement adopted in Proposition 42 is alleged as a
subsequent change in mandates law. Further, article I, section 3(b), paragraph 7 of the California
Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings
of public officials and agencies…each local agency is hereby required to comply
with the California Public Records Act (Chapter 3.5 [commencing with Section
6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown
Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title
5 of the Government Code), and with any subsequent statutory enactment
amending either act, enacting a successor act, or amending any successor act that
contains findings demonstrating that the statutory enactment furthers the purposes
of this section.

The test claim statement of decision and parameters and guidelines for CPRA, 02-TC-10 and
02-TC-51 found reimbursable activities imposed by Government Code sections 6253, 6253.1,
6253.9, 6254.3, and 6255. Chapter 3.5, Division 7 of Title 1 of the Government Code includes
sections 6250 through 6270.

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,”
as defined in Government Code section 17570, since it amends article XIII B section 6, the
Constitutional provision from whence the subvention requirement stems. Article XIII B, section
6(a) paragraph 4 in turn references another constitutional provision, article I, section 3(b),
paragraph 7, which requires local government to comply with the “California Public Records Act
(Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code).
. . .” and any subsequent amendments thereto or reenactments thereof.

B. Proposition 42 Creates a Valid Exception to the Reimbursement Requirement of
Article XIII B, Section 6.

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section
3(b) to the California Constitution, requiring local agencies to comply with the California Public
Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the
Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950]
of Part 1 of Division 2 of Title 5 of the Government Code).

37 Government Code section 17570(a)(1).
Moreover, Proposition 42 amended section 6(a) of article XIII B of the California Constitution, by adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for… legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of section 3 of article I."

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7. Therefore, the plain language of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4, enacted by Proposition 42, directly implicates these sections of the Government Code and therefore cannot be a reimbursable state mandate.

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional. Here, the subsequent enactment is in fact an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 6250-6255.

Based on the foregoing, the Commission finds that the state’s liability for the test claim statutes has been modified based on a subsequent change in law, and a new test claim decision is required.


Government Code section 17570 provides that a redetermination request “shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.” This redetermination request was filed on January 21, 2015, establishing potential eligibility beginning July 1, 2013. However, the subsequent change in law identified was adopted on June 3, 2014, and became effective the following day. Therefore, the CPRA program no longer constitutes a reimbursable state-mandated program beginning June 4, 2014.

IV. Conclusion

Based on the foregoing, the Commission approves the request for redetermination and concludes that the CPRA program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning June 4, 2014.

38 California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).
40 California Constitution, article II, section 10.
DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 29, 2015, I served the:

Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing
Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 May 29, 2015 at Sacramento, California.

[Signature]

Imran Majid
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/27/15
Claim Number: 14-MR-02

Matter: California Public Records Act (02-TC-10 and 02-TC-51)
Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

Paul Abelson, Finance Director, City of Oakley
Finance Department, 3231 Main Street, Oakley, CA 94561
Phone: (925) 625-7010
abelson@ci.oakley.ca.us

John Adams, Finance Director, City of Thousand Oaks
Finance Department, 2100 Thousand Oaks Blvd., Thousand Oaks, CA 91362
Phone: (805) 449-2200
jadams@toaks.org

Joe Aguilar, Finance Director, City of Live Oak
Finance, 9955 Live Oak Blvd, Live Oak, CA 95953
Phone: (530) 695-2112
jaguilar@liveoakcity.org

Ron Ahlers, Finance Director / City Treasurer, City of Moorpark
Finance Department, 799 Moorpark Ave., Moorpark, CA 93021
Phone: (805) 517-6249
RAhlers@MoorparkCA.gov

Douglas Alessio, Administrative Services Director, City of Livermore
Finance Department, 1052 South Livermore Avenue, Livermore, CA 94550
Phone: (925) 960-4300
finance@cityoflivermore.net

Amber Alexander, Department of Finance
915 L Street, Sacramento, Ca
Phone: (916) 445-0328
Amber.Alexander@dof.ca.gov

**Roberta Allen, County of Plumas**
520 Main Street, Room 205, Quincy, CA 95971
Phone: (530) 283-6246
robertaallen@countyofplumas.com

**Tiffany Allen**, Treasury Manager, **City of Chula Vista**
Finance Department, 276 Fourth Avenue, Chula Vista, CA 91910
Phone: (619) 691-5250
tallen@chulavistaca.gov

**Mark Alvarado, City of Monrovia**
415 S. Ivy Avenue, Monrovia, CA 91016
Phone: N/A
malvarado@ci.monrovia.ca.us

**LeRoy Anderson, County of Tehama**
444 Oak Street, Room J, Red Bluff, CA 96080
Phone: (530) 527-3474
landerson@tehama.net

**Paul Angulo, Auditor-Controller, County of Riverside**
4080 Lemon Street, 11th Floor, Riverside, CA 92501
Phone: (951) 955-3800
pangulo@co.riverside.ca.us

**Socorro Aquino, State Controller's Office**
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

**Debra Auker, Administrative Services Director, City of Emeryville**
Administrative Services, 1333 Park Ave, Emeryville, CA 94608
Phone: (510) 596-4300
finance@ci.emeryville.ca.us

**Lisa Bailey, City of San Marino**
2200 Huntington Dr., San Marino, CA 91108
Phone: N/A
lbailey@cityofsanmarino.org

**Harmeeet Barkschat, Mandate Resource Services, LLC**
5325 Elkhorn Blvd. #307, Sacramento, CA 95842
Phone: (916) 727-1350
harmeeet@calsdrc.com

**Mary Barnhart, Interim Chief Fiscal Officer, City of Gardena**
Department of Finance, 1700 West 162nd Street, Gardena, CA 90247
Phone: (310) 217-9516
mbarnhart@ci.gardena.ca.us

**Robert Barron III, Finance Director, City of Atherton**
Finance Department, 91 Ashfield Rd, Atherton, CA 94027
Phone: (650) 752-0552
rbarron@ci.atherton.ca.us

**Timothy Barry**, County of San Diego
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101-2469
Phone: (619) 531-6259
timothy.barry@sdcounty.ca.gov

**David Batt**, Finance Director, City of South Pasadena
Finance Department, 1414 Mission Street, South Pasadena, CA 91030
Phone: (626) 403-7250
dbatt@southpasadenaca.gov

**David Baum**, Finance Director, City of San Leandro
835 East 14th St., San Leandro, CA 94577
Phone: (510) 577-3376
dbaum@sanleandro.org

**Deborah Bautista**, County of Tuolumne
2 South Green St., Sonora, CA 95370
Phone: (209) 533-5551
dbautista@co.tuolumne.ca.us

**Lacey Baysinger**, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
lbaysinger@sco.ca.gov

**Mary Bedard**, County of Kern
1115 Truxtun Avenue, 2nd Floor, Bakersfield, CA 93301
Phone: (805) 868-3599
bedardm@co.kern.ca.us

**John Beiers**, County of San Mateo
Office of the County Counsel, 400 County Center, Redwood City, CA 94063
Phone: (650) 363-4775
jbeiers@smcgov.org

**Maria Bemis**, City of Porterville
291 North Main Street, Porterville, CA 93257
Phone: N/A
mbemis@ci.porterville.ca.us

**Paul Benoit**, City Administrator, City of Piedmont
120 Vista Avenue, Piedmont, CA 94611
Phone: (510) 420-3042
pbenoit@ci.piedmont.ca.us

**Richard Benson**, Assessor - Recorder - County Clerk, County of Marin
3501 Civic Center Drive, Room 208, San Rafael, CA 94903
Phone: (415) 499-7215
rbenson@co.marin.ca.us

**Robin Bertagna**, City of Yuba City
1201 Civic Center Blvd, Yuba City, CA 95993
Phone: N/A
rbertagn@yubacity.net

Angela Bickle, Interim Auditor-Controller, County of Trinity
11 Court Street, P.O. Box 1230, Weaverville, CA 96093
Phone: (530) 623-1317
abickle@trinitycounty.org

Heidi Bigall, Director of Admin Services, City of Tiburon
Administration, 1505 Tiburon Blvd., Tiburon, CA 94920
Phone: (415) 435-7373
hbigall@townoftiburon.org

Teresa Binkley, Director of Finance, City of Taft
Finance Department, 209 E. Kern St., Taft, CA 93268
Phone: (661) 763-1350
tbinkley@cityoftaft.org

Barbara Bishop, Finance Manager, City of San Dimas
Finance Division, 245 East Bonita Avenue, San Dimas, CA 91773
Phone: (909) 394-6220
administration@ci.san-dimas.ca.us

Dalacie Blankenship, Finance Manager, City of Jackson
Administration / Finance, 33 Broadway, Sacramento, CA 95818
Phone: (209) 223-1646
dblankenship@ci.jackson.ca.us

Rene Bobadilla, City Manager, City of Pico Rivera
Administration, 6615 Passons Boulevard, Pico Rivera, CA 90660
Phone: (562) 801-4379
rbobadilla@pico-rivera.org

Chris Bonvenuto, Santa Monica Community College District
1900 Pico Blvd., Santa Monica, CA 90405-1628
Phone: (310) 434-4201
Bonvenuto_chris@smc.edu

Emily Boyd, Finance Director, City of Crescent City
Finance Department, 377 J Street, Crescent City, CA 95531
Phone: (707) 464-7483
eboyd@crescentcity.org

Karen Bradley, City of Fresno
2600 Fresno St. Rm. 2157, Fresno, CA 93721
Phone: N/A
karen.bradley@fresno.gov

Diane Brady, California Community Colleges
 Chancellor's Office, 1102 Q Street, 1102 Q Street, Sacramento, CA 95814-6511
Phone: (916) 324-2564
dbrady@cccco.edu

Danielle Brandon, Budget Analyst, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Danielle Brandon, City Manager, City of Cupertino
10300 Torre Avenue, Cupertino, CA 95014-3202
Phone: 408.777.3212
manager@cupertino.org

Rob Braulik, Town Manager, City of Ross
P.O. Box 320, Ross, CA 94957
Phone: (415) 453-1453
rbraulik@townofross.org

Robert Bravo, Finance Director, City of Port Hueneme
Finance Department, 250 N. Ventura Road, Port Hueneme, CA 93041
Phone: (805) 986-6524
rbravo@cityofporthueneme.org

John Brewer, Finance Director, City of Corning
Finance Department, 794 Third Street, Corning, CA 96021
Phone: (530) 824-7033
jbrewer@corning.org

Daryl Brock, Finance Director, City of Orland
Finance Department, P.O. Box 547, Orland, CA 95963
Phone: (530) 865-1602
dbrock@cityoforland.com

Dawn Brooks, City of Fontana
8353 Sierra Way, Fontana, CA 92335
Phone: N/A
dbrooks@fontana.org

Mike Brown, School Innovations & Advocacy
5200 Golden Foothill Parkway, El Dorado Hills, CA 95762
Phone: (916) 669-5116
mikeb@sia-us.com

Ken Brown, Acting Director of Administrative Services, City of Irvine
One Civic Center Plaza, Irvine, CA 92606
Phone: (949) 724-6255
Kbrown@cityofirvine.org

Daniel Buffalo, Finance Director, City of Lakeport
Finance Department, 225 Park Street, Lakeport, CA 95453
Phone: (707) 263-5615
dbuffalo@cityoflakeport.com

Christa Buhagiar, Finance Director, City of West Covina
Finance and Administrative Services, 1444 West Garvey Avenue South, West Covina, CA 91790
Phone: (626) 939-8463
Christina.Buhagiar@westcovina.org

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
J. Bradley Burgess, MGT of America
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Burgess@mgtamer.com

Jeff Burgh, County of Ventura
County Auditor's Office, 800 S. Victoria Avenue, Ventura, CA 93009-1540
Phone: (805) 654-3152
jburg@mngtamer.com

Vanessa Burke, Chief Financial Officer, City of Stockton
425 N. El Dorado St., Stockton, CA 95202
Phone: (209) 937-8460
vanessa.burke@stockton.gov

Rob Burns, City of Chino
13220 Central Avenue, Chino, CA 91710
Phone: N/A
rburns@cityofchino.org

Regan M Cadelario, City Manager, City of Fortuna
Finance Department, 621 11th Street, Fortuna, CA 95540
Phone: (707) 725-1409
rc@ci.fortuna.ca.us

David Cain, Director of Finance, City of Fountain Valley
10200 Slater Ave, Fountain Valley, CA 92646
Phone: N/A
david.cain@fountinvalley.org

Rebecca Callen, County of Calaveras
891 Mountain Ranch Road, San Andreas, CA 95249
Phone: (209) 754-6343
rcallen@co.calaveras.ca.us

Ronnie Campbell, Finance Director, City of Camarillo
Finance Department, 601 Carmen Drive, Camarillo, CA 93010
Phone: (805) 388-5320
rcampbell@ci.camarillo.ca.us

Robert Campbell, County of Contra Costa
625 Court Street, Room 103, Martinez, CA 94553
Phone: (925) 646-2181
bobcampbell@ac.cccounty.us

Joy Canfield, City of Murrieta
1 Town Square, Murrieta, CA 92562
Phone: N/A
jcanfield@murrieta.org

Lisa Cardella-Presto, County of Merced
2222 M Street, Merced, CA 95340
Phone: (209) 385-7511
LCardella-presto@co.merced.ca.us

**Gwendolyn Carlos, State Controller's Office**
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

**Rebecca Carr, County of Kings**
1400 West Lacey Blvd, Hanford, CA 93230
Phone: (559) 582-1236
becky.carr@co.kings.ca.us

**Daria Carrillo, Finance & Administrative Director, City of San Anselmo**
Administration & Finance, 525 San Anselmo Ave., San Anselmo, CA 94960
Phone: (415) 258-4678
dcarrillo@townofsananselmo.org

**Roger Carroll, Finance Director/Treasurer, Town of Loomis**
Finance Department, 3665 Taylor Road, Loomis, CA 95650
Phone: (916) 652-1840
rcarroll@loomis.ca.gov

**Susan Casey, City of American Canyon**
4381 Broadway, Suite 201, American Canyon, CA 94503
Phone: (707) 647-4360
scasey@cityofamericanca.org

**Jack Castro, Director of Finance, City of Huron**
Finance Department, 36311 Lassen Avenue, PO Box 339, Huron, CA 93234
Phone: (559) 945-3020
findir@cityofhuron.com

**Karen Chang, Interim Finance Director, City of Pittsburg**
Finance Department, 65 Civic Avenue, Pittsburg, CA 94565-3814
Phone: (925) 252-4872
kchang@ci.pittsburg.ca.us

**Rolando Charvel, City Comptroller, City of San Diego**
202 C Street, MS-6A, San Diego, CA 92101
Phone: (619) 236-6060
comptroller@sandiego.gov

**Lin-Lin Cheng, City of Foster City**
610 Foster City Blvd, Foster City, CA 94404
Phone: N/A
lcheng@fostercity.org

**Erick Cheung, Director of Finance/Human Resources, City of Piedmont**
120 Vista Avenue, Piedmont, CA 94611
Phone: (510) 420-3040
echeung@ci.piedmont.ca.us

**Annette Chinn, Cost Recovery Systems, Inc.**
705-2 East Bidwell Street, #294, Folsom, CA 95630
Lawrence Chiu, Director of Finance & Administrative Services, City of Daly City
Finance and Administrative Services, 333 90th Street, Daly City, CA 94015
Phone: (650) 991-8049
lchiu@dalycity.org

Doug Chotkevys, City Manager, City of Dana Point
Finance Department, 33282 Golden Lantern, Dana Point, CA 92629
Phone: (949) 248-3513
dchotkevys@danapoint.org

Carmen Chu, Assessor-Recorder, City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, City Hall, Room 190, San Francisco, CA 94102-4698
Phone: (415) 554-5596
assessor@sfgov.org

Hannah Chung, Finance Director, City of Tehachapi
Finance Department, 115 S. Robinson St., Tehachapi, CA 93561
Phone: (661) 822-2200
hchung@tehachapicityhall.com

David Cichella, California School Management Group
3130-C Inland Empire Blvd., Ontario, CA 91764
Phone: (209) 834-0556
dcichella@csmcentral.com

Geoffrey Cobbett, Treasurer, City of Covina
Finance Department, 125 E. College Street, Covina, CA 91723
Phone: (626) 384-5506
gcobbett@covinaca.gov

Brian Cochran, Finance Manager, City of Novato
75 Rowland Way #200, Novato, CA 94945
Phone: (415) 899-8912
bcochran@novato.org

Russell Cochran Branson, City of Roseville
311 Vemnon Street, Roseville, CA 95678-2649
Phone: N/A
rbbranson@roseville.ca.us

Dennis Coleman, Finance Director/Treasurer, City of Solana Beach
Finance Department, City Hall 635 S. HWY 101, Solana Beach, CA 92075
Phone: (858) 720-2431
finance@cosb.org

Shannon Collins, Finance Manager, City of El Cerrito
10890 San Pablo Avenue, El Cerrito, CA 94530-2392
Phone: N/A
scollins@ci.el-cerrito.ca.us

Harriet Commons, City of Fremont
P.O. Box 5006, Fremont, CA 94537
Stephen Conway, City of Los Gatos
110 E. Main Street, Los Gatos, CA 95031
Phone: N/A
sconway@losgatosca.gov

Julia Cooper, City of San Jose
Finance, 200 East Santa Clara Street, San Jose, CA 95113
Phone: (408) 535-7000
Finance@sanjoseca.gov

Viki Copeland, City of Hermosa Beach
1315 Valley Drive, Hermosa Beach, CA 90254
Phone: N/A
vcopeland@hermosabch.org

Drew Corbett, Finance Director, City of Menlo Park
Finance Department, 701 Laurel St, Menlo Park, CA 94025
Phone: (650) 330-6640
dcorbett@menlopark.org

Lis Cottrell, Finance Director, City of Anderson
Finance Department, 1887 Howard Street, Anderson, CA 96007
Phone: (530) 378-6626
lcottrell@ci.anderson.ca.us

Jeremy Craig, Finance Director, City of Vacaville
Finance Department, 650 Merchant Street, Vacaville, CA 95688
Phone: (707) 449-5128
jkcraig@cityofvacaville.com

Vicki Crow, Auditor-Controller/Treasurer-Tax Collector, County of Fresno
2281 Tulare Street, Room 105, Fresno, CA 93721
Phone: (559) 600-3487
vcrow@co.fresno.ca.us

Deborah Cullen, City of El Segundo
350 Main Street, El Segundo, CA 90245-3813
Phone: N/A
dcullen@elsegundo.org

David Culver, City of San Mateo
330 West 20th Avenue, San Mateo, CA 94403-1388
Phone: (650) 522-7100
dculver@cityofsanmateo.org

Gavin Curran, City of Laguna Beach
505 Forest Avenue, Laguna Beach, CA 92651
Phone: N/A
gcurran@lagunabeachcity.net

Stefani Daniell, Finance Director, City of Citrus Hts
Finance Department, 6237 Fountain Square Dr, Citrus Heights, CA 95621
Joshua Daniels, Attorney, *California School Boards Association*
3251 Beacon Blvd, West Sacramento, CA 95691
Phone: (916) 669-3266
jdaniels@csba.org

Chuck Dantuono, Director of Administrative Services, *City of Highland*
Administrative Services, 27215 Base Line, Highland, CA 92346
Phone: (909) 864-6861
cdantuono@cityofhighland.org

Fran David, City Manager, *City of Hayward*
Finance Department, 777 B Street, Hayward, CA 94541
Phone: (510) 583-4000
citymanager@hayward-ca.gov

William Davis, *County of Mariposa*
Auditor, P.O. Box 729, Mariposa, CA 95338
Phone: (209) 966-7606
wdavis@mariposacounty.org

Daniel Dawson, City Manager, *City of Del Rey Oaks*
Finance Department, 650 Canyon Del Rey Rd, Del Rey Oaks, CA 93940
Phone: (831) 394-8511
ddawson@delreyoaks.org

Dilu DeAlwis, *City of Colton*
125 E. College Street, Covina, CA 91723
Phone: N/A
ddealwis@covinaca.gov

Suzanne Dean, Deputy Finance Director, *City of Ceres*
Finance Department, 2220 Magnolia Street, Ceres, CA 95307
Phone: (209) 538-5757
Suzanne.Dean@ci.ceres.ca.us

Gigi Decavalles-Hughes, Director of Finance, *City of Santa Monica*
Finance, 1717 4th Street, Suite 250, Santa Monica, CA 90401
Phone: (310) 458-8281
gigi.decavalles@smgov.net

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Brent Dennis, *County of Tuolumne*
1021 Harvard Way, El Dorado Hills, CA 95762
Phone: (916) 614-3237
Bdennis@edhesd.org

Leticia Dias, Accountant, *City of Ceres*
2720 Second Street, Ceres, CA 95307-3292
Phone: (209) 538-5764
leticia.dias@ci.ceres.ca.us

Tom Dibble, City of Hanford
315 North Douty Street, Hanford, CA 93230
Phone: (559) 585-2525
tdibble@ci.hanford.ca.us

Steve Diels, City Treasurer, City of Redondo Beach
City Treasurer's Department, 415 Diamond Street, Redondo Beach, CA 90277
Phone: (310) 318-0652
steven.diels@redondo.org

Richard Digre, City of Union City
34009 Alvarado-Niles Road, Union City, CA 94587
Phone: N/A
rdigre@ci.union-city.ca.us

Andra Donovan, San Diego Unified School District
Legal Services Office, 4100 Normal Street, Room 2148, , San Diego, CA 92103
Phone: (619) 725-5630
adonovan@sandi.net

Richard Doyle, City Attorney, City of San Jose
200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1900
richard.doyle@sanjoseca.gov

Randall L. Dunn, City Manager, City of Colusa
Finance Department, 425 Webster St. , Colusa, CA 95932
Phone: (530) 458-4740
citymanager@cityofcolusa.com

Cheryl Dyas, City of Mission Viejo
200 Civic Center, Mission Viejo, CA 92691
Phone: N/A
cdyas@cityofmissionviejo.org

Jennie Ebejer, County of Siskiyou
311 Fourth Street, Room 101, Yreka, CA 96097
Phone: (530) 842-8030
Jebejer@co.siskiyou.ca.us

Richard Eberle, County of Yuba
915 8th Street, Suite 105, Marysville, CA 95901
Phone: (530) 749-7810
reberle@co.yuba.ca.us

Kerry Eden, City of Corona
400 S. Vicentia Avenue. Suite 320, Corona, CA 92882
Phone: (951) 817-5740
kerry.eden@ci.corona.ca.us

Scott Edwards, City of Poway
PO Box 789, Poway, CA 92074
Pamela Ehler, City of Brentwood
150 City Park Way, Brentwood, CA 94513
Phone: N/A
pehler@brentwoodca.gov

Bob Elliot, City of Glendale
141 North Glendale Ave, Ste. 346, Glendale, CA 91206-4998
Phone: N/A
belliot@ci.glendale.ca.us

Edwin Eng, State Center Community College District
1525 East Weldon Avenue, Fresno, CA 93704-6398
Phone: (559) 244-5910
ed.eng@scccd.edu

Kelly Ent, Director of Admin Services, City of Big Bear Lake
Finance Department, 39707 Big Bear Blvd, Big Bear Lake, CA 92315
Phone: (909) 866-5831
kent@citybigbearlake.com

Tina Envia, Finance Manager, City of Waterford
Finance Department, 101 E Street, Waterford, CA 95386
Phone: (209) 874-2328
finance@cityofwaterford.org

James Erb, County of San Luis Obispo
1055 Monterey Street, Room D222, San Luis Obispo, CA 93408
Phone: (805) 781-5040
jerb@co.slo.ca.us

Vic Erganian, Deputy Finance Director, City of Pasadena
Finance Department, 100 N. Garfield Ave, Room S348, Pasadena, CA 91109-7215
Phone: (626) 744-4355
verganian@ci.pasadena.net

Eric Erickson, Director of Finance and Human Resources, City of Mill Valley
Department of Finance and Human Resources, 26 Corte Madera Avenue, Mill Valley, CA 94941
Phone: (415) 388-4033
finance@cityofmillvalley.org

Steve Erlandson, Finance Director/City Treasurer, City of Laguna Niguel
Finance Director/City Treasurer, 30111 Crown Valley Parkway, Laguna Niguel, CA 92677
Phone: (949) 362-4300
serlandson@cityoflagunaniguel.org

Gary Ernst, City Treasurer, City of Oceanside
City Treasurer, 300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3553
gernst@ci.oceanside.ca.us

Jennifer Erwin, Assistant Finance Director, City of Perris
Finance Department, 101 N. D Street, Perris, CA 92570
Phone: (951) 943-4610
jerwin@cityofperris.org

Paul Espinoza, City of Alhambra
111 South First Street, Alhambra, CA 91801
Phone: N/A
pEspinoza@cityofalhambra.org

Lori Ann Farrell, Finance Director, City of Huntington Beach
2000 Main St., Huntington Beach, CA 92648
Phone: (714) 536-5630
loriann.farrell@surfcity-hb.org

Sandra Featherson, Administrative Services Director, City of Solvang
Finance, 1644 Oak Street, Solvang, CA 93463
Phone: (805) 688-5575
sandraf@cityofsolvang.com

Donna Ferebee, Department of Finance
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Chris Ferguson, Department of Finance
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Ferguson@dof.ca.gov

Matthew Fertal, City Manager, City of Garden Grove
Finance Department, 11222 Acacia Parkway, Garden Grove, CA 92840
Phone: (714) 741-5000
CityManager@ci.garden-grove.ca.us

Jimmy Forbis, Finance Director, City of Monterey
Finance Department, 735 Pacific Street, Suite A, Monterey, CA 93940
Phone: (831) 646-3940
forbis@monterey.org

Karen Fouch, County of Lassen
221 S. Roop Street, Ste 1, Susanville, CA 96130
Phone: (530) 251-8233
kfouch@co.lassen.ca.us

James Francis, City of Folsom
50 Natoma Street, Folsom, CA 95630
Phone: N/A
jfrancis@folsom.ca.us

Charles Francis, Administrative Services Director/Treasurer, City of Sausalito
Finance, 420 Litho Street, Sausalito, CA 94965
Phone: (415) 289-4105
cfrancis@ci.sausalito.ca.us
Eric Frost, Deputy City Manager, City of Visalia
707 West Acequia, Visalia, CA 93291
Phone: (559) 713-4474
efrost@ci.visalia.ca.us

Harold Fujita, City of Los Angeles
Department of Recreation and Parks, 211 N. Figueroa Street, 7th Floor, Los Angeles, CA 90012
Phone: (213) 202-3222
harold.fujita@lacity.org

Mary Furey, City of Saratoga
13777 Fruitvale Avenue, Saratoga, CA 95070
Phone: N/A
mfurey@saratoga.ca.us

Carolyn Galloway-Cooper, Finance Director, City of Buellton
Finance Department, 107 West Highway 246, Buellton, CA 93427
Phone: (805) 688-5177
carolync@cityofbuellton.com

Robert Galvan, Director of Administrative Services, City of Hollister
Administrative Services, 375 Fifth Street, Hollister, CA 95023
Phone: (831) 636-4300
robert.galvan@hollister.ca.gov

Jason Garben, Financial Services Manager, City of Suisun City
Administrative Services, 701 Civic Center Blvd., Suisun City, CA 94585
Phone: (707) 421-7320
jgarben@suisun.com

Rebecca Garcia, City of San Bernardino
300 North, San Bernardino, CA 92418-0001
Phone: (909) 384-7272
garcia_re@sbcity.org

Henry Garcia, Interim Finance Director, City of Cudahy
Finance Department, 5220 Santa Ana Street, Cudahy, CA 90201
Phone: (323) 733-5143
hgarcia@cityofcudahyca.gov

Marisela Garcia, Finance Director, City of Riverbank
Finance Department, 6707 Third Street, Riverbank, CA 95367
Phone: (209) 863-7109
mhgarcia@riverbank.org

Jeffry Gardner, City Manager & Finance Director, City of Plymouth
P.O. Box 429, Plymouth, CA 95669
Phone: (209) 245-6941
jgardner@ci.plymouth.ca.us

George Gascon, District Attorney, City and County of San Francisco
850 Bryant Street, Room 322, San Francisco, CA 94103
Phone: (415) 553-1751
robyn.burke@sfgov.org

**Susan Geanacou, Department of Finance**  
915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-3274  
susan.geanacou@dof.ca.gov

**Robert Geis, County of Santa Barbara**  
Auditor-Controller, 105 E Anapamu St, Room 303, Santa Barbara, CA 93101  
Phone: (805) 568-2100  
geis@co.santa-barbara.ca.us

**Gloriette Genereux, Finance Director, City of Modesto**  
Finance Department, 1010 10th Street, P.O. Box 642 Modesto, CA 95353, Modesto, CA 95354  
Phone: (209) 577-5371  
ggenereux@modestogov.com

**Laura S. Gill, City Manager, City of Elk Grove**  
Finance Department, 8401 Laguna Palms Way, Elk Grove, CA 95758  
Phone: (916) 478-2201  
lgill@elkgrovecity.org

**Jeri Gilley, Finance Director, City of Turlock**  
156 S. Broadway, Ste 230, Turlock, CA 95380  
Phone: (209) 668-5570  
jgilley@turlock.ca.us

**Cindy Giraldo, City of Burbank**  
301 E. Olive Avenue, Financial Services Department, Burbank, CA 91502  
Phone: N/A  
cgiraldo@ci.burbank.ca.us

**James Goins, City of Richmond**  
1401 Marina Way South, P.O. Box 4046, Richmond, CA 94804  
Phone: N/A  
james_goins@ci.richmond.ca.us

**Paul Golaszewski, Legislative Analyst's Office**  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8341  
Paul.Golaszewski@lao.ca.gov

**Donna Goldsmith, Finance Manager, City of Santee**  
Finance Department, 10601 Magnolia Avenue, Building #3, Santee, CA 92071  
Phone: (619) 258-4100  
dgoldsmith@ci.santee.ca.us

**Jesus Gomez, City Manager, City of El Monte**  
Finance Department, 11333 Valley Blvd, El Monte, CA 91731-3293  
Phone: (626) 580-2001  
citymanager@elmonteca.gov

**Jose Gomez, Director of Finance and Administrative Services, City of Santa Fe Springs**  
Finance and Administrative Services, 11710 E. Telegraph Road, Santa Fe Springs, CA 90670
Phone: (562) 868-0511
josegomez@santafesprings.org

**Vivian Gong, City of Dublin**
100 Civic Plaza, Dublin, CA 94568
Phone: N/A
vivian.gong@ci.dublin.ca.us

**Joe Gonzalez, County of San Benito**
440 Fifth Street Room 206, Hollister, CA 95023
Phone: (831) 636-4090
jgonzalez@auditor.co san-benito.ca.us

**Adela Gonzalez, City Manager, City of Soledad**
248 Main St., PO Box 156, Soledad, CA 93960
Phone: (831) 223-5014
adelag@cityofsoledad.com

**Mike Goodson, City Manager, City of Hawthorne**
Finance Department, 4455 W. 126th Street, Hawthorne, CA 90250
Phone: (310) 349-2901
mgoodson@hawthorneCA.gov

**Jim Goodwin, City Manager, City of Live Oak**
9955 Live Oak Blvd., Live Oak, CA 95953
Phone: (530) 695-2112
liveoak@liveoakcity.org

**Craig Graves, Finance Director, City of Baldwin Park**
14403 East Pacific Avenue, Baldwin Park, CA 91706
Phone: N/A
cgraves@baldwinpark.com

**Michelle Green, Admin Service Director, City of Banning**
Administrative Services, 99 E. Ramsey St., Banning, CA 92220
Phone: (951) 922-3105
mgreen@ci.banning.ca.us

**Michelle Greene, City Manager, City of Goleta**
130 Cremo Drive, Suite B, Goleta, CA 93117
Phone: (805) 961-7500
mgreene@cityofgoleta.org

**Nancy Greenhalgh, Accounting Specialist, City of Canyon Lake**
Finance Department, 31516 Railroad Canyon Rd, Canyon Lake, CA 92587
Phone: (951) 244-2955
ngreenhalgh@cityofcanyonlake.com

**Jan Grimes, County of Orange**
P.O. Box 567, Santa Ana, CA 92702
Phone: (714) 834-2459
jan.grimes@ac.ocgov.com

**John Gross, City of Long Beach**
333 W. Ocean Blvd., 6th Floor, Long Beach, CA 90802
Shelly Gunby, Director of Financial Management, City of Winters
Finance, 318 First Street, Winters, CA 95694
Phone: (530) 795-4910
shelly.gunby@cityofwinters.org

Francisco Gutierrez, Finance Director, City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Phone: (714) 647-5400
fgutierrez@santa-ana.org

Thomas J. Haglund, City Administrator, City of Gilroy
Finance Department, 7351 Rosanna Street, Gilroy, CA 95020
Phone: (408) 846-0202
Tom.Haglund@ci.gilroy.ca.us

Amanda Hall, City of Lynwood
11330 Bullis Road, Lynwood, CA 90262
Phone: (310) 603-0220
ahall@lynwood.ca.us

Ed Hanson, Department of Finance
Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
ed.hanson@dof.ca.gov

Anne Haraksin, City of La Mirada
13700 La Mirada Blvd., La Mirada, CA 90638
Phone: N/A
aharaksin@cityoflamirada.org

Joe Harn, County of El Dorado
360 Fair Lane, Placerville, CA 95667
Phone: (530) 621-5633
joe.ham@edcgov.us

George Harris, City of Rialto
150 South Palm ave., Rialto, CA 92376
Phone: N/A
gharris@rialto.ca.gov

Emily Harrison, Interim Finance Director, County of Santa Clara
70 West Hedding Street, San Jose, CA 95110
Phone: (408) 299-5205
emily.harrison@ceo.sccgov.org

Jenny Haruyama, Director of Finance & Administrative Services, City of Tracy
Finance Department, 333 Civic Center Plaza, Tracy, CA 95376
Phone: (209) 831-6800
financedept@ci.tracy.ca.us

Jone Hayes, Administrative Services Director, City of Healdsburg
Administrative Services , 401 Grove Street, Healdsburg, CA 95448
Jim Heller, City Treasurer, City of Atwater
Finance Department, 750 Bellevue Rd, Atwater, CA 95301
Phone: (209) 357-6310
finance@atwater.org

Jennifer Hennessy, City of Temecula
41000 Main St., Temecula, CA 92590
Phone: N/A
Jennifer.Hennessy@cityoftemecula.org

Darren Hernandez, City of Santa Clarita
23920 Valencia Blvd., Suite 295, Santa Clarita, CA 91355
Phone: N/A
dhernandez@santa-clarita.com

John Herrera, Interim Finance Director, City of Goleta
Finance Department, 130 Cremona Drive, Suite B, Goleta, CA 93117
Phone: (805) 961-7500
Jherrera@cityofgoleta.org

John Herrera, City Attorney, City and County of San Francisco
Office of the City Attorney, 1 Dr. Carton B. Goodlett Place, Rm. 234, San Francisco, CA 94102
Phone: (415) 554-4700
brittany.feitelberg@sfgov.org

Robert Hicks, City of Berkeley
2180 Milvia Street, Berkeley, CA 94704
Phone: N/A
finance@ci.berkeley.ca.us

Rod Hill, City of Whittier
13230 Penn Street, Whittier, CA 90602
Phone: N/A
rhill@cityofwhittier.org

Wally Hill, City Manager, City of Hemet
Finance Department, 445 E. Florida Ave, Hemet, CA 92543
Phone: (951) 765-2301
kaguilar@cityofhemet.org

Lorenzo Hines Jr., Assistant City Manager, City of Pacifica
170 Santa Maria Avenue, Pacifica, CA 94044
Phone: (650) 738-7409
lhines@ci.pacifica.ca.us

Daphne Hodgson, City of Seaside
440 Harcourt Avenue, Seaside, CA 93955
Phone: N/A
dhodgson@ci.seaside.ca.us

S. Rhetta Hogan, Finance Director, City of Yreka
Finance Department, 701 Fourth Street, Yreka, CA 96097
Phone: (530) 841-2386
rhetta@ci.yreka.ca.us

Linda Hollinsworth, Finance Director/Treasurer, City of Hawaiian Gardens
21815 Pioneer Blvd, Hawaiian Gardens, CA 90716
Phone: (562) 420-2641
lindah@hgcity.org

Victoria Holthaus, Finance Officer, City of Clearlake
Finance Department, 7684 1st Avenue, Clear Lake, CA 55319
Phone: (320) 743-3111
administrator@clearlake.ca.us

Dorothy Holzem, California Special Districts Association
1112 I Street, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dorothyh@csda.net

David Houser, County of Butte
25 County Center Drive, Suite 120, Oroville, CA 95965
Phone: (530) 538-7607
dhouser@buttecounty.net

Justyn Howard, Program Budget Manager, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Shannon Huang, City of Arcadia
240 West Huntington Drive, Arcadia, CA 91007
Phone: N/A
shuang@ci.arcadia.ca.us

Elizabeth Hudson, City of Danville
510 La Gonda Way, Danville, CA 94526
Phone: N/A
ehudson@danville.ca.gov

Jamie Hughson, Finance Director/City Treasurer, City of Clovis
1033 Fifth St., Clovis, CA 93611
Phone: (559) 324-2130
jamieh@ci.clovis.ca.us

Lewis Humphries, Finance Director, City of Newman
Finance Department, 938 Fresno Street, Newman, CA 95360
Phone: (209) 862-3725
lhumphries@cityofnewman.com

Mark Ibele, Senate Budget & Fiscal Review Committee
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Cheryl Ide, Associate Finance Budget Analyst, Department of Finance
Education Systems Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Cheryl.ide@dof.ca.gov

Julia James, City of Fullerton
303 W. Commonwealth Ave., Fullerton, CA 92832
Phone: N/A
juliaj@ci.fullerton.ca.us

Dennis Jaw, Senior Accountant, City of Huntington Beach
2000 Main Street, Huntington Beach, CA 92648
Phone: N/A
dennis.jaw@surfcity-hb.org

Edward Jewik, County of Los Angeles
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Scott Johnson, Assistant City Manager, City of Oakland
1 Frank H. Ogawa Plaza, Oakland, CA 94612
Phone: N/A
sjohnson@oaklandnet.com

Rochelle Johnson, Acting Accounting Manager, City of Wildomar
Finance Department, 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595
Phone: (951) 677-7751
rjohnson@cityofwildomar.org

Onyx Jones, Interim Finance Director, City of Adelanto
Finance Department, 11600 Air Expressway, Adelanto, CA 92301
Phone: (760) 246-2300
ojones@ci.adelanto.ca.us

Susan Jones, Finance Manager, City of Pismo Beach
Finance, 760 Mattie Road, Pismo Beach, CA 93449
Phone: (805) 773-7012
swjones@pismobeach.org

Toni Jones, Finance Director, City of Kerman
Finance Department, 850 S. Madera Avenue, Kerman, CA 93630
Phone: (559) 846-4682
tjones@cityofkerman.org

Ferlyn Junio, Nimbus Consulting Group, LLC
2386 Fair Oaks Boulevard, Suite 104, Sacramento, CA 95825
Phone: (916) 480-9444
fjunio@nimbusconsultinggroup.com

Kim Juran, Finance Director, City of San Bruno
Finance Department, 567 El Camino Real, San Bruno, CA 94066
Phone: (650) 616-7080
Finance-Web@sanbruno.ca.gov

Will Kaholokula, City of Bell Gardens
7100 S. Garfield Avenue, Bell Gardens, CA 90201
Phone: (562) 806-7700
wkaholokula@bellgardens.org

Harshil Kanakia, County of San Mateo
Controller's Office, 555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1080
hkanakia@smegov.org

Jill Kanemasu, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Emma Karlen, Finance Director, City of Milpitas
Finance Department, 455 East Calaveras Boulevard, Milpitas, CA 95035
Phone: (408) 586-3145
ekarlen@ci.milpitas.ca.gov

Naomi Kelly, City Administrator, City and County of San Francisco
City Hall, Room 362, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
Phone: (415) 554-4851
city.administrator@sfgov.org

Anita Kerezsi, AK & Company
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Nancy Kerry, City of South Lake Tahoe
1901 Airport Road, South Lake Tahoe, CA 96150
Phone: N/A
nkerry@cityofslt.us

Geoffrey Kiehl, Director of Finance and Treasurer, City of Palm Springs
Finance & Treasury, 3200 E. Tahquitz Canyon Way, P.O. Box 2743, Palm Springs, CA 92262
Phone: (760) 323-8229
Geoffrey.Kiehl@palmspringsca.gov

Lauren Klein, County of Stanislaus
1010 Tenth Street, Suite 5100, Modesto, CA 95353
Phone: (209) 525-6398
kleinl@stancounty.com

Will Kolbow, Finance Director, City of Orange
300 E. Chapman Avenue, Orange, CA 92866-1508
Phone: (714) 744-2234
WKolbow@cityoforange.org

Patty Kong, City of Mountain View
P.O. Box 7540, Mountain View, CA 94039-7540
Phone: N/A
patty.kong@mountainview.gov
Cathy Krysyna, Assistant Finance Officer, City of Pacific Grove
Finance Department, 300 Forest Ave., Pacific Grove, CA 93950
Phone: (831) 648-3102
ckrysyna@ci.pg.ca.us

Jennifer Kuhn, Deputy, Legislative Analyst's Office
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8332
Jennifer.kuhn@lao.ca.gov

Tina Kundig, City of Redlands
P.O. Box 3005, Redlands, CA 92373
Phone: N/A
tkundig@cityofredlands.org

Ana Kwong, City of Rohnert Park
Finance, P.O. Box 1489, Rohnert Park, CA 94928
Phone: (707) 585-6722
akwong@rpcity.org

Lauren Lai, Finance Director, City of Marina
Finance Department, 211 Hillcrest Ave, Marina, CA 93933
Phone: (831) 884-1274
llai@ci.marina.ca.us

Jay Lal, State Controller's Office (B-08)
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Karina Lam, City of Paramount
16400 Colorado Avenue, Paramount, CA 90723
Phone: N/A
klam@paramountcity.com

Judy Lancaster, City of Chino Hills
14000 City Center Drive, Chino Hills, CA 91709
Phone: N/A
jlancaster@chinohills.org

Ramon Lara, City Administrator, City of Woodlake
350 N. Valencia Blvd., Woodlake, CA 93286
Phone: (559) 564-8055
rlara@ci.woodlake.ca.us

Israel Lara Jr., City Manager, City of Parlier
Administration, 1100 E. Parlier Avenue, Parlier, CA 93648
Phone: (559) 646-3545
ilara@parlier.ca.us

Nancy Lassey, Finance Administrator, City of Lake Elsinore
130 South Main Street, Lake Elsinore, CA 92530
Phone: N/A
nlassey@lake-elsinore.org
Tamara Layne, City of Rancho Cucamonga
10500 Civic Center Drive, Rancho Cucamonga, CA 91730
Phone: (909) 477-2700
Tamara.Layne@cityofrc.us

Gloria Leon, Admin Services Director, City of Calistoga
Administrative Services, 1232 Washington Street, Calistoga, CA 94515
Phone: (707) 942-2802
GLeon@ci.calistoga.ca.us

Grace Leung, City of Sunnyvale
Sunnyvale City Hall, 456 W. Olive Ave., Sunnyvale, CA 94086
Phone: (408) 730-7284
gleung@ci.sunnyvale.ca.us

Mark Lewis, City Administrator, City of Chowchilla
Finance Department, 130 S. Second Street Civic Center Plaza, Chowchilla, CA 93610
Phone: (559) 665-8615
mlewis@ci.chowchilla.ca.us

Gilbert A. Livas, City Manager, City of Downey
11111 Brookshire Ave, Downey, CA 90241
Phone: (562) 904-7284
CityManager@downeyca.org

Rudolph Livingston, Finance Director, City of Ojai
PO Box 1570, Ojai, CA 93024
Phone: N/A
livingston@ojaicity.org

Darcy Locken, County of Modoc
204 S. Court Street, Alturas, CA 96101
Phone: (530) 233-6204
darcylocken@co.modoc.ca.us

Kenneth Louie, City of Lawndale
14717 Burin Avenue, Lawndale, CA 90260
Phone: N/A
klouie@lawndalecity.org

Linda Lowry, City Manager, City of Pomona
City Manager's Office, 505 South Garey Ave., Pomona, CA 91766
Phone: (909) 620-2051
linda_lowry@ci.pomona.ca.us

Janet Luzzi, Finance Director, City of Arcata
Finance Department, 736 F Street, Arcata, CA 95521
Phone: (707) 822-5951
finance@cityofarcata.org

Gary J. Lysik, Chief Financial Officer, City of Calabasas
100 Civic Center Waya, Calabasas, CA 91302
Phone: (818) 224-1600
glysik@cityofcalabasas.com
Van Maddox, County of Sierra
211 Nevada Street, 2nd Floor, P.O. Box 425, Downieville, CA 95936
Phone: (530) 289-3273
vmaddox@sierracounty.ws

Martin Magana, City Manager/Finance Director, City of Desert Hot Springs
Finance Department, 65-950 Pierson Blvd, Desert Hot Springs, CA 92240
Phone: (760) 329-6411, Ext.
CityManager@cityofdhs.org

Susan Mahoney, City of Orinda
22 Orinda Way, Orinda, CA 94563
Phone: N/A
smahoney@cityoforinda.org

Imran Majid, Student Assistant, Commission on State Mandates
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
imran.majid@csm.ca.gov

James Makshanoff, City Manager, City of San Clemente
100 Avenida Presidio, San Clemente, CA 92672
Phone: N/A
makshanoffJ@san-clemente.org

Debbie Malicoat, Director of Admin Services, City of Arroyo Grande
Finance Department, 300 E. Branch Street, Arroyo Grande, CA 93420
Phone: (805) 473-5410
dmalicoat@arroyogrande.org

Suzanne Mallory, City of Manteca
1001 W Center Street, Manteca, CA 95337
Phone: N/A
smallory@ci.manteca.ca.us

Eddie Manfro, City of Westminster
8200 Westminster Blvd., Westminster, CA 92683
Phone: N/A
emanfro@westminster-ca.gov

Denise Manoogian, City of Cerritos
P.O. Box 3130, Cerritos, CA 90703-3130
Phone: N/A
dmanoogian@cerritos.us

Noel Marquis, City of Beverly Hills
455 N. Rexford Dr., Beverly Hills, CA 90210
Phone: N/A
nmarquis@beverlyhills.org

Terri Marsh, Finance Director, City of Signal Hill
Finance, 2175 Cherry Ave., Signal Hill, CA 90755
Phone: (562) 989-7319
Finance1@cityofsignalhill.org
Thomas Marston, City of San Gabriel  
425 South Mission Drive, San Gabriel, CA 91776  
Phone: N/A  
tmarston@sgch.org

Pio Martin, Finance Manager, City of Firebaugh  
Finance Department, 1133 P Street, Firebaugh, CA 93622  
Phone: (559) 659-2043  
financedirector@ci.firebaugh.ca.us

Brent Mason, Finance Director, City of Riverside  
Finance, 3900 Main St, Riverside, CA 92501  
Phone: (951) 826-5454  
bmason@riversideca.gov

Janice Mateo-Reyes, Finance Manager, City of Laguna Hills  
Administrative Services Department, 24035 El Toro Rd., Laguna Hills, CA 92653  
Phone: (949) 707-2623  
jreyes@ci.laguna-hills.ca.us

Hortensia Mato, City of Newport Beach  
100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3000  
hmato@newportbeachca.gov

Mike Matsumoto, City of South Gate  
8650 California Ave, South Gate, CA 90280  
Phone: N/A  
zcaltitla@pico-rivera.org

Dan Matusiewicz, City of Newport Beach  
3300 Newport Blvd, Newport Beach, CA 92663  
Phone: N/A  
danm@newportbeachca.gov

Denise Maxwell, Finance Director, City of Redding  
Finance Department, 3rd Floor City Hall, 777 Cypress Avenue, Redding, CA 96001  
Phone: (530) 225-4079  
dmaxwell@ci.redding.ca.us

Charles McBride, City of Carlsbad  
1635 Faraday Avenue, Carlsbad, CA 92008-7314  
Phone: N/A  
chuck.mcbride@carlsbadca.gov

Teresa McBroom, Finance Director/City Treasurer, City of Del Mar  
Finance Department, 1050 Camino Del Mar, Del Mar, CA 92014  
Phone: (858) 755-9313  
tmcbroome@delmar.ca.us

Kevin McCarthy, Director of Finance, City of Indian Wells  
Finance Department, 44-950 Eldorado Drive, Indian Wells, CA 92210-7497  
Phone: (760) 346-2489  
kmcCarthy@indianwells.com
Mary McCarthy, Finance Manager, *City of Pleasant Hill*
Finance Division, 100 Gregory Lane, Pleasant Hill, CA 94523
Phone: (925) 671-5231
Mmccarthy@ci.pleasant-hill.ca.us

Michelle McClelland, *County of Alpine*
P.O. Box 266, Markleeville, CA 96120
Phone: (530) 694-2284
mmclelland@alpinecountyca.gov

Sheila McCrory, Interim Finance Director / Treasurer, *City of St. Helena*
Finance, 1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2751
sheilam@cityofsthelena.org

Maureen McGoldrick, Director, *City of Simi Valley*
Department of Administrative Services, 2929 Tapo Canyon Road, Simi Valley, CA 93063
Phone: (805) 583-6700
mmcgoldrick@simivalley.org

Michael McGrane, Finance Director, *City of Imperial Beach*
Finance Department, 825 Imperial Beach Blvd., Imperial Beach, CA 91932
Phone: (619) 423-8303
mmgrane@cityofib.org

Bridgette McInally, Accounting Manager, *City of Buenaventura*
Finance and Technology, 501 Poli Street, Ventura, CA 93001
Phone: (805) 654-7812
bmcinally@ci.ventura.ca.us

Kelly McKinnis, Finance Director, *City of Weed*
Finance Department, 550 Main Street, Weed, CA 96094
Phone: (530) 938-5020
mckinnis@ci.weed.ca.us

Larry McLaughlin, City Manager, *City of Sebastopol*
7120 Bodega Avenue, P.O. Box 1776, Sebastopol, CA 95472
Phone: (707) 823-1153
lwmclaughlin@juno.com

Dennis McLean, *City of Rancho Palos Verdes*
30940 Hawthorne Blvd., Rancho Palos Verdes, CA 90275
Phone: N/A
dennism@rpv.com

Rachelle McQuiston, Finance Director, *City of Ridgecrest*
Finance Department, 100 W CALIFORNIA AVE, RIDGECREST, CA 93555
Phone: (760) 499-5020
rmcquiston@ridgecrest-ca.gov

Donald McVey, Director of Finance, *City of Daly City*
Finance Department, 333 90th Street, Daly City, CA 94015
Phone: (650) 991-8127
dmcvey@daly city.org
Paul Melikian, City of Reedley
1717 Ninth Street, Reedley, CA 93654
Phone: (559) 637-4200
paul.melikian@reedley.ca.gov

Joe Mellett, County of Humboldt
825 Fifth Street, Room 126, Eureka, CA 95501
Phone: (707) 476-2452
jmellett@co.humboldt.ca.us

Rebecca Mendenhall, City of San Carlos
600 Elm Street, P.O. Box 3009, San Carlos, CA 94070-1309
Phone: (650) 802-4205
rmendenhall@cityofsancarlos.org

Michelle Mendoza, MAXIMUS
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Dawn Merchant, City of Antioch
P.O. Box 5007, Antioch, CA 94531
Phone: (925) 779-7055
dmerchant@ci.antioch.ca.us

Yazmin Meza, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Joan Michaels Aguilar, City of Dixon
600 East A Street, Dixon, CA 95620
Phone: N/A
jmichaelsaguilar@ci.dixon.ca.us

Ron Millard, Interim Finance Director, City of Vallejo
Finance Department, 555 Santa Clara Street, 3rd Floor, Vallejo, CA 94590
Phone: (707) 648-4592
Ikimura@ci.vallejo.ca.us

Todd Miller, County of Madera
Auditor-Controller, 200 W Fourth Street, 2nd Floor, Madera, CA 93637
Phone: (559) 675-7707
Todd.Miller@co.madera.ca.gov

Michael Miller, County of Monterey
168 W. Alisal Street, 3rd floor, Salinas, CA 93901
Phone: (831) 755-4500
millerm@co.monterey.ca.us

Meredith Miller, Director of SB90 Services, MAXIMUS
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (916) 490-9990
meredithcmiller@maximus.com
David Millican, Interim Chief Financial Officer, *City of Oxnard*
300 West Third Street, Suite 302, Oxnard, CA 93030
Phone: (805) 385-7466
Tamara.Reese@ci.oxnard.ca.us

Leyne Milstein, Director of Finance, *City of Sacramento*
915 I Street, 5th Floor, Sacramento, CA 98514
Phone: (916) 808-5845
lmilstein@cityofsacramento.org

Robert Miyashiro, *Education Mandated Cost Network*
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Kevin Mizuno, Finance Director, *City of Clayton*
Finance Department, 600 Heritage Trail, Clayton, CA 94517
Phone: (925) 673-7309
kmizuno@ci.clayton.ca.us

Bruce Moe, *City of Manhattan Beach*
1400 Highland Ave., Manhattan Beach, CA 90266
Phone: N/A
bmoe@citymb.info

Minnie Moreno, *City of Patterson*
1 Plaza Circle, Patterson, CA 95363
Phone: N/A
mmoreno@ci.patterson.ca.us

Debbie Moreno, *City of Anaheim*
200 S. Anaheim Boulevard, Anaheim, CA 92805
Phone: (716) 765-5192
DMoreno@anaheim.net

Russell Morreale, Finance Director, *City of Palos Verdes Estates*
Finance Department, 340 Palos Verdes Dr West, Palos Verdes Estates, CA 90274
Phone: (310) 378-0383
rmorreale@pvestates.org

Russell Morreale, *City of Los Altos*
One North San Antonio Road, Los Altos, CA 94022
Phone: N/A
rmorreale@losaltosca.gov

Cindy Mosser, City Treasurer/Finance Director, *City of San Rafael*
1400 Fifth Avenue, PO Box 151560, San Rafael, CA 94915
Phone: (415) 458-5001
cindy.mosser@cityofsanrafael.org

Brian Muir, *County of Shasta*
1450 Court St., Suite 238, Redding, CA 96001
Phone: (530) 225-5541
bmuir@co.shasta.ca.us
walter Munchheimer, Interim Administrative Services Manager, City of Marysville
Administration and Finance Department, 526 C Street, Marysville, CA 95901
Phone: (530) 749-3901
wmunchheimer@marysville.ca.us

Bill Mushallo, Finance Director, City of Petaluma
Finance Department, 11 English St., Petaluma, CA 94952
Phone: (707) 778-4352
financeemail@ci.petaluma.ca.us

Renee Nagel, Finance Director, City of Visalia
707 W. Acequia Avenue, City Hall West, Visalia, CA 93291
Phone: (559) 713-4375
RNagel@ci.visalia.ca.us

Jameel Naqvi, Analyst, Legislative Analyst’s Office
Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8331
Jameel.naqvi@lao.ca.gov

Tim Nash, City of Encinitas
505 S Vulcan Avenue, Encinitas, CA 92054
Phone: N/A
finmail@encinitasca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, California State
Association of Counties (CSAC)
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Keith Neves, Director of Finance/City Treasurer, City of Lake Forest
Finance Department, 25550 Commercentre Drive, Lake Forest, CA 92630
Phone: (949) 461-3430
kneves@lakeforestca.gov

Howard Newens, County of Yolo
625 Court Street, Room 102, Woodland, CA 95695
Phone: (530) 666-8625
howard.newens@yolocounty.org

Doug Newland, County of Imperial
940 Main Street, Ste 108, El Centro, CA 92243
Phone: (760) 482-4556
dougnewland@co.imperial.ca.us

Keith Nezaam, Department of Finance
915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-8913
Keith.Nezaam@dof.ca.gov

Andy Nichols, Nichols Consulting
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

**Dale Nielsen**, Director of Finance/Treasurer, *City of Vista*
Finance Department, 200 Civic Center Drive, Vista, CA 92084
Phone: (760) 726-1340
dnielsen@ci.vista.ca.us

**David Noce**, Accounting Division Manager, *City of Santa Clara*
1500 Warburton Ave, Santa Clara, CA 95050
Phone: (408) 615-2341
dnoce@santaclaraca.gov

**Marianne O'Malley**, Legislative Analyst's Office (B-29)
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8315
marianne.O'malley@lao.ca.gov

**Patrick O'Connell**, County of Alameda
1221 Oak Street, Room 249, Oakland, CA 94512
Phone: (510) 272-6565
pat.oconnell@acgov.org

**Andy Okoro**, City Manager, *City of Norco*
2870 Clark Avenue, Norco, CA 92860
Phone: N/A
aokoro@ci.norco.ca.us

**Cathy Orme**, Finance Director, *City of Larkspur*
Finance Department, 400 Magnolia Ave, Larkspur, CA 94939
Phone: (415) 927-5019
corme@cityoflarkspur.org

**John Ornelas**, Interim City Manager, *City of Huntington Park*
6550 Miles Avenue, Huntington Park, CA 90255
Phone: (323) 584-6223
scrum@hpca.gov

**Odi Ortiz**, Assistant City Manager/Finance Director, *City of Livingston*
Administrative Services, 1416 C Street, Livingston, CA 95334
Phone: (209) 394-8041
oortiz@livingstoncity.com

**Christian Osmena**, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

**Wayne Padilla**, Interim Director, *City of San Luis Obispo*
Finance & Information Technology Department, 990 Palm Street, San Luis Obispo, CA 93401
Phone: (805) 781-7125
wpadilla@slocity.org

**Simona Padilla-Scholtens**, Auditor-Controller, *County of Solano*
675 Texas Street, Suite 2800, Fairfield, CA 94533
Phone: (707) 784-6282
sypadilla@solanocounty.com

Arthur Palkowitz, Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@sashlaw.com

Deborah Paolinelli, County of Tulare
411 East Kern Ave, Tulare, CA 93274
Phone: N/A
dpaolinelli@co.tulare.ca.us

Susan Paragas, City of Azusa
PO Box 1395, Azusa, CA 91702
Phone: N/A
sparagas@ci.azusa.ca.us

Alice Park-Renzie, County of Alameda
CAO, 1221 Oak Street, Oakland, CA 94612
Phone: (510) 272-3873
Alice.Park@acgov.org

Stephen Parker, Administrative Services Director, City of Stanton
Administrative Services and Finance Department, 7800 Katella Avenue, Stanton, CA 90680
Phone: (714) 379-9222
sparker@ci.stanton.ca.us

Donald Parker, City of Montclair
5111 Benito St., Montclair, CA 91763
Phone: N/A
dparker@cityofmontclair.org

Lalo Perez, City of Palo Alto
P.O. Box 10250, Palo Alto, CA 94303
Phone: N/A
lalo.perez@cityofpaloalto.org

Diane Perkin, City of Lakewood
5050 Clark Avenue, Lakewood, CA 90712
Phone: (562) 866-9771
dperkin@lakewoodcity.org

Keith Petersen, SixTen & Associates
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@aol.com

Eva Phelps, City of San Ramon
2226 Camino Ramon, San Ramon, CA 94583
Phone: N/A
ephelps@sanramon.ca.gov

Marcus Pimentel, City of Santa Cruz
809 Center Street, Rm 101, Santa Cruz, CA 95060
Phone: N/A
dl_Finance@cityofsantacruz.com

Adam Pirrie, City of Claremont
207 Harvard Ave, Claremont, CA 91711
Phone: (909) 399-5328
apirrie@ci.claremont.ca.us

Ruth Piyaman, Finance / Accounting Manager, City of Malibu
Administrative Services / Finance, 23825 Stuart Ranch Road, Malibu, CA 90265
Phone: (310) 456-2489
RPiyaman@malibucity.org

Bret M. Plumlee, City Manager, City of Los Alamitos
3191 Katella Ave., Los Alamitos, CA 90720
Phone: (562) 431-3538 ext.
bplumlee@cityoflosalamitos.org

Mike Podegracz, City Manager, City of Hesperia
Finance Department, 9700 Seventh Ave, Hesperia, CA 92345
Phone: (760) 947-1025
mpodegracz@cityofhesperia.us

Brian Ponty, City of Redwood City
1017 Middlefield Road, Redwood City, CA 94063
Phone: (650) 780-7300
finance@redwoodcity.org

Michael Powers, City Manager, City of King City
212 South Vanderhurst Avenue, King City, CA 93930
Phone: 831-386-5925
mpowers@kingcity.com

Jai Prasad, County of San Bernardino
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Matt Pressey, Director, City of Salinas
Finance Department, 200 Lincoln Ave., Salinas, CA 93901
Phone: (831) 758-7211
mattp@ci.salinas.ca.us

Tom Prill, Finance Director, City of San Jacinto
Finance Department, 595 S. San Jacinto Ave., Building B, San Jacinto, CA 92583
Phone: (951) 487-7340
TPrill@sanjacintoca.us

Cindy Prothro, Finance Director, City of Barstow
Finance Department, 220 East Mountain View Street, Barstow, CA 92311
Phone: (760) 255-5115
cprothro@barstowca.org

Tim Przybyla, Finance Director, City of Madera

322
Finance Department, 205 West Fourth Street, Madera, CA 93637
Phone: (559) 661-5454
tprzybyla@cityofmadera.com

Marc Pucket, Assistant Town Manager of Finance & Administration, Town of Apple Valley
Finance Department, 14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
finance@applevalley.org

Raul Purificacion, Finance Manager, City of La Puente
Finance Department, 15900 E. Main Street, La Puente, CA 91744
Phone: (626) 855-1500
rpurificacion@lapuente.org

John Quinn, City of Calexico
608 Heber Ave., Calexico, CA 92231
Phone: N/A
jquinn@calexico.ca.gov

Frank Quintero, City of Merced
678 West 18th Street, Merced, CA 95340
Phone: N/A
quinterof@cityofmerced.org

Yvonne Quiring, City of Davis
23 Russell Blvd., Davis, CA 95616
Phone: N/A
yquiring@cityofdavis.org

Sean Rabe, City Manager, City of Colma
1198 El Camino Real, Colma, CA 94014
Phone: (650) 997-8318
sean.rabe@colma.ca.gov

Juan Raigoza, Auditor-Controller, County of San Mateo
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 363-4777
jraigoza@smcgov.org

Roberta Raper, Finance Director, City of Napa
Finance Department, P.O. Box 660, Napa, CA 94559-0660
Phone: (707) 257-9510
rraper@cityofnapa.org

Roberta Reed, County of Mono
P.O. Box 556, Bridgeport, CA 93517
Phone: (760) 932-5490
RReed@mono.ca.gov

Karan Reid, Finance Director, City of Concord
1950 Parkside Drive, Concord, CA 94519
Phone: (925) 671-3178
karan.reid@cityofconcord.org

Mark Rewolinski, MAXIMUS
625 Coolidge Drive, Suite 100, Folsom, CA 95630  
Phone: (949) 440-0845  
markrewolinski@maximus.com

Sandra Reynolds, Reynolds Consulting Group, Inc.  
P.O. Box 894059, Temecula, CA 92589  
Phone: (951) 303-3034  
sandrareynolds_30@msn.com

Tina Reza, Interim Finance Director, City of Morgan Hill  
Finance Department, 17575 Peak Ave., Morgan Hill, CA 95037  
Phone: (408) 779-7237  
Tina.Reza@morgan-hill.ca.gov

Tae G. Rhee, Finance Director, City of Bellflower  
Finance Department, 16600 Civic Center Dr, Bellflower, CA 90706  
Phone: (562) 804-1424  
thee@bellflower.org

Robert Richardson, City Manager, City of Grass Valley  
Finance Department, 125 East Main Street, Grass Valley, CA 95945  
Phone: (530) 274-4312  
r.richardson@cityofgrassvalley.com

Rachelle Rickard, City Manager, City of Atascadero  
Finance Department, 6500 Palma Ave, Atascadero, CA 93422  
Phone: (805) 461-7612  
rickard@atascadero.org

Jorge Rifa, City Administrator, City of Commerce  
Finance Department, 2535 Commerce Way, Commerce, CA 90040  
Phone: (323) 722-4805  
jorger@ci.commerce.ca.us

Rosa Rios, City of Delano  
1015 11th Ave., Delano, CA 93216  
Phone: N/A  
rrios@cityofdelano.org

Nicole Rizzo, Operations Manager, City of Lancaster  
Finance Department, 44933 N. Fern Avenue, Lancaster, CA 93534  
Phone: (661) 723-5893  
nrizzo@cityoflancasterca.org

Mark Roberts, City of National City  
1243 National City Blvd., National City, CA 91950  
Phone: N/A  
finance@nationalcityca.gov

Laura Rocha, City of San Marcos  
1 Civic Center Drive, San Marcos, CA 92069  
Phone: (760) 744-1050  
Lrocha@san-marcos.net

Rob Rockwell, Director of Finance, City of Indio
Finance Department, 100 Civic Center Mall, Indio, CA 92201
Phone: (760) 391-4029
rockwell@indio.org

Benjamin Rosenfield, City Controller, City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, CA 94102
Phone: (415) 554-7500
ben.rosenfield@sfgov.org

Tacy Oneto Rouen, Auditor, County of Amador
810 Court Street, Jackson, CA 95642-2131
Phone: (209) 223-6357
trouen@amadorgov.org

Linda Ruffing, City Manager, City of Fort Bragg
Finance Department, 416 N Franklin Street, Fort Bragg, CA 94537
Phone: (707) 961-2823
lruffing@fortbragg.com

Cynthia Russell, Chief Financial Officer/City Treasurer, City of San Juan Capistrano
Finance Department, 32400 Paseo Adelanto, San Juan Capistrano, CA 92675
Phone: (949) 443-6343
crussell@sanjuancapistrano.org

Joan Ryan, Finance Director, City of Escondido
201 N. Broadway, Escondido, CA 92025
Phone: N/A
jryan@ci.escondido.ca.us

Cathy Saderlund, County of Lake
255 N. Forbes Street, Lakeport, CA 95453
Phone: (707) 263-2311
cathy.saderlund@lakecountyca.gov

Leticia Salcido, City of El Centro
1275 Main Street, El Centro, CA 92243
Phone: N/A
lsalcido@ci.el-centro.ca.us

Marcia Salter, County of Nevada
950 Maidu Avenue, Nevada City, CA 95959
Phone: (530) 265-1244
marcia.salter@co.nevada.ca.us

Robert Samario, City of Santa Barbara
P.O. Box 1990, Santa Barbara, CA 93102-1990
Phone: (805) 564-5336
BSamario@SantaBarbaraCA.gov

Kathy Samms, County of Santa Cruz
701 Ocean Street, Room 340, Santa Cruz, CA 95060
Phone: (831) 454-2440
shf735@co.santa-cruz.ca.us

Tony Sandhu, Interim Finance Director, City of Capitola
Finance Department, 480 Capitola Ave, Capitola, CA 95010
Phone: (831) 475-7300
tsandhu@ci.capitola.ca.us

**Tracy Sandoval**, County of San Diego
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.sandoval@sdcounty.ca.gov

**Kimberly Sarkovich**, Chief Financial Officer, City of Rocklin
3970 Rocklin Road, Rocklin, CA 95677
Phone: (916) 625-5020
kim.sarkovich@rocklin.ca.us

**Clinton Schaad**, County of Del Norte
981 H Street, Suite 140, Crescent City, CA 95531
Phone: (707) 464-7202
cschaad@co.del-norte.ca.us

**Stuart Schillinger**, City of Brisbane
50 Park Place, Brisbane, CA 94005-1310
Phone: N/A
schillinger@ci.brisbane.ca.us

**Karin Schnaider**, Finance Director, City of Benicia
Finance Department, 250 East L Street, Benicia, CA 94510
Phone: (707) 746-4225
KSchnaider@ci.benicia.ca.us

**Tracy Schulze**, County of Napa
1195 Third Street, Suite B-10, Napa, CA 94559
Phone: (707) 299-1733
tracy.schulze@countyofnapa.org

**Donna Schwartz**, City Clerk, City of Huntington Park
6550 Miles Avenue, Huntington park, CA 90255-4393
Phone: (323) 584-6231
DSchwartz@hpca.gov

**Tami Scott**, Administrative Services Director, Cathedral City
Administrative Services, 68700 Avenida Lalo Guerrero, Cathedral City, CA 92234
Phone: (760) 770-0356
tscott@cathedralcity.gov

**David Scribner**, Max8550
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

**Peggy Scroggins**, County of Colusa
546 Jay Street, Ste 202, Colusa, CA 95932
Phone: (530) 458-0400
pscroggins@countyofcolusa.org

**Kelly Sessions**, Finance Manager, City of San Pablo
Finance Department, 13831 San Pablo Avenue, Building #2, San Pablo, CA 94806
Phone: (510) 215-3021
ekellys@sanpabloca.gov

Mel Shannon, Finance Director, *City of La Habra*
Finance/Admin. Services, 201 E. La Habra Blvd, La Habra, CA 90633-0337
Phone: (562) 383-4050
mshannon@lahabraca.gov

Amy Shepherd, *County of Inyo*
Auditor-Controller, P.O. Drawer R, Independence, CA 93526
Phone: (760) 878-0343
ashepherd@inyocounty.us

Steve Shields, *Shields Consulting Group, Inc.*
1536 36th Street, Sacramento, CA 95816
Phone: (916) 454-7310
steve@shieldscg.com

Ed Shikada, City Manager, *City of San Jose*
200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-8100
ed.shikada@sanjoseca.gov

Wayne Shimabukuro, *County of San Bernardino*
Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty.gov

Donna Silva, Finance Director, *City of Rancho Cordova*
Finance Department, 2729 Prospect Park Drive, Rancho Cordova, CA 95670
Phone: (916) 851-8730
dsilva@cityofranchocordova.org

Lucy Simonson, *County of Mendocino*
501 Low Gap Road, Rm 1080, Ukiah, CA 95482
Phone: (707) 463-4388
simonsol@co.mendocino.ca.us

Andrew Sisk, *County of Placer*
2970 Richardson Drive, Auburn, CA 95603
Phone: (530) 889-4026
asisk@placer.ca.gov

Susan Slayton, Administrative Services Director, *City of Morro Bay*
Administrative Services, 595 Harbor Street, Morro Bay, CA 93442
Phone: (805) 772-6201
sslayton@morro-bay.ca.us

Nelson Smith, *City of Bakersfield*
1600 Truxtun Avenue, Bakersfield, CA 93301
Phone: N/A
nsmith@bakersfieldcity.us
Margarita Solis, City Treasurer, City of San Fernando
117 Macneil Street, San Fernando, CA 91340
Phone: (818) 898-1218
msolis@sfcity.org

Jim Spano, Chief, Mandated Cost Audits Bureau, State Controller's Office
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Greg Sparks, City Manager, City of Eureka
531 K Street, Eureka, CA 95501
Phone: (707) 441-4144
cityclerk@ci.eureka.ca.gov

Dennis Speciale, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Cathy Spinella, Finance Manager, City of Martinez
Finance Department, 525 Henrietta Street, Martinez, CA 94553
Phone: (925) 372-3579
cspinella@cityofmartinez.org

Kenneth Spray, Finance Director, City of Millbrae
621 Magnolia Avenue, Millbrae, CA 94030
Phone: (650) 259-2433
kspray@ci.millbrae.ca.us

Betsy St. John, City of Palmdale
38300 Sierra Highway, Suite D, Palmdale, CA 93550
Phone: N/A
bstjohn@cityofpalmdale.org

Susan A. Stanton, City Manager, City of Greenfield
Finance Department, 599 El Camino Real, Greenfield, CA 93927
Phone: (831) 674-5591
sstanton@ci.greenfield.ca.us

Robert Stark, County of Sutter
463 2nd Street, Suite 117, Yuba City, CA 95991
Phone: (530) 822-7127
rstark@co.sutter.ca.us

Jim Steele, City of South San Francisco
P.O. Box 711, South San Francisco, CA 94083
Phone: N/A
jim.steele@ssf.net

Jana Stuard, City of Norwalk
P.O. Box 1030, Norwalk, CA 90650
Phone: N/A
jstuard@norwalkca.gov
Leslie Suelter, City of Coronado
1825 Strand Way, Coronado, CA 92118
Phone: N/A
lsuelter@coronado.ca.us

Edmund Suen, Finance Director, City of East Palo Alto
Finance Department, 2415 University Ave, East Palo Alto, CA 94303
Phone: (650) 853-3122
financedepartment@cityofepa.org

Evelyn Suess, Principal Program Budget Analyst, Department of Finance Requester Representative
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
evelyn.suess@dof.ca.gov

Karen Suiker, City Manager, City of Trinidad
409 Trinity Street, PO Box 390, Trinidad, CA 95570
Phone: (707) 677-3876
citymanager@trinidad.ca.gov

Deborah Sultan, Finance Director, City of Sanger
Finance, 1700 7th Street, Sanger, CA 93657
Phone: (559) 876-6300
dsultan@ci.sanger.ca.us

David Sundstrom, County of Sonoma
585 Fiscal Drive, Room 100, Santa Rosa, CA 95403
Phone: (707) 565-3285
david.sundstrom@sonoma-county.org

Meg Svoboda, Senate Office of Research
1020 N Street, Suite 200, Sacramento, CA
Phone: (916) 651-1500
meg.svoboda@sen.ca.gov

Kim Szczurek, Administrative Services Director, Town of Truckee
Administrative Services, 10183 Truckee Airport Road, Truckee, CA 96161
Phone: (530) 582-2913
kszczurek@townoftruckee.com

Jesse Takahashi, City of Campbell
70 North First Street, Campbell, CA 95008
Phone: N/A
jesset@cityofcampbell.com

Amy Tang-Paterno, Educational Fiscal Services Consultant, California Department of Education
Government Affairs, 1430 N Street, Suite 5602, Sacramento, CA 95814
Phone: (916) 322-6630
ATangPaterno@cde.ca.gov

Jill Taura, City of Glendora
116 East Foothill Blvd, Glendora, CA 91741-3380
Phone: N/A
jtaura@ci.glendora.ca.us

**Rick Teichert, City of Moreno Valley**
14177 Frederick Street, Moreno Valley, CA 92552-0805
Phone: N/A
richardt@moval.org

**Gina Tharani, Finance Director, City of Aliso Viejo**
Finance Department, 12 Journey, Suite 100, Aliso Viejo, CA 92656-5335
Phone: (949) 425-2524
financial-services@cityofalisoviejo.com

**Lynn Theissen, Finance Director, City of Chico**
411 Main St., Chico, CA 95927
Phone: (530) 879-7300
lynn.theissen@chicoca.gov

**Darlene Thompson, Finance Director / Treasurer, City of Tulare**
Finance Department, 411 E Kern Ave., Tulare, CA 93274
Phone: (559) 684-4255
dthompson@ci.tulare.ca.us

**John Thornberry, Finance Director, City of Carpinteria**
Finance Department, 5775 Carpinteria Ave, Carpinteria, CA 93013
Phone: (805) 684-5405
johnt@ci.carpinteria.ca.us

**James Throop, Finance Director, City of El Paso De Robles**
Administrative Services, 1000 Spring Street, Paso Robles, CA 93446
Phone: (805) 227-7276
jthroop@prcity.com

**Sheryl Thur, County of Glenn**
516 West Sycamore Street, Willows, CA 95988
Phone: (530) 934-6402
sthur@countyofglenn.net

**Cathleen Till, Finance Director, City of Lemon Grove**
Finance Department, 3232 Main Street, Lemon Grove, CA 91945
Phone: (619) 825-3803
cstill@lemongrove.ca.gov

**Donna Timmerman, Financial Manager, City of Ferndale**
Finance Department, 834 Main Street, Ferndale, CA 95535
Phone: (707) 786-4224
finance@ci.ferndale.ca.us

**Jolene Tollenaar, MGT of America**
2001 P Street, Suite 200, Suite 200, Sacramento, CA 95811
Phone: (916) 443-9136
jolene_tollenaar@mgtamer.com

**Eric Tsao, City of Torrance**
Finance Department, 3031 Torrance Blvd., Torrance, CA 90503
Evelyn Tseng, City of Newport Beach  
100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3127  
etseng@newportbeachca.gov

Stefanie Turner, Finance Director, City of Rancho Santa Margarita  
Finance Department, 22112 El Pasco, Rancho Santa Margarita, CA 92688  
Phone: (949) 635-1808  
sturner@cityofrsm.org

Brian Uhler, Legislative Analyst's Office  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8328  
brian.uhler@lao.ca.gov

Marichi Valle, San Jose Unified School District  
855 Lenzen Avenue, San Jose, CA 95126  
Phone: (408) 535-6141  
mvalle@sjusd.org

Julie Valverde, County of Sacramento  
700 H Street, Room 3650, Sacramento, CA 95814  
Phone: (916) 874-7248  
valverdej@saccounty.net

James Vanderpool, City Manager, City of Buena Park  
6650 Beach Boulevard, Buena Park, CA 90622  
Phone: N/A  
jvanderpool@buenapark.com

Sue Vannucci, City of Woodland  
300 First Street, Woodland, CA 95695  
Phone: N/A  
svannucci@cityofwilliams.org

Ruby Vasquez, County of Colusa  
546 Jay Street, Suite 202, Colusa, CA 95932  
Phone: (530) 458-0424  
rvasquez@countyofcolusa.com

Ezequiel Vega, Director, City of Watsonville  
250 Main St., Watsonville, CA 95076  
Phone: (831) 768-3450  
ezequiel.vega@cityofwatsonville.org

Patty Virto, Finance Manager, City of Fillmore  
Finance Department, 250 Central Avenue, Fillmore, CA 93015  
Phone: (805) 524-3701  
pvrito@ci.fillmore.ca.us

Rene Vise, Director of Administrative Services, City of Santa Maria  
Department of Administrative Services, 110 East Cook Street Room 6, Santa Maria, CA
Nawel Voelker, Acting Director of Finance (Management Analyst), City of Belmont
Finance Department, One Twin Pines Lane, Belmont, CA 94002
Phone: (650) 595-7433
nvoelker@belmont.gov

Mary Jo Walker, County of Santa Cruz
701 Ocean Street, Room 100, Santa Cruz, CA 95060-4073
Phone: (831) 454-2500
Aud002@co.santa-cruz.ca.us

Melinda Wall, City of Lompoc
P.O. Box 8001, Lompoc, CA 93438-8001
Phone: N/A
m_wall@ci.lompoc.ca.us

Sarah Waller-Bullock, City of La Mesa
P.O. Box 937, La Mesa, CA 91944-0937
Phone: N/A
sbullock@ci.la-mesa.ca.us

George Warman Jr., City of Corte Madera
P.O. Box 159, Corte Madera, CA 94976-0159
Phone: N/A
gwarman@ci.corte-madera.ca.us

Dave Warren, Director of Finance, City of Placerville
Finance Department, 3101 Center Street, Placerville, CA 95667
Phone: (530) 642-5223
dwarren@cityofplacerville.org

Tara Webley, County of Tulare
411 East Kern Ave., Tulare, CA 93274
Phone: N/A
twebley@co.tulare.ca.us

Renee Wellhouse, David Wellhouse & Associates, Inc.
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Kevin Werner, City Administrator, City of Ripon
Administrative Staff, 259 N. Wilma Avenue, Ripon, CA 95366
Phone: (209) 599-2108
kwerner@cityofripon.org

David White, City of Fairfield
1000 Webster Street, Fairfield, CA 94533
Phone: N/A
dwhite@fairfield.ca.gov

Michael Whitehead, Administrative Services Director & City Treasurer, City of Rolling
Curtis Yakimow, Town Manager, Town of Yucca Valley
57090 Twentynine Palms Highway, Yucca Valley, CA 92284
Phone: (760) 369-7207
townmanager@yucca-valley.org

Annie Yaung, City of Monterey Park
320 West Newmark Avenue, Monterey Park, CA 91754
Phone: N/A
ayaung@montereypark.ca.gov

Carl Yeats, City of Burlingame
501 Primrose Rd., Burlingame, CA 94010
Phone: N/A
cyeats@burlingame.org

Bobby Young, City of Costa Mesa
77 Fair Drive, Costa Mesa, CA 92626
Phone: N/A
Bobby.Young@costamesaca.gov
May 29, 2015

Ms. Evelyn Suess
Department of Finance
Local Government Unit
915 L Street
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

Dear Ms. Suess:

On May 29, 2015 the Commission on State Mandates (Commission) adopted the decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. The adopted decision is enclosed. The draft proposed decision for the second hearing and the draft expedited amendment to parameters and guidelines are enclosed for your review and comment.

Written Comments on Second Hearing Draft Proposed Decision

Written comments may be filed on the draft proposed decision by June 19, 2015. The draft proposed decision is set for hearing on July 24, 2015.

Written Comments on Draft Expedited Amendment to Parameters and Guidelines

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the July Commission hearing. The draft expedited amendment to parameters and guidelines is set for hearing on July 24, 2015 and will only be taken up if the Commission first approves the request for redetermination.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff’s draft proposal by June 19, 2015. (Cal. Code Regs., tit. 2, § 1183.9(e).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.8(f).)

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. However, this requirement may also be satisfied by electronically filing your
Ms. Evelyn Suess  
May 29, 2015  
Page 2


If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission’s regulations.

**Hearing**

The second hearing on the request for a mandate redetermination is set for **Friday, July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the amendment to the parameters and guidelines is also set for hearing on **Friday, July 24, 2015**, but will only be taken up if the Commission first approves the request for redetermination.

The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about July 10, 2015. 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 1187.9(b) of the Commission’s regulations.

Sincerely,

[Signature]

Heather Halsey  
Executive Director
ITEM __

MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION
DRAFT PROPOSED DECISION

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014

California Public Records Act (02-TC-10 and 02-TC-51)

14-MR-02

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On May 26, 2011, the Commission on State Mandates (Commission) adopted the California Public Records Act (CPRA) test claim decisions, 02-TC-10 and 02-TC-51, program. Specifically, the Commission found that Statutes 1992, Chapters 463, Statutes 2000, Chapter 982, and Statutes 2001, Chapter 355 amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 of the Government Code, resulting in an increased level of service related to the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education.¹

Parameters and guidelines were adopted on April 19, 2013, authorizing reimbursement for the following activities:²

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;
- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;
- Making disclosable public records in electronic formats available in electronic formats; and

¹ Exhibit B, Test Claim Statement of Decision 02-TC-10 & 02-TC-51, adopted May 26, 2011.
• Removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee.³

On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.”⁴ The proposition amended article XIII B, section 6, of the California Constitution, adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for… Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."⁵

Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies…each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

**Procedural History**

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the CPRA test claim, 02-TC-10 and 02-TC-51.⁶ Finance asserts the passage of Proposition 42 constituted a “subsequent change in law” and the “state's obligation to reimburse affected local agencies has ceased.” On February 17, 2015, the State Controller’s Office (Controller) submitted comments, concurring with Finance's request to adopt a new test claim decision.⁷ On April 3, 2015, Commission staff issued the draft proposed decision for the first hearing.⁸ On April 23, 2015, the Controller filed comments concurring with the draft proposed decision.⁹

On May 29, 2015, the Commission found that Finance had made an adequate showing that the request had a substantial possibility of prevailing at the second hearing, and the Commission therefore directed staff to set the matter for hearing on whether to adopt a new test claim.

⁴ Exhibit X, Text of Ballot Measure, Proposition 42, at p. 42.
⁵ Exhibit X, Text of Ballot Measure, Proposition 42, at p. 43.
⁷ Exhibit D, Controller’s Comments on Request for Redetermination.
decision. On May 29, 2015, Commission staff issued the draft proposed decision and draft expedited parameters and guidelines for the second hearing.

**Commission Responsibilities**

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission’s regulations state:

> The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.10

The regulations further state:

> If the commission proceeds to the second hearing, it shall consider whether the state’s liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.11

Therefore, the issue before the Commission at this second hearing is whether the state’s liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.

**Staff Analysis**

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

Moreover, Proposition 42 amended article XIII B, section 6(a) of the California Constitution, by adding paragraph 4, to the list of mandates exempt from reimbursement under the Constitution, to provide "that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."

10 Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).
11 Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).
Article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies…each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7.

Therefore, article XIII B, section 6(a) paragraph 4 of the California Constitution as amended June 3, 2014 specifically exempts California Public Records Act from the subvention requirement.

Government Code section 17570 provides, with respect to mandate redetermination, that:

“Subsequent change in law” is a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to section 17556, or a change in mandates law…12

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement comes. Moreover, it expressly declares that activities under, Article I, section 3(b), paragraph 7, which include Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code), are not reimbursable state mandates under article XIII B, section 6. Therefore, pursuant to section 17514, the costs for the California Public Records Act (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not costs mandated by the state within the meaning of article XIII B section 6.

Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on January 29, 2015, establishing eligibility beginning July 1, 2013. However, the effective date of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4 is June 4, 2014, the day after the election at which Proposition 42

12 Government Code section 17570(a)(2) (Stats. 2010, ch. 719 (SB 856)).
was approved.\textsuperscript{13} Therefore, as a result of this proposed decision, staff finds that the approved activities in the prior test claim decision are no longer reimbursable as of June 4, 2014.\textsuperscript{14}

Based on the foregoing, staff finds the CPRA program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning June 4, 2014.

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision as its new test claim decision, ending reimbursement for the mandated program beginning June 4, 2014.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new test claim decision following the hearing.

\textsuperscript{13} See Exhibit X, Text of Proposed Law, section 5.

\textsuperscript{14} California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].
IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION FOR:
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)
California Public Records Act, 02-TC-10 and 02-TC-51
As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014
Filed on January 21, 2015
By Department of Finance, Requester.

Case No.: 14-MR-02
California Public Records Act (02-TC-10 & 02-TC-51)
DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500, ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.
(Adopted July 24, 2015)

DECISION
The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on July 24, 2015. [Witness list will be included in the adopted decision.]

Government Code section 17570 and section 1190 et seq. of the Commission’s regulations establish the mandate redetermination process. In addition, 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., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission [adopted/modified] the proposed decision as its new test claim decision, granting the request for redetermination and approving the request to end reimbursement for the test claim activities by a vote of [vote count will be included in the adopted decision].

SUMMARY OF THE FINDINGS
The Commission finds the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for the 02-TC-10 & 02-TC-51 California Public Records Act (CPRA) mandate has been modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added paragraph 4 to article XIII B, section 6(a) of the
California Constitution which, together with article I, section 3(b), paragraph 7, expressly declare
that activities under Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the
Government Code) are not reimbursable state mandates under article XIII B, section 6. The
approved activities in CPRA are imposed by Government Code provisions within chapter 3.5,
and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B,
section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section
17570, the Commission approves the request for redetermination and concludes that the CPRA
program no longer constitutes a reimbursable state-mandated program within the meaning of
article XIII B, section 6 of the California Constitution, effective June 4, 2014.\footnote{15}

COMMISSION FINDINGS

I. **Chronology**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/26/2011</td>
<td>The Commission adopted the test claim statement of decision.\footnote{16}</td>
</tr>
<tr>
<td>4/19/2013</td>
<td>The Commission adopted the parameters and guidelines.\footnote{17}</td>
</tr>
</tbody>
</table>
| 6/3/2014      | The voters adopted Proposition 42, which added paragraph 7 of article I,
                 section 3(b), and paragraph 4 of article XIII B, section 6 to the California
                 Constitution.\footnote{18}                                            |
| 1/21/2015     | Department of Finance (Finance) filed a request for redetermination on
                 CPRA, 02-TC-10 and 02-TC-51.\footnote{19}                             |
| 2/17/2015     | The State Controller’s Office (Controller) submitted written comments on
                 the redetermination request.\footnote{20}                            |
| 4/3/2015      | Commission staff issued the draft proposed decision for the first hearing on
                 the request.\footnote{21}                                              |
| 4/23/2015     | The Controller filed comments on the draft proposed decision.\footnote{22}|

\footnote{15} California Constitution, article II, section 10 [“An initiative statute or referendum approved by
a majority of votes thereon takes effect the day after the election unless the measure provides
otherwise.”].
\footnote{16} Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.
\footnote{17} Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.
\footnote{18} Exhibit X, Text of Ballot Measure, Proposition 42, at p. 2.
\footnote{19} Exhibit A, Request for Redetermination.
\footnote{20} Exhibit D, Controller’s Comments on Request for Redetermination filed September 26, 2014.
\footnote{21} Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.
\footnote{22} Exhibit F, Controller’s Comments on Draft Proposed Decision filed April 23, 2015.
5/29/2015 Commission adopted the decision for the first hearing.  

5/29/2015 Commission staff issued the draft proposed decision and the draft expedited amendment to parameters and guidelines for the second hearing.

Background

The California Public Records Act Program

Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014) amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 to the Government Code, which require a local agency to (1) provide copies of public records with portions exempted from disclosure redacted; (2) notify a person making a public records request whether the requested records are disclosable; (3) assist members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) make disclosable public records in electronic formats available in electronic formats; and (5) remove an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee. The Commission found these statutes to impose reimbursable costs mandated by the state.

In the parameters and guidelines for CPRA, the reimbursable activities are described as follows:

A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV B of these parameters and guidelines. The activities in section IV B represent the incremental higher level of service approved by the Commission.

   This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B of these parameters and guidelines.

   This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

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24 See Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.
B. Ongoing Activities

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

   This activity includes:

   a. Computer programming, extraction, or compiling necessary to produce disclosable records.

   b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:

   a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

      This activity includes, where applicable:

      1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.

      2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.

      3) Sending or transmitting the notice to the requestor.

   b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

      This activity includes, where applicable:
1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.

2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.

3) Sending or transmitting the notice to the requestor.

c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.

2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.

3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

a. Conferring with the requestor if clarification is needed to identify records requested.

b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

   a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

      This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

   b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. The redetermination process calls for

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25 Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.
a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution.”

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”

If the Commission finds, at the second hearing, that the state’s liability has been modified based on a subsequent change in law, “it shall adopt a new decision that reflects the modified liability of the state.” If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission “shall adopt new parameters and guidelines or amend existing parameters and guidelines...pursuant to Section 17557.”

II. Positions of the Requester, Test Claimant, and Interested Parties and Persons

A. Department of Finance, Requester

Finance argues that Proposition 42 “specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance” with the California Public Records Act.

B. State Controller

The Controller states that it concurs with Finance's request to adopt a new test claim decision for the CPRA test claim since Proposition 42 “requires local agencies and K-14 school districts to

26 Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).
27 Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).
28 Code of Regulations, Title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).
29 Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).
30 Government Code section 17570(i) (Stats. 2010, chapter 719 (SB 856).
31 Exhibit A, Request for Redetermination, at p. 1.
comply with specific state laws providing for public access to meetings of local government bodies and records of government officials” and “eliminates the requirement that the State reimburse local agencies and K-14 school districts for compliance with these laws.”

III. Discussion

Pursuant to article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the increased costs of state-mandated new programs or higher levels of service. For local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a successful test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.33 The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.34 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.”35

Government Code section 17570 provides that, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.36

A. Proposition 42 Constitutes a Subsequent Change in Law, as Defined.

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. Pursuant to section 17570, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state

32 Exhibit D, Controller’s Comments on Request for Redetermination, filed February 17, 2015.
36 Government Code section 17570 (Stats. 2010, ch. 719 (SB 856).
pursuant to section 17556; or (3) is another change in mandates law. This request for redetermination is based on a change in mandates law, which includes “amendments to section 6 of article XIII B of the California Constitution.”\textsuperscript{37} Specifically, the request is based on Proposition 42, which added paragraph 4 to article XIII B section 6 to add the following to the list of exemptions from the subvention requirement:

“Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.”

The plain language exception to reimbursement adopted in Proposition 42 is alleged as a subsequent change in mandates law. Further, article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies…each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The test claim statement of decision and parameters and guidelines for CPRA, 02-TC-10 and 02-TC-51 found reimbursable activities imposed by Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. Chapter 3.5, Division 7 of Title 1 of the Government Code includes sections 6250 through 6270.

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement stems. Article XIII B, section 6(a) paragraph 4 in turn references another constitutional provision, article I, section 3(b), paragraph 7, which requires local government to comply with the “California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code). . .” and any subsequent amendments thereto or reenactments thereof.

B. Proposition 42 Creates a Valid Exception to the Reimbursement Requirement of Article XIII B, Section 6.

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

\textsuperscript{37} Government Code section 17570(a)(1).
Moreover, Proposition 42 amended section 6(a) of article XIII B of the California Constitution, by adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for… legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of section 3 of article I."

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7. Therefore, the plain language of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4, enacted by Proposition 42, directly implicates these sections of the Government Code and therefore cannot be a reimbursable state mandate.

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional. Here, the subsequent enactment is in fact an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 6250-6255.

Based on the foregoing, the Commission finds that the state’s liability for the test claim statutes has been modified based on a subsequent change in law, and a new test claim decision is required.


Government Code section 17570 provides that a redetermination request “shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.” This redetermination request was filed on January 21, 2015, establishing potential eligibility beginning July 1, 2013. However, the subsequent change in law identified was adopted on June 3, 2014, and became effective the following day. Therefore, the CPRA program no longer constitutes a reimbursable state-mandated program beginning June 4, 2014.

IV. Conclusion

Based on the foregoing, the Commission approves the request for redetermination and concludes that the CPRA program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning June 4, 2014.

38 California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).
40 California Constitution, article II, section 10.
DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 29, 2015, I served the:

- Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing
- Mandate Redetermination Request, 14-MR-02
- California Public Records Act (02-TC-10 and 02-TC-51)
- Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
- Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
- As Alleged to be Modified by Proposition 42, adopted June 3, 2014
- California Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 May 29, 2015 at Sacramento, California.

Imran Majid
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/27/15
Claim Number: 14-MR-02
Matter: California Public Records Act (02-TC-10 and 02-TC-51)
Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

Paul Abelson, Finance Director, City of Oakley
Finance Department, 3231 Main Street, Oakley, CA 94561
Phone: (925) 625-7010
abelson@ci.oakley.ca.us

John Adams, Finance Director, City of Thousand Oaks
Finance Department, 2100 Thousand Oaks Blvd., Thousand Oaks, CA 91362
Phone: (805) 449-2200
jadams@toaks.org

Joe Aguilar, Finance Director, City of Live Oak
Finance, 9955 Live Oak Blvd, Live Oak, CA 95953
Phone: (530) 695-2112
jaguilar@liveoakcity.org

Ron Ahlers, Finance Director / City Treasurer, City of Moorpark
Finance Department, 799 Moorpark Ave., Moorpark, CA 93021
Phone: (805) 517-6249
RAhlers@MoorparkCA.gov

Douglas Alessio, Administrative Services Director, City of Livermore
Finance Department, 1052 South Livermore Avenue, Livermore, CA 94550
Phone: (925) 960-4300
finance@cityoflivermore.net

Amber Alexander, Department of Finance
915 L Street, Sacramento, Ca
Phone: (916) 445-0328

353
Amber.Alexander@dof.ca.gov

**Robert Allen, County of Plumas**
520 Main Street, Room 205, Quincy, CA 95971
Phone: (530) 283-6246
robertaallen@countyofplumas.com

**Tiffany Allen**, Treasury Manager, City of Chula Vista
Finance Department, 276 Fourth Avenue, Chula Vista, CA 91910
Phone: (619) 691-5250
tallen@chulavistaca.gov

**Mark Alvarado, City of Monrovia**
415 S. Ivy Avenue, Monrovia, CA 91016
Phone: N/A
malvarado@ci.monrovia.ca.us

**LeRoy Anderson, County of Tehama**
444 Oak Street, Room J, Red Bluff, CA 96080
Phone: (530) 527-3474
landerson@tehama.net

**Paul Angulo, Auditor-Controller, County of Riverside**
4080 Lemon Street, 11th Floor, Riverside, CA 92501
Phone: (951) 955-3800
pangulo@co.riverside.ca.us

**Socorro Aquino, State Controller's Office**
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

**Debra Auker, Administrative Services Direcor, City of Emeryville**
Administrative Services, 1333 Park Ave, Emeryville, CA 94608
Phone: (510) 596-4300
finance@ci.emeryville.ca.us

**Lisa Bailey, City of San Marino**
2200 Huntington Dr., San Marino, CA 91108
Phone: N/A
lbailey@cityofsanmarino.org

**Harmee Barkschat, Mandate Resource Services, LLC**
5325 Elkhorn Blvd. #307, Sacramento, CA 95842
Phone: (916) 727-1350
harmeeet@calsdrc.com

**Mary Barnhart, Interim Chief Fiscal Officer, City of Gardena**
Department of Finance, 1700 West 162nd Street, Gardena, CA 90247
Phone: (310) 217-9516
mbarnhart@ci.gardena.ca.us

**Robert Barron III, Finance Director, City of Atherton**
Finance Department, 91 Ashfield Rd, Atherton, CA 94027
Phone: (650) 752-0552
rbarron@ci.atherton.ca.us

**Timothy Barry**, County of San Diego  
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101-2469  
Phone: (619) 531-6259  
timothy.barry@sdcounty.ca.gov

**David Batt**, Finance Director, City of South Pasadena  
Finance Department, 1414 Mission Street, South Pasadena, CA 91030  
Phone: (626) 403-7250  
dbatt@southpasadenaca.gov

**David Baum**, Finance Director, City of San Leandro  
835 East 14th St., San Leandro, CA 94577  
Phone: (510) 577-3376  
dbaum@sanleandro.org

**Deborah Bautista**, County of Tuolumne  
2 South Green St., Sonora, CA 95370  
Phone: (209) 533-5551  
dbautista@co.tuolumne.ca.us

**Lacey Baysinger**, State Controller's Office  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0254  
lbaysinger@sco.ca.gov

**Mary Bedard**, County of Kern  
1115 Truxtun Avenue, 2nd Floor, Bakersfield, CA 93301  
Phone: (805) 868-3599  
bedardm@co.kern.ca.us

**John Beiers**, County of San Mateo  
Office of the County Counsel, 400 County Center, Redwood City, CA 94063  
Phone: (650) 363-4775  
jbeiers@smcgov.org

**Maria Bemis**, City of Porterville  
291 North Main Street, Porterville, CA 93257  
Phone: N/A  
mbemis@ci.porterville.ca.us

**Paul Benoit**, City Administrator, City of Piedmont  
120 Vista Avenue, Piedmont, CA 94611  
Phone: (510) 420-3042  
pbenoit@ci.piedmont.ca.us

**Richard Benson**, Assessor - Recorder - County Clerk, County of Marin  
3501 Civic Center Drive, Room 208, San Rafael, CA 94903  
Phone: (415) 499-7215  
rbenson@co.marin.ca.us

**Robin Bertagna**, City of Yuba City  
1201 Civic Center Blvd, Yuba City, CA 95993  
Phone: N/A
Angela Bickle, Interim Auditor-Controller, County of Trinity
11 Court Street, P.O. Box 1230, Weaverville, CA 96093
Phone: (530) 623-3177
abickle@trinitycounty.org

Heidi Bigall, Director of Admin Services, City of Tiburon
Administration, 1505 Tiburon Blvd., Tiburon, CA 94920
Phone: (415) 435-7373
hbigall@townoftiburon.org

Teresa Binkley, Director of Finance, City of Taft
Finance Department, 209 E. Kern St., Taft, CA 93268
Phone: (661) 763-1350
tbinkley@cityoftaft.org

Barbara Bishop, Finance Manager, City of San Dimas
Finance Division, 245 East Bonita Avenue, San Dimas, CA 91773
Phone: (909) 394-6220
administration@ci.san-dimas.ca.us

Dalacie Blankenship, Finance Manager, City of Jackson
Administration / Finance, 33 Broadway, Sacramento, CA 95818
Phone: (209) 223-1346
dblankenship@ci.jackson.ca.us

Rene Bobadilla, City Manager, City of Pico Rivera
Administration, 6615 Passons Boulevard, Pico Rivera, CA 90660
Phone: (562) 801-4379
rbobadilla@pico-rivera.org

Chris Bonvenuto, Santa Monica Community College District
1900 Pico Blvd., Santa Monica, CA 90405-1628
Phone: (310) 434-4201
Bonvenuto_chris@smc.edu

Emily Boyd, Finance Director, City of Crescent City
Finance Department, 377 J Street, Crescent City, CA 95531
Phone: (707) 464-7483
eboyd@crescentcity.org

Karen Bradley, City of Fresno
2600 Fresno St. Rm. 2157, Fresno, CA 93721
Phone: N/A
karen.bradley@fresno.gov

Diane Brady, California Community Colleges
Chancellor’s Office, 1102 Q Street, 1102 Q Street, Sacramento, CA 95814-6511
Phone: (916) 324-2564
dbrady@cccco.edu

Danielle Brandon, Budget Analyst, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Danielle Brandon@dof.ca.gov

David Brandt, City Manager, City of Cupertino
10300 Torre Avenue, Cupertino, CA 95014-3202
Phone: 408.777.3212
manager@cupertino.org

Rob Braulik, Town Manager, City of Ross
P.O. Box 320, Ross, CA 94957
Phone: (415) 453-1453
rbraulik@townofross.org

Robert Bravo, Finance Director, City of Port Hueneme
Finance Department, 250 N. Ventura Road, Port Hueneme, CA 93041
Phone: (805) 986-6524
rbravo@cityofporthueneme.org

John Brewer, Finance Director, City of Corning
Finance Department, 794 Third Street, Corning, CA 96021
Phone: (530) 824-7033
jbrewer@corning.org

Daryl Brock, Finance Director, City of Orland
Finance Department, P.O. Box 547, Orland, CA 95963
Phone: (530) 865-1602
dbrock@cityoforland.com

Dawn Brooks, City of Fontana
8353 Sierra Way, Fontana, CA 92335
Phone: N/A
dbrooks@fontana.org

Mike Brown, School Innovations & Advocacy
5200 Golden Foothill Parkway, El Dorado Hills, CA 95762
Phone: (916) 669-5116
mikeb@sia-us.com

Ken Brown, Acting Director of Administrative Services, City of Irvine
One Civic Center Plaza, Irvine, CA 92606
Phone: (949) 724-6255
Kbrown@cityofirvine.org

Daniel Buffalo, Finance Director, City of Lakeport
Finance Department, 225 Park Street, Lakeport, CA 95453
Phone: (707) 263-5615
dbuffalo@cityoflakeport.com

Christa Buhagiar, Finance Director, City of West Covina
Finance and Administrative Services, 1444 West Garvey Avenue South, West Covina, CA 91790
Phone: (626) 939-8463
Christina.Buhagiar@westcovina.org

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
J. Bradley Burgess, MGT of America
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Jeff Burgh, County of Ventura
County Auditor's Office, 800 S. Victoria Avenue, Ventura, CA 93009-1540
Phone: (805) 654-3152
jeff.burgh@ventura.org

Vanessa Burke, Chief Financial Officer, City of Stockton
425 N. El Dorado St., Stockton, CA 95202
Phone: (209) 937-8460
vanessa.burke@stocktongov.com

Rob Burns, City of Chino
13220 Central Avenue, Chino, CA 91710
Phone: N/A
rburns@cityofchino.org

Regan M Cadelario, City Manager, City of Fortuna
Finance Department, 621 11th Street, Fortuna, CA 95540
Phone: (707) 725-1409
rc@ci.fortuna.ca.us

David Cain, Director of Finance, City of Fountain Valley
10200 Slater Ave, Fountain Valley, CA 92646
Phone: N/A
david.cain@fountainvalley.org

Rebecca Callen, County of Calaveras
891 Mountain Ranch Road, San Andreas, CA 95249
Phone: (209) 754-6343
rcallen@co.calaveras.ca.us

Ronnie Campbell, Finance Director, City of Camarillo
Finance Department, 601 Carmen Drive, Camarillo, CA 93010
Phone: (805) 388-5320
rcampbell@ci.camarillo.ca.us

Robert Campbell, County of Contra Costa
625 Court Street, Room 103, Martinez, CA 94553
Phone: (925) 646-2181
bob.campbell@ac.cccounty.us

Joy Canfield, City of Murrieta
1 Town Square, Murrieta, CA 92562
Phone: N/A
jcanfield@murrieta.org

Lisa Cardella-Presto, County of Merced
2222 M Street, Merced, CA 95340
Gwendolyn Carlos, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Rebecca Carr, County of Kings
1400 West Lacey Blvd, Hanford, CA 93230
Phone: (559) 582-1236
becky.carr@co.kings.ca.us

Daria Carrillo, Finance & Administrative Director, City of San Anselmo
Administration & Finance, 525 San Anselmo Ave., San Anselmo, CA 94960
Phone: (415) 258-4678
dcarrillo@townofsananselmo.org

Roger Carroll, Finance Director/Treasurer, Town of Loomis
Finance Department, 3665 Taylor Road, Loomis, CA 95650
Phone: (916) 652-1840
rcarroll@loomis.ca.gov

Susan Casey, City of American Canyon
4381 Broadway, Suite 201, American Canyon, CA 94503
Phone: (707) 647-4360
scasey@cityofamerican canyon.org

Jack Castro, Director of Finance, City of Huron
Finance Department, 36311 Lassen Avenue, PO Box 339, Huron, CA 93234
Phone: (559) 945-3020
findir@cityofhuron.com

Karen Chang, Interim Finance Director, City of Pittsburg
Finance Department, 65 Civic Avenue, Pittsburg, CA 94565-3814
Phone: (925) 252-4872
kchang@ci.pittsburg.ca.us

Rolando Charvel, City Comptroller, City of San Diego
202 C Street, MS-6A, San Diego, CA 92101
Phone: (619) 236-6060
comptroller@sandiego.gov

Lin-Lin Cheng, City of Foster City
610 Foster City Blvd, Foster City, CA 94404
Phone: N/A
lcheng@fostercity.org

Erick Cheung, Director of Finance/Human Resources, City of Piedmont
120 Vista Avenue, Piedmont, CA 94611
Phone: (510) 420-3040
echeung@ci.piedmont.ca.us

Annette Chinn, Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294, Folsom, CA 95630
Lawrence Chiu, Director of Finance & Administrative Services, City of Daly City
Finance and Administrative Services, 333 90th Street, Daly City, CA 94015
Phone: (650) 991-8049
lchiu@dalycity.org

Doug Chotkevys, City Manager, City of Dana Point
Finance Department, 33282 Golden Lantern, Dana Point, CA 92629
Phone: (949) 248-3513
dchotkevys@danapoint.org

Carmen Chu, Assessor-Recorder, City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, City Hall, Room 190, San Francisco, CA 94102-4698
Phone: (415) 554-5596
assessor@sfgov.org

Hannah Chung, Finance Director, City of Tehachapi
Finance Department, 115 S. Robinson St., Tehachapi, CA 93561
Phone: (661) 822-2200
hchung@tehachapicityhall.com

David Cichella, California School Management Group
3130-C Inland Empire Blvd., Ontario, CA 91764
Phone: (209) 834-0556
dcichella@csmcentral.com

Geoffrey Cobbett, Treasurer, City of Covina
Finance Department, 125 E. College Street, Covina, CA 91723
Phone: (626) 384-5506
gcobbett@covinaca.gov

Brian Cochran, Finance Manager, City of Novato
75 Rowland Way #200, Novato, CA 94945
Phone: (415) 899-8912
bcochran@novato.org

Russell Cochran Branson, City of Roseville
311 Vemon Street, Roseville, CA 95678-2649
Phone: N/A
rbranson@roseville.ca.us

Dennis Coleman, Finance Director/Treasurer, City of Solana Beach
Finance Department, City Hall 635 S. HWY 101, Solana Beach, CA 92075
Phone: (858) 720-2431
finance@cosb.org

Shannon Collins, Finance Manager, City of El Cerrito
10890 San Pablo Avenue, El Cerrito, CA 94530-2392
Phone: N/A
scollins@ci.el-cerrito.ca.us

Harriet Commons, City of Fremont
P.O. Box 5006, Fremont, CA 94537
Stephen Conway, City of Los Gatos
110 E. Main Street, Los Gatos, CA 95031
Phone: N/A
sconway@losgatosca.gov

Julia Cooper, City of San Jose
Finance, 200 East Santa Clara Street, San Jose, CA 95113
Phone: (408) 535-7000
Finance@sanjoseca.gov

Viki Copeland, City of Hermosa Beach
1315 Valley Drive, Hermosa Beach, CA 90254
Phone: N/A
vcopeland@hermosabch.org

Drew Corbett, Finance Director, City of Menlo Park
Finance Department, 701 Laurel St, Menlo Park, CA 94025
Phone: (650) 330-6640
dcorbett@menlopark.org

Lis Cottrell, Finance Director, City of Anderson
Finance Department, 1887 Howard Street, Anderson, CA 96007
Phone: (530) 378-6626
lcottrell@ci.anderson.ca.us

Jeremy Craig, Finance Director, City of Vacaville
Finance Department, 650 Merchant Street, Vacaville, CA 95688
Phone: (707) 449-5128
jcraig@cityofvacaville.com

Vicki Crow, Auditor-Controller/Treasurer-Tax Collector, County of Fresno
2281 Tulare Street, Room 105, Fresno, CA 93721
Phone: (559) 600-3487
vcrow@co.fresno.ca.us

Deborah Cullen, City of El Segundo
350 Main Street, El Segundo, CA 90245-3813
Phone: N/A
dcullen@elsegundo.org

David Culver, City of San Mateo
330 West 20th Avenue, San Mateo, CA 94403-1388
Phone: (650) 522-7100
dculver@cityofsanmateo.org

Gavin Curran, City of Laguna Beach
505 Forest Avenue, Laguna Beach, CA 92651
Phone: N/A
gcurran@lagunabeachcity.net

Stefani Daniell, Finance Director, City of Citrus Hts
Finance Department, 6237 Fountain Square Dr, Citrus Heights, CA 95621
Joshua Daniels, Attorney, California School Boards Association
3251 Beacon Blvd, West Sacramento, CA 95691
Phone: (916) 669-3266
jdaniels@csba.org

Chuck Dantuono, Director of Administrative Services, City of Highland
Administrative Services, 27215 Base Line, Highland, CA 92346
Phone: (909) 864-6861
cdantuono@cityofhighland.org

Fran David, City Manager, City of Hayward
Finance Department, 777 B Street, Hayward, CA 94541
Phone: (510) 583-4000
citymanager@hayward-ca.gov

William Davis, County of Mariposa
Auditor, P.O. Box 729, Mariposa, CA 95338
Phone: (209) 966-7606
wdavis@mariposacounty.org

Daniel Dawson, City Manager, City of Del Rey Oaks
Finance Department, 650 Canyon Del Rey Rd, Del Rey Oaks, CA 93940
Phone: (831) 394-8511
ddawson@delreyoaks.org

Dilu DeAlwis, City of Colton
125 E. College Street, Covina, CA 91723
Phone: N/A
ddealwis@covinaca.gov

Suzanne Dean, Deputy Finance Director, City of Ceres
Finance Department, 2220 Magnolia Street, Ceres, CA 95307
Phone: (209) 538-5757
Suzanne.Dean@ci.ceres.ca.us

Gigi Decavalles-Hughes, Director of Finance, City of Santa Monica
Finance, 1717 4th Street, Suite 250, Santa Monica, CA 90401
Phone: (310) 458-8281
gigi.decavalles@smgov.net

Marieta Delfin, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Brent Dennis, County of Tuolumne
1021 Harvard Way, El Dorado Hills, CA 95762
Phone: (916) 614-3237
Bdennis@edhesd.org

Leticia Dias, Accountant, City of Ceres
2720 Second Street, Ceres, CA 95307-3292
Phone: (209) 538-5764
leticia.dias@ci.ceres.ca.us

**Tom Dibble, City of Hanford**
315 North Douty Street, Hanford, CA 93230
Phone: (559) 585-2525
tdibble@ci.hanford.ca.us

**Steve Diels, City Treasurer, City of Redondo Beach**
City Treasurer's Department, 415 Diamond Street, Redondo Beach, CA 90277
Phone: (310) 318-0652
steven.dieles@redondo.org

**Richard Digre, City of Union City**
34009 Alvarado-Niles Road, Union City, CA 94587
Phone: N/A
rdigre@ci.union-city.ca.us

**Andra Donovan, San Diego Unified School District**
Legal Services Office, 4100 Normal Street, Room 2148, , San Diego, CA 92103
Phone: (619) 725-5630
adonovan@sandi.net

**Richard Doyle, City Attorney, City of San Jose**
200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1900
richard.doyle@sanjoseca.gov

**Randall L. Dunn, City Manager, City of Colusa**
Finance Department, 425 Webster St., Colusa, CA 95932
Phone: (530) 458-4740
citymanager@cityofcolusa.com

**Cheryl Dyas, City of Mission Viejo**
200 Civic Center, Mission Viejo, CA 92691
Phone: N/A
cdyas@cityofmissionviejo.org

**Jennie Ebejer, County of Siskiyou**
311 Fourth Street, Room 101, Yreka, CA 96097
Phone: (530) 842-8030
Jebejer@co.siskiyou.ca.us

**Richard Eberle, County of Yuba**
915 8th Street, Suite 105, Marysville, CA 95901
Phone: (530) 749-7810
reberle@co.yuba.ca.us

**Kerry Eden, City of Corona**
400 S. Vicentia Avenue. Suite 320, Corona, CA 92882
Phone: (951) 817-5740
kerry.eden@ci.corona.ca.us

**Scott Edwards, City of Poway**
PO Box 789, Poway, CA 92074
Pamela Ehler, City of Brentwood
150 City Park Way, Brentwood, CA 94513
Phone: N/A
pehler@brentwoodca.gov

Bob Elliot, City of Glendale
141 North Glendale Ave, Ste. 346, Glendale, CA 91206-4998
Phone: N/A
belliot@ci.glendale.ca.us

Edwin Eng, State Center Community College District
1525 East Weldon Avenue, Fresno, CA 93704-6398
Phone: (559) 244-5910
ed.eng@scccd.edu

Kelly Ent, Director of Admin Services, City of Big Bear Lake
Finance Department, 39707 Big Bear Blvd, Big Bear Lake, CA 92315
Phone: (909) 866-5831
kent@citybigbearlake.com

Tina Envia, Finance Manager, City of Waterford
Finance Department, 101 E Street, Waterford, CA 95386
Phone: (209) 874-2328
finance@cityofwaterford.org

James Erb, County of San Luis Obispo
1055 Monterey Street, Room D222, San Luis Obispo, CA 93408
Phone: (805) 781-5040
jerb@co.slo.ca.us

Vic Erganian, Deputy Finance Director, City of Pasadena
Finance Department, 100 N. Garfield Ave, Room S348, Pasadena, CA 91109-7215
Phone: (626) 744-4355
vergianian@cityofpasadena.net

Eric Erickson, Director of Finance and Human Resources, City of Mill Valley
Department of Finance and Human Resources, 26 Corte Madera Avenue, Mill Valley, CA 94941
Phone: (415) 388-4033
finance@cityofmillvalley.org

Steve Erlandson, Finance Director/City Treasurer, City of Laguna Niguel
Finance Director/City Treasurer, 30111 Crown Valley Parkway, Laguna Niguel, CA 92677
Phone: (949) 362-4300
serlandson@cityoflagunaniguel.org

Gary Ernst, City Treasurer, City of Oceanside
City Treasurer, 300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3553
gemst@ci.oceanside.ca.us

Jennifer Erwin, Assistant Finance Director, City of Perris
Finance Department, 101 N. D Street, Perris, CA 92570
Phone: (951) 943-4610
jerwin@cityofperris.org

Paul Espinoza, City of Alhambra
111 South First Street, Alhambra, CA 91801
Phone: N/A
pespinoza@cityofalhambra.org

Lori Ann Farrell, Finance Director, City of Huntington Beach
2000 Main St., Huntington Beach, CA 92648
Phone: (714) 536-5630
loriann.farrell@surfcity-hb.org

Sandra Featherson, Administrative Services Director, City of Solvang
Finance, 1644 Oak Street, Solvang, CA 93463
Phone: (805) 688-5575
sandraf@cityofsolvang.com

Donna Ferebee, Department of Finance
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Chris Ferguson, Department of Finance
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Ferguson@dof.ca.gov

Matthew Fertal, City Manager, City of Garden Grove
Finance Department, 11222 Acacia Parkway, Garden Grove, CA 92840
Phone: (714) 741-5000
CityManager@ci.garden-grove.ca.us

Jimmy Forbis, Finance Director, City of Monterey
Finance Department, 735 Pacific Street, Suite A, Monterey, CA 93940
Phone: (831) 646-3940
forbis@monterey.org

Karen Fouch, County of Lassen
221 S. Roop Street, Ste 1, Susanville, CA 96130
Phone: (530) 251-8233
kfouch@co.lassen.ca.us

James Francis, City of Folsom
50 Natoma Street, Folsom, CA 95630
Phone: N/A
jfrancis@folsom.ca.us

Charles Francis, Administrative Services Director/Treasurer, City of Sausalito
Finance, 420 Litho Street, Sausalito, CA 94965
Phone: (415) 289-4105
cfrancis@ci.sausalito.ca.us
Eric Frost, Deputy City Manager, *City of Visalia*
707 West Acequia, Visalia, CA 93291
Phone: (559) 713-4474
efrost@ci.visalia.ca.us

Harold Fujita, *City of Los Angeles*
Department of Recreation and Parks, 211 N. Figueroa Street, 7th Floor, Los Angeles, CA 90012
Phone: (213) 202-3222
harold.fujita@lacity.org

Mary Furey, *City of Saratoga*
13777 Fruitvale Avenue, Saratoga, CA 95070
Phone: N/A
mfurey@saratoga.ca.us

Carolyn Galloway-Cooper, Finance Director, *City of Buellton*
Finance Department, 107 West Highway 246, Buellton, CA 93427
Phone: (805) 688-5177
carolync@cityofbuellton.com

Robert Galvan, Director of Administrative Services, *City of Hollister*
Administrative Services, 375 Fifth Street, Hollister, CA 95023
Phone: (831) 636-4300
robert.galvan@hollister.ca.gov

Jason Garben, Financial Services Manager, *City of Suisun City*
Administrative Services, 701 Civic Center Blvd., Suisun City, CA 94585
Phone: (707) 421-7320
jgarben@suisun.com

Rebecca Garcia, *City of San Bernardino*
300 North, San Bernardino, CA 92418-0001
Phone: (909) 384-7272
garcia_re@sbcity.org

Henry Garcia, Interim Finance Director, *City of Cudahy*
Finance Department, 5220 Santa Ana Street, Cudahy, CA 90201
Phone: (323) 733-5143
hgarcia@cityofcudahyca.gov

Marisela Garcia, Finance Director, *City of Riverbank*
Finance Department, 6707 Third Street, Riverbank, CA 95367
Phone: (209) 863-7109
mhcgarca@riverbank.org

Jeffry Gardner, City Manager & Finance Director, *City of Plymouth*
P.O. Box 429, Plymouth, CA 95669
Phone: (209) 245-6941
jgardner@ci.plymouth.ca.us

George Gascon, District Attorney, *City and County of San Francisco*
850 Bryant Street, Room 322, San Francisco, CA 94103
Phone: (415) 553-1751
robyn.burke@sfgov.org

**Susan Geanacou**, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

**Robert Geis**, *County of Santa Barbara*
Auditor-Controller, 105 E Anapamu St, Room 303, Santa Barbara, CA 93101
Phone: (805) 568-2100
geis@co.santa-barbara.ca.us

**Gloriette Genereux**, Finance Director, *City of Modesto*
Finance Department, 1010 10th Street, P.O. Box 642 Modesto, CA 95353, Modesto, CA 95354
Phone: (209) 577-5371
ggenerieux@modestogov.com

**Laura S. Gill**, City Manager, *City of Elk Grove*
Finance Department, 8401 Laguna Palms Way, Elk Grove, CA 95758
Phone: (916) 478-2201
lgill@elkgrovecity.org

**Jeri Gilley**, Finance Director, *City of Turlock*
156 S. Broadway, Ste 230, Turlock, CA 95380
Phone: (209) 668-5570
jgilley@turlock.ca.us

**Cindy Giraldo**, City of Burbank
301 E. Olive Avenue, Financial Services Department, Burbank, CA 91502
Phone: N/A
cgiraldo@ci.burbank.ca.us

**James Goins**, City of Richmond
1401 Marina Way South, P.O. Box 4046, Richmond, CA 94804
Phone: N/A
james_goins@ci.richmond.ca.us

**Paul Golaszewski**, Legislative Analyst's Office
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8341
Paul.Golaszewski@lao.ca.gov

**Donna Goldsmith**, Finance Manager, *City of Santee*
Finance Department, 10601 Magnolia Avenue, Building #3, Santee, CA 92071
Phone: (619) 258-4100
dgoldsmith@ci.santee.ca.us

**Jesus Gomez**, City Manager, *City of El Monte*
Finance Department, 11333 Valley Blvd, El Monte, CA 91731-3293
Phone: (626) 580-2001
citymanager@elmonteca.gov

**Jose Gomez**, Director of Finance and Administrative Services, *City of Santa Fe Springs*
Finance and Administrative Services, 11710 E. Telegraph Road, Santa Fe Springs, CA 90670
Phone: (562) 868-0511
josegomez@santafesprings.org

Vivian Gong, City of Dublin
100 Civic Plaza, Dublin, CA 94568
Phone: N/A
vivian.gong@ci.dublin.ca.us

Joe Gonzalez, County of San Benito
440 Fifth Street Room 206, Hollister, CA 95023
Phone: (831) 636-4090
jgonzalez@auditor.co.san-benito.ca.us

Adela Gonzalez, City Manager, City of Soledad
248 Main St., PO Box 156, Soledad, CA 93960
Phone: (831) 223-5014
adelag@cityofsoledad.com

Mike Goodson, City Manager, City of Hawthorne
Finance Department, 4455 W. 126th Street, Hawthorne, CA 90250
Phone: (310) 349-2901
mgoodson@hawthorneCA.gov

Jim Goodwin, City Manager, City of Live Oak
9955 Live Oak Blvd., Live Oak, CA 95953
Phone: (530) 695-2112
liveoak@liveoakcity.org

Craig Graves, Finance Director, City of Baldwin Park
14403 East Pacific Avenue, Baldwin Park, CA 91706
Phone: N/A
cgraves@baldwinpark.com

Michelle Green, Admin Service Director, City of Banning
Administrative Services, 99 E. Ramsey St., Banning, CA 92220
Phone: (951) 922-3105
mgreen@ci.banning.ca.us

Michelle Greene, City Manager, City of Goleta
130 Cremona Drive, Suite B, Goleta, CA 93117
Phone: (805) 961-7500
mgreene@cityofgoleta.org

Nancy Greenhalgh, Accounting Specialist, City of Canyon Lake
Finance Department, 31516 Railroad Canyon Rd, Canyon Lake, CA 92587
Phone: (951) 244-2955
ngreenhalgh@cityofcanyonlake.com

Jan Grimes, County of Orange
P.O. Box 567, Santa Ana, CA 92702
Phone: (714) 834-2459
jan.grimes@ac.oegov.com

John Gross, City of Long Beach
333 W. Ocean Blvd., 6th Floor, Long Beach, CA 90802
Shelly Gunby, Director of Financial Management, City of Winters
Finance, 318 First Street, Winters, CA 95694
Phone: (530) 795-4910
shelly.gunby@cityofwinters.org

Francisco Gutierrez, Finance Director, City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Phone: (714) 647-5400
fgutierrez@santa-ana.org

Thomas J. Haglund, City Administrator, City of Gilroy
Finance Department, 7351 Rosanna Street, Gilroy, CA 95020
Phone: (408) 846-0202
Tom.Haglund@ci.gilroy.ca.us

Amanda Hall, City of Lynwood
11330 Bullis Road, Lynwood, CA 90262
Phone: (310) 603-0220
ahall@lynwood.ca.us

Ed Hanson, Department of Finance
Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
ed.hanson@dof.ca.gov

Anne Haraksin, City of La Mirada
13700 La Mirada Blvd., La Mirada, CA 90638
Phone: N/A
aharaksin@cityoflamirada.org

Joe Harn, County of El Dorado
360 Fair Lane, Placerville, CA 95667
Phone: (530) 621-5633
joe.ham@edcgov.us

George Harris, City of Rialto
150 South Palm ave., Rialto, CA 92376
Phone: N/A
gharris@rialto.ca.gov

Emily Harrison, Interim Finance Director, County of Santa Clara
70 West Hedding Street, San Jose, CA 95110
Phone: (408) 299-5205
emily.harrison@ceo.sccgov.org

Jenny Haruyama, Director of Finance & Administrative Services, City of Tracy
Finance Department, 333 Civic Center Plaza, Tracy, CA 95376
Phone: (209) 831-6800
financedept@ci.tracy.ca.us

Jone Hayes, Administrative Services Director, City of Healdsburg
Administrative Services, 401 Grove Street, Healdsburg, CA 95448
Jim Heller, City Treasurer, City of Atwater
Finance Department, 750 Bellevue Rd, Atwater, CA 95301
Phone: (209) 357-6310
finance@atwater.org

Jennifer Hennessy, City of Temecula
41000 Main St., Temecula, CA 92590
Phone: N/A
Jennifer.Hennessy@cityoftemecula.org

Darren Hernandez, City of Santa Clarita
23920 Valencia Blvd., Suite 295, Santa Clarita, CA 91355
Phone: N/A
dherandez@santa-clarita.com

John Herrera, Interim Finance Director, City of Goleta
Finance Department, 130 Cremona Drive, Suite B, Goleta, CA 93117
Phone: (805) 961-7500
Jherrera@cityofgoleta.org

Dennis Herrera, City Attorney, City and County of San Francisco
Office of the City Attorney, 1 Dr. Carton B. Goodlett Place, Rm. 234, San Francisco, CA 94102
Phone: (415) 554-4700
brittany.feitelberg@sfgov.org

Robert Hicks, City of Berkeley
2180 Milvia Street, Berkeley, CA 94704
Phone: N/A
finance@ci.berkeley.ca.us

Rod Hill, City of Whittier
13230 Penn Street, Whittier, CA 90602
Phone: N/A
rhill@cityofwhittier.org

Wally Hill, City Manager, City of Hemet
Finance Department, 445 E. Florida Ave, Hemet, CA 92543
Phone: (951) 765-2301
kaguilar@cityofhemet.org

Lorenzo Hines Jr., Assistant City Manager, City of Pacifica
170 Santa Maria Avenue, Pacifica, CA 94044
Phone: (650) 738-7409
lhines@ci.pacifica.ca.us

Daphne Hodgson, City of Seaside
440 Harcourt Avenue, Seaside, CA 93955
Phone: N/A
dhodgson@ci.seaside.ca.us

S. Rhetta Hogan, Finance Director, City of Yreka
Finance Department, 701 Fourth Street, Yreka, CA 96097
Phone: (530) 841-2386
rhetta@ci.yreka.ca.us

**Linda Hollinsworth**, Finance Director/Treasurer, *City of Hawaiian Gardens*
21815 Pioneer Blvd, Hawaiian Gardens, CA 90716
Phone: (562) 420-2641
lindah@hgcity.org

**Victoria Holthaus**, Finance Officer, *City of Clearlake*
Finance Department, 7684 1st Avenue, Clear Lake, CA 55319
Phone: (320) 743-3111
administrator@clearlake.ca.us

**Dorothy Holzem**, *California Special Districts Association*
1112 I Street, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dorothyh@csda.net

**David Houser**, County of Butte
25 County Center Drive, Suite 120, Oroville, CA 95965
Phone: (530) 538-7607
dhouser@buttecounty.net

**Justyn Howard**, Program Budget Manager, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

**Shannon Huang**, City of Arcadia
240 West Huntington Drive, Arcadia, CA 91007
Phone: N/A
shuang@ci.arcadia.ca.us

**Elizabeth Hudson**, City of Danville
510 La Gonda Way, Danville, CA 94526
Phone: N/A
ehudson@danville.ca.gov

**Jamie Hughson**, Finance Director/City Treasurer, *City of Clovis*
1033 Fifth St., Clovis, CA 93611
Phone: (559) 324-2130
jamieh@ci.clovis.ca.us

**Lewis Humphries**, Finance Director, *City of Newman*
Finance Department, 938 Fresno Street, Newman, CA 95360
Phone: (209) 862-3725
lhumphries@cityofnewman.com

**Mark Ibele**, Senate Budget & Fiscal Review Committee
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

**Cheryl Ide**, Associate Finance Budget Analyst, *Department of Finance*
Education Systems Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Cheryl.ide@dof.ca.gov

**Julia James, City of Fullerton**
303 W. Commonwealth Ave., Fullerton, CA 92832
Phone: N/A
juliaj@ci.fullerton.ca.us

**Dennis Jaw, Senior Accountant, City of Huntington Beach**
2000 Main Street, Huntington Beach, CA 92648
Phone: N/A
dennis.jaw@surfcity-hb.org

**Edward Jewik, County of Los Angeles**
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

**Scott Johnson, Assistant City Manager, City of Oakland**
1 Frank H. Ogawa Plaza, Oakland, CA 94612
Phone: N/A
sjohnson@oaklandnet.com

**Rochelle Johnson, Acting Accounting Manager, City of Wildomar**
Finance Department, 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595
Phone: (951) 677-7751
rjohnson@cityofwildomar.org

**Onyx Jones, Interim Finance Director, City of Adelanto**
Finance Department, 11600 Air Expressway, Adelanto, CA 92301
Phone: (760) 246-2300
ojones@ci.adelanto.ca.us

**Susan Jones, Finance Manager, City of Pismo Beach**
Finance, 760 Mattie Road, Pismo Beach, CA 93449
Phone: (805) 773-7012
swjones@pismobeach.org

**Toni Jones, Finance Director, City of Kerman**
Finance Department, 850 S. Madera Avenue, Kerman, CA 93630
Phone: (559) 846-4682
tjones@cityofkerman.org

**Ferlyn Junio, Nimbus Consulting Group, LLC**
2386 Fair Oaks Boulevard, Suite 104, Sacramento, CA 95825
Phone: (916) 480-9444
fjunio@nimbusconsultinggroup.com

**Kim Juran, Finance Director, City of San Bruno**
Finance Department, 567 El Camino Real, San Bruno, CA 94066
Phone: (650) 616-7080
Finance-Web@sanbruno.ca.gov

**Will Kaholokula, City of Bell Gardens**
Cathy Krysyna, Assistant Finance Officer, City of Pacific Grove
Finance Department, 300 Forest Ave., Pacific Grove, CA 93950
Phone: (831) 648-3102
ckrysyna@ci.pg.ca.us

Jennifer Kuhn, Deputy, Legislative Analyst's Office
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8332
Jennifer.kuhn@lao.ca.gov

Tina Kundig, City of Redlands
P.O. Box 3005, Redlands, CA 92373
Phone: N/A
tkundig@cityofredlands.org

Ana Kwong, City of Rohnert Park
Finance, P.O. Box 1489, Rohnert Park, CA 94928
Phone: (707) 585-6722
akwong@rpcity.org

Lauren Lai, Finance Director, City of Marina
Finance Department, 211 Hillcrest Ave, Marina, CA 93933
Phone: (831) 884-1274
llai@ci.marina.ca.us

Jay Lal, State Controller's Office (B-08)
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Karina Lam, City of Paramount
16400 Colorado Avenue, Paramount, CA 90723
Phone: N/A
klam@paramountcity.com

Judy Lancaster, City of Chino Hills
14000 City Center Drive, Chino Hills, CA 91709
Phone: N/A
jlancaster@chinohills.org

Ramon Lara, City Administrator, City of Woodlake
350 N. Valencia Blvd., Woodlake, CA 93286
Phone: (559) 564-8055
rlara@ci.woodlake.ca.us

Israel Lara Jr., City Manager, City of Parlier
Administration, 1100 E. Parlier Avenue, Parlier, CA 93648
Phone: (559) 646-3545
ilara@parlier.ca.us

Nancy Lassey, Finance Administrator, City of Lake Elsinore
130 South Main Street, Lake Elsinore, CA 92530
Phone: N/A
nlassey@lake-elsinore.org
Tamara Layne, City of Rancho Cucamonga
10500 Civic Center Drive, Rancho Cucamonga, CA 91730
Phone: (909) 477-2700
Tamara.Layne@cityofrc.us

Gloria Leon, Admin Services Director, City of Calistoga
Administrative Services, 1232 Washington Street, Calistoga, CA 94515
Phone: (707) 942-2802
GLeon@ci.calistoga.ca.us

Grace Leung, City of Sunnyvale
Sunnyvale City Hall, 456 W. Olive Ave., Sunnyvale, CA 94086
Phone: (408) 730-7284
gleung@ci.sunnyvale.ca.us

Mark Lewis, City Administrator, City of Chowchilla
Finance Department, 130 S. Second Street Civic Center Plaza, Chowchilla, CA 93610
Phone: (559) 665-8615
mlewis@ci.chowchilla.ca.us

Gilbert A. Livas, City Manager, City of Downey
11111 Brookshire Ave, Downey, CA 90241
Phone: (562) 904-7284
CityManager@downeyca.org

Rudolph Livingston, Finance Director, City of Ojai
PO Box 1570, Ojai, CA 93024
Phone: N/A
livingston@ojaicity.org

Darcy Locken, County of Modoc
204 S. Court Street, Alturas, CA 96101
Phone: (530) 233-6204
darcylocken@co.modoc.ca.us

Kenneth Louie, City of Lawndale
14717 Burin Avenue, Lawndale, CA 90260
Phone: N/A
klouie@lawndalecity.org

Linda Lowry, City Manager, City of Pomona
City Manager's Office, 505 South Garey Ave., Pomona, CA 91766
Phone: (909) 620-2051
linda_lowry@ci.pomona.ca.us

Janet Luzzi, Finance Director, City of Arcata
Finance Department, 736 F Street, Arcata, CA 95521
Phone: (707) 822-5951
finance@cityofarcata.org

Gary J. Lysik, Chief Financial Officer, City of Calabasas
100 Civic Center Waya, Calabasas, CA 91302
Phone: (818) 224-1600
glysik@cityofcalabasas.com
Van Maddox, County of Sierra
211 Nevada Street, 2nd Floor, P.O. Box 425, Downieville, CA 95936
Phone: (530) 289-3273
vmaddox@sierracounty.ws

Martin Magana, City Manager/Finance Director, City of Desert Hot Springs
Finance Department, 65-950 Pierson Blvd, Desert Hot Springs, CA 92240
Phone: (760) 329-6411, Ext.
CityManager@cityofdhs.org

Susan Mahoney, City of Orinda
22 Orinda Way, Orinda, CA 94563
Phone: N/A
smahoney@cityoforinda.org

Imran Majid, Student Assistant, Commission on State Mandates
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
imran.majid@csm.ca.gov

James Makshanoff, City Manager, City of San Clemente
100 Avenida Presidio, San Clemente, CA 92672
Phone: N/A
makshanoffJ@san-clemente.org

Debbie Malicoat, Director of Admin Services, City of Arroyo Grande
Finance Department, 300 E. Branch Street, Arroyo Grande, CA 93420
Phone: (805) 473-5410
dmalicoat@arroyogrande.org

Suzanne Mallory, City of Manteca
1001 W Center Street, Manteca, CA 95337
Phone: N/A
smallory@ci.manteca.ca.us

Eddie Manfro, City of Westminster
8200 Westminster Blvd., Westminster, CA 92683
Phone: N/A
emanfro@westminster-ca.gov

Denise Manoogian, City of Cerritos
P.O. Box 3130, Cerritos, CA 90703-3130
Phone: N/A
dmanoogian@cerritos.us

Noel Marquis, City of Beverly Hills
455 N. Rexford Dr., Beverly Hills, CA 90210
Phone: N/A
nmarquis@beverlyhills.org

Terri Marsh, Finance Director, City of Signal Hill
Finance, 2175 Cherry Ave., Signal Hill, CA 90755
Phone: (562) 989-7319
Finance1@cityofsignalhill.org
Thomas Marston, City of San Gabriel
425 South Mission Drive, San Gabriel, CA 91776
Phone: N/A
tmarston@sgch.org

Pio Martin, Finance Manager, City of Firebaugh
Finance Department, 1133 P Street, Firebaugh, CA 93622
Phone: (559) 659-2043
financedirector@ci.firebaugh.ca.us

Brent Mason, Finance Director, City of Riverside
Finance, 3900 Main St, Riverside, CA 92501
Phone: (951) 826-5454
bmason@riversideca.gov

Janice Mateo-Reyes, Finance Manager, City of Laguna Hills
Administrative Services Department, 24035 El Toro Rd., Laguna Hills, CA 92653
Phone: (949) 707-2623
jreyes@ci.laguna-hills.ca.us

Hortensia Mato, City of Newport Beach
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Mike Matsumoto, City of South Gate
8650 California Ave, South Gate, CA 90280
Phone: N/A
zcaltitla@pico-rivera.org

Dan Matusiewicz, City of Newport Beach
3300 Newport Blvd, Newport Beach, CA 92663
Phone: N/A
danm@newportbeachca.gov

Denise Maxwell, Finance Director, City of Redding
Finance Department, 3rd Floor City Hall, 777 Cypress Avenue, Redding, CA 96001
Phone: (530) 225-4079
dmaxwell@ci.redding.ca.us

Charles McBride, City of Carlsbad
1635 Faraday Avenue, Carlsbad, CA 92008-7314
Phone: N/A
chuck.mcbride@carlsbadca.gov

Teresa McBroome, Finance Director/City Treasurer, City of Del Mar
Finance Department, 1050 Camino Del Mar, Del Mar, CA 92014
Phone: (858) 755-9313
tmcbroome@delmar.ca.us

Kevin McCarthy, Director of Finance, City of Indian Wells
Finance Department, 44-950 Eldorado Drive, Indian Wells, CA 92210-7497
Phone: (760) 346-2489
kmccarthy@indianwells.com
Mary McCarthy, Finance Manager, City of Pleasant Hill
Finance Division, 100 Gregory Lane, Pleasant Hill, CA 94523
Phone: (925) 671-5231
Mmccarthy@ci.pleasant-hill.ca.us

Michelle McClelland, County of Alpine
P.O. Box 266, Markleeville, CA 96120
Phone: (530) 694-2284
mmclelland@alpinecountyca.gov

Sheila McCrory, Interim Finance Director / Treasurer, City of St. Helena
Finance, 1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2751
sheilam@cityofsthelena.org

Maureen McGoldrick, Director, City of Simi Valley
Department of Administrative Services, 2929 Tapo Canyon Road, Simi Valley, CA 93063
Phone: (805) 583-6700
mmcgoldrick@simivalley.org

Michael McGrane, Finance Director, City of Imperial Beach
Finance Department, 825 Imperial Beach Blvd., Imperial Beach, CA 91932
Phone: (619) 423-8303
mmmgrane@cityofib.org

Bridgette McInally, Accounting Manager, City of Buenaventura
Finance and Technology, 501 Poli Street, Ventura, CA 93001
Phone: (805) 654-7812
bmcinally@ci.ventura.ca.us

Kelly McKinnis, Finance Director, City of Weed
Finance Department, 550 Main Street, Weed, CA 96094
Phone: (530) 938-5020
mckinnis@ci.weed.ca.us

Larry McLaughlin, City Manager, City of Sebastopol
7120 Bodega Avenue, P.O. Box 1776, Sebastopol, CA 95472
Phone: (707) 823-1153
lwmclaughlin@juno.com

Dennis McLean, City of Rancho Palos Verdes
30940 Hawthorne Blvd., Rancho Palos Verdes, CA 90275
Phone: N/A
dennism@rpv.com

Rachelle McQuiston, Finance Director, City of Ridgecrest
Finance Department, 100 W CALIFORNIA AVE, RIDGECREST, CA 93555
Phone: (760) 499-5020
rmcquiston@ridgecrest-ca.gov

Donald McVey, Director of Finance, City of Daly City
Finance Department, 333 90th Street, Daly City, CA 94015
Phone: (650) 991-8127
dmcvey@dalycity.org
Paul Melikian, City of Reedley
1717 Ninth Street, Reedley, CA 93654
Phone: (559) 637-4200
paul.melikian@reedley.ca.gov

Joe Mellett, County of Humboldt
825 Fifth Street, Room 126, Eureka, CA 95501
Phone: (707) 476-2452
jmellett@co.humboldt.ca.us

Rebecca Mendenhall, City of San Carlos
600 Elm Street, P.O. Box 3009, San Carlos, CA 94070-1309
Phone: (650) 802-4205
rmendenhall@cityofsancarlos.org

Michelle Mendoza, MAXIMUS
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemdendoza@maximus.com

Dawn Merchant, City of Antioch
P.O. Box 5007, Antioch, CA 94531
Phone: (925) 779-7055
dmerchant@ci.antioch.ca.us

Yazmin Meza, Department of Finance
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Joan Michaels Aguilar, City of Dixon
600 East A Street, Dixon, CA 95620
Phone: N/A
jmichaelsaguilar@ci.dixon.ca.us

Ron Millard, Interim Finance Director, City of Vallejo
Finance Department, 555 Santa Clara Street, 3rd Floor, Vallejo, CA 94590
Phone: (707) 648-4592
Ikimura@ci.vallejo.ca.us

Todd Miller, County of Madera
Auditor-Controller, 200 W Fourth Street, 2nd Floor, Madera, CA 93637
Phone: (559) 675-7707
Todd.Miller@co.madera.ca.gov

Michael Miller, County of Monterey
168 W. Alisal Street, 3rd floor, Salinas, CA 93901
Phone: (831) 755-4500
millermm@co.monterey.ca.us

Meredith Miller, Director of SB90 Services, MAXIMUS
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com
David Millican, Interim Chief Financial Officer, City of Oxnard
300 West Third Street, Suite 302, Oxnard, CA 93030
Phone: (805) 385-7466
Tamara.Reese@ci.oxnard.ca.us

Leyne Milstein, Director of Finance, City of Sacramento
915 I Street, 5th Floor, Sacramento, CA 98514
Phone: (916) 807-5845
lmilstein@cityofsacramento.org

Robert Miyashiro, Education Mandated Cost Network
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Kevin Mizuno, Finance Director, City of Clayton
Finance Department, 600 Heritage Trail, Clayton, CA 94517
Phone: (925) 673-7309
kmizuno@ci.clayton.ca.us

Bruce Moe, City of Manhattan Beach
1400 Highland Ave., Manhattan Beach, CA 90266
Phone: N/A
bmoe@citymb.info

Minnie Moreno, City of Patterson
1 Plaza Circle, Patterson, CA 95363
Phone: N/A
mmoreno@ci.patterson.ca.us

Debbie Moreno, City of Anaheim
200 S. Anaheim Boulevard, Anaheim, CA 92805
Phone: (714) 765-5192
DMoreno@anaheim.net

Russell Morreale, Finance Director, City of Palos Verdes Estates
Finance Department, 340 Palos Verdes Dr West, Palos Verdes Estates, CA 90274
Phone: (310) 378-0383
rmorreale@pvestates.org

Russell Morreale, City of Los Altos
One North San Antonio Road, Los Altos, CA 94022
Phone: N/A
rmorreale@losaltosca.gov

Cindy Mosser, City Treasurer/Finance Director, City of San Rafael
1400 Fifth Avenue, PO Box 151560, San Rafael, CA 94915
Phone: (415) 458-5001
cindy.mosser@cityofsanrafael.org

Brian Muir, County of Shasta
1450 Court St., Suite 238, Redding, CA 96001
Phone: (530) 225-5541
bmuir@co.shasta.ca.us
walter Munchheimer, Interim Administrative Services Manager, City of Marysville
Administration and Finance Department, 526 C Street, Marysville, CA 95901
Phone: (530) 749-3901
wmunchheimer@marysville.ca.us

Bill Mushallo, Finance Director, City of Petaluma
Finance Department, 11 English St., Petaluma, CA 94952
Phone: (707) 778-4352
financeemail@ci.petaluma.ca.us

Renee Nagel, Finance Director, City of Visalia
707 W. Acequia Avenue, City Hall West, Visalia, CA 93291
Phone: (559) 713-4375
RNagel@ci.visalia.ca.us

Jameel Naqvi, Analyst, Legislative Analyst’s Office
Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8331
Jameel.naqvi@lao.ca.gov

Tim Nash, City of Encinitas
505 S Vulcan Avenue, Encinitas, CA 92054
Phone: N/A
finmail@encinitasca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, California State
Association of Counties (CSAC)
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Keith Neves, Director of Finance/City Treasurer, City of Lake Forest
Finance Department, 25550 Commercentre Drive, Lake Forest, CA 92630
Phone: (949) 461-3430
kneves@lakeforestca.gov

Howard Newens, County of Yolo
625 Court Street, Room 102, Woodland, CA 95695
Phone: (530) 666-8625
howard.newens@yolocounty.org

Doug Newland, County of Imperial
940 Main Street, Ste 108, El Centro, CA 92243
Phone: (760) 482-4556
dougnewland@co.imperial.ca.us

Keith Nezaam, Department of Finance
915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-8913
Keith.Nezaam@dof.ca.gov

Andy Nichols, Nichols Consulting
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Dale Nielsen, Director of Finance/Treasurer, City of Vista  
Finance Department, 200 Civic Center Drive, Vista, CA 92084  
Phone: (760) 726-1340  
dnielsen@ci.vista.ca.us

David Noce, Accounting Division Manager, City of Santa Clara  
1500 Warburton Ave, Santa Clara, CA 95050  
Phone: (408) 615-2341  
dnoce@santaclaraca.gov

Marianne O'Malley, Legislative Analyst’s Office (B-29)  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8315  
marianne.O'malley@lao.ca.gov

Patrick O'Connell, County of Alameda  
1221 Oak Street, Room 249, Oakland, CA 94512  
Phone: (510) 272-6565  
pat.oconnell@acgov.org

Andy Okoro, City Manager, City of Norco  
2870 Clark Avenue, Norco, CA 92860  
Phone: N/A  
aokoro@ci.norco.ca.us

Cathy Orme, Finance Director, City of Larkspur  
Finance Department, 400 Magnolia Ave, Larkspur, CA 94939  
Phone: (415) 927-5019  
corme@cityoflarkspur.org

John Ornelas, Interim City Manager, City of Huntington Park  
6550 Miles Avenue, Huntington Park, CA 90255  
Phone: (323) 584-6223  
scrum@hpca.gov

Odi Ortiz, Assistant City Manager/Finance Director, City of Livingston  
Administrative Services, 1416 C Street, Livingston, CA 95334  
Phone: (209) 394-8041  
oortiz@livingstoncity.com

Christian Osmena, Department of Finance  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-0328  
christian.osmena@dof.ca.gov

Wayne Padilla, Interim Director, City of San Luis Obispo  
Finance & Information Technology Department, 990 Palm Street, San Luis Obispo, CA 93401  
Phone: (805) 781-7125  
wpadilla@slocity.org

Simona Padilla-Scholtens, Auditor-Controller, County of Solano  
675 Texas Street, Suite 2800, Fairfield, CA 94533
Phone: (707) 784-6282
sjpadilla@solanocounty.com

Arthur Palkowitz, Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@sashlaw.com

Deborah Paolinelli, County of Tulare
411 East Kern Ave, Tulare, CA 93274
Phone: N/A
dpaolinelli@co.tulare.ca.us

Susan Paragas, City of Azusa
PO Box 1395, Azusa, CA 91702
Phone: N/A
sparagas@ci.azusa.ca.us

Alice Park-Renzie, County of Alameda
CAO, 1221 Oak Street, Oakland, CA 94612
Phone: (510) 272-3873
Alice.Park@acgov.org

Stephen Parker, Administrative Services Director, City of Stanton
Administrative Services and Finance Department, 7800 Katella Avenue, Stanton, CA 90680
Phone: (714) 379-9222
sparker@ci.stanton.ca.us

Donald Parker, City of Montclair
5111 Benito St., Montclair, CA 91763
Phone: N/A
dparker@cityofmontclair.org

Lalo Perez, City of Palo Alto
P.O. Box 10250, Palo Alto, CA 94303
Phone: N/A
lalo.perez@cityofpaloalto.org

Diane Perkin, City of Lakewood
5050 Clark Avenue, Lakewood, CA 90712
Phone: (562) 866-9771
dperkin@lakewoodcity.org

Keith Petersen, SixTen & Associates
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@aol.com

Eva Phelps, City of San Ramon
2226 Camino Ramon, San Ramon, CA 94583
Phone: N/A
ephelps@sanramon.ca.gov

Marcus Pimentel, City of Santa Cruz
809 Center Street, Rm 101, Santa Cruz, CA 95060
Phone: N/A
dl_Finance@cityofsantacruz.com

Adam Pirrie, City of Claremont
207 Harvard Ave, Claremont, CA 91711
Phone: (909) 399-5328
apirrie@ci.claremont.ca.us

Ruth Piyaman, Finance / Accounting Manager, City of Malibu
Administrative Services / Finance, 23825 Stuart Ranch Road, Malibu, CA 90265
Phone: (310) 456-2489
RPiyaman@malibucity.org

Bret M. Plumlee, City Manager, City of Los Alamitos
3191 Katella Ave., Los Alamitos, CA 90720
Phone: (562) 431-3538 ext.
bplumlee@cityoflosalamitos.org

Mike Podegracz, City Manager, City of Hesperia
Finance Department, 9700 Seventh Ave, Hesperia, CA 92345
Phone: (760) 947-1025
mpodegracz@cityofhesperia.us

Brian Ponty, City of Redwood City
1017 Middlefield Road, Redwood City, CA 94063
Phone: (650) 780-7300
finance@redwoodcity.org

Michael Powers, City Manager, City of King City
212 South Vanderhurst Avenue, King City, CA 93930
Phone: 831-386-5925
mpowers@kingcity.com

Jai Prasad, County of San Bernardino
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Matt Pressey, Director, City of Salinas
Finance Department, 200 Lincoln Ave., Salinas, CA 93901
Phone: (831) 758-7211
mattp@ci.salinas.ca.us

Tom Prill, Finance Director, City of San Jacinto
Finance Department, 595 S. San Jacinto Ave., Building B, San Jacinto, CA 92583
Phone: (951) 487-7340
TPrill@sanjacintoca.us

Cindy Prothro, Finance Director, City of Barstow
Finance Department, 220 East Mountain View Street, Barstow, CA 92311
Phone: (760) 255-5115
cprothro@barstowca.org

Tim Przybyla, Finance Director, City of Madera
Finance Department, 205 West Fourth Street, Madera, CA 93637
Phone: (559) 661-5454
tprzybyla@cityofmadera.com

Marc Pucket, Assistant Town Manager of Finance & Administration, Town of Apple Valley
Finance Department, 14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
finance@applevalley.org

Raul Purificacion, Finance Manager, City of La Puente
Finance Department, 15900 E. Main Street, La Puente, CA 91744
Phone: (626) 855-1500
rpurificacion@lapuente.org

John Quinn, City of Calexico
608 Heber Ave., Calexico, CA 92231
Phone: N/A
jquinn@calexico.ca.gov

Frank Quintero, City of Merced
678 West 18th Street, Merced, CA 95340
Phone: N/A
quinterof@cityofmerced.org

Yvonne Quiring, City of Davis
23 Russell Blvd., Davis, CA 95616
Phone: N/A
yquiring@cityofdavis.org

Sean Rabe, City Manager, City of Colma
1198 El Camino Real, Colma, CA 94014
Phone: (650) 997-8318
sean.rabe@colma.ca.gov

Juan Raigoza, Auditor-Controller, County of San Mateo
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 363-4777
jraigoza@smcgov.org

Roberta Raper, Finance Director, City of Napa
Finance Department, P.O. Box 660, Napa, CA 94559-0660
Phone: (707) 257-9510
rraper@cityofnapa.org

Roberta Reed, County of Mono
P.O. Box 556, Bridgeport, CA 93517
Phone: (760) 932-5490
RReed@mono.ca.gov

Karan Reid, Finance Director, City of Concord
1950 Parkside Drive, Concord, CA 94519
Phone: (925) 671-3178
karan.reid@cityofconcord.org

Mark Rewolinski, MAXIMUS
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845
markrewolinski@maximus.com

Sandra Reynolds, Reynolds Consulting Group, Inc.
P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrareynolds_30@msn.com

Tina Reza, Interim Finance Director, City of Morgan Hill
Finance Department, 17575 Peak Ave., Morgan Hill, CA 95037
Phone: (408) 779-7237
Tina.Reza@morgan-hill.ca.gov

Tae G. Rhee, Finance Director, City of Bellflower
Finance Department, 16600 Civic Center Dr, Bellflower, CA 90706
Phone: (562) 804-1424
thee@bellflower.org

Robert Richardson, City Manager, City of Grass Valley
Finance Department, 125 East Main Street, Grass Valley, CA 95945
Phone: (530) 274-4312
r.richardson@cityofgrassvalley.com

Rachel Rickard, City Manager, City of Atascadero
Finance Department, 6500 Palma Ave, Atascadero, CA 93422
Phone: (805) 461-7612
rickard@atascadero.org

Jorge Rifa, City Administrator, City of Commerce
Finance Department, 2535 Commerce Way, Commerce, CA 90040
Phone: (323) 722-4805
jorger@ci.commerce.ca.us

Rosa Rios, City of Delano
1015 11th Ave., Delano, CA 93216
Phone: N/A
rios@cityofdelano.org

Nicole Rizzo, Operations Manager, City of Lancaster
Finance Department, 44933 N. Fern Avenue, Lancaster, CA 93534
Phone: (661) 723-5893
nrizzo@cityoflancasterca.org

Mark Roberts, City of National City
1243 National City Blvd., National City, CA 91950
Phone: N/A
finance@nationalcityca.gov

Laura Rocha, City of San Marcos
1 Civic Center Drive, San Marcos, CA 92069
Phone: (760) 744-1050
Lrocha@san-marcos.net

Rob Rockwell, Director of Finance, City of Indio
Finance Department, 100 Civic Center Mall, Indio, CA 92201
Phone: (760) 391-4029
rrockwell@indio.org

Benjamin Rosenfield, City Controller, City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, CA 94102
Phone: (415) 554-7500
ben.rosenfield@sfgov.org

Tacy Oneto Rouen, Auditor, County of Amador
810 Court Street, Jackson, CA 95642-2131
Phone: (209) 223-6357
trouen@amadorgov.org

Linda Ruffing, City Manager, City of Fort Bragg
Finance Department, 416 N Franklin Street, Fort Bragg, CA 94537
Phone: (707) 961-2823
lruffing@fortbragg.com

Cynthia Russell, Chief Financial Officer/City Treasurer, City of San Juan Capistrano
Finance Department, 32400 Paseo Adelanto, San Juan Capistrano, CA 92675
Phone: (949) 443-6343
crussell@sanjuancapistrano.org

Joan Ryan, Finance Director, City of Escondido
201 N. Broadway, Escondido, CA 92025
Phone: N/A
jryan@ci.escondido.ca.us

Cathy Saderlund, County of Lake
255 N. Forbes Street, Lakeport, CA 95453
Phone: (707) 263-2311
cathy.saderlund@lakecountyca.gov

Leticia Salcido, City of El Centro
1275 Main Street, El Centro, CA 92243
Phone: N/A
lsalcido@ci.el-centro.ca.us

Marcia Salter, County of Nevada
950 Maidu Avenue, Nevada City, CA 95959
Phone: (530) 265-1244
marcia.salter@co.nevada.ca.us

Robert Samario, City of Santa Barbara
P.O. Box 1990, Santa Barbara, CA 93102-1990
Phone: (805) 564-5336
BSamario@SantaBarbaraCA.gov

Kathy Samms, County of Santa Cruz
701 Ocean Street, Room 340, Santa Cruz, CA 95060
Phone: (831) 454-2440
shf735@co.santa-cruz.ca.us

Tony Sandhu, Interim Finance Director, City of Capitola
Tracy Sandoval, County of San Diego
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.sandoval@sdcounty.ca.gov

Kimberly Sarkovich, Chief Financial Officer, City of Rocklin
3970 Rocklin Road, Rocklin, CA 95677
Phone: (916) 625-5020
kim.sarkovich@rocklin.ca.us

Clinton Schaad, County of Del Norte
981 H Street, Suite 140, Crescent City, CA 95531
Phone: (707) 464-7202
cschaad@co.del-norte.ca.us

Stuart Schillinger, City of Brisbane
50 Park Place, Brisbane, CA 94005-1310
Phone: N/A
schillinger@ci.brisbane.ca.us

Karin Schnaider, Finance Director, City of Benicia
Finance Department, 250 East L Street, Benicia, CA 94510
Phone: (707) 746-4225
Kschnaider@ci.benicia.ca.us

Tracy Schulze, County of Napa
1195 Third Street, Suite B-10, Napa, CA 94559
Phone: (707) 299-1733
tracy.schulze@countyofnapa.org

Donna Schwartz, City Clerk, City of Huntington Park
6550 Miles Avenue, Huntington park, CA 90255-4393
Phone: (323) 584-6231
DSchwartz@hpc.gov

Tami Scott, Administrative Services Director, Cathedral City
Administrative Services, 68700 Avenida Lalo Guerrero, Cathedral City, CA 92234
Phone: (760) 770-0356
tscott@cathedralcity.gov

David Scribner, Max8550
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

Peggy Scroggins, County of Colusa
546 Jay Street, Ste 202, Colusa, CA 95932
Phone: (530) 458-0400
pscroggins@countyofcolusa.org

Kelly Sessions, Finance Manager, City of San Pablo
Finance Department, 13831 San Pablo Avenue, Building #2, San Pablo, CA 94806
Phone: (510) 215-3021
kellys@sanpabloca.gov

Mel Shannon, Finance Director, City of La Habra
Finance/Admin. Services, 201 E. La Habra Blvd, La Habra, CA 90633-0337
Phone: (562) 383-4050
mshannon@lahabraca.gov

Amy Shepherd, County of Inyo
Auditor-Controller, P.O. Drawer R, Independence, CA 93526
Phone: (760) 878-0343
ashepherd@inyocounty.us

Steve Shields, Shields Consulting Group, Inc.
1536 36th Street, Sacramento, CA 95816
Phone: (916) 454-7310
steve@shieldscg.com

Ed Shikada, City Manager, City of San Jose
200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-8100
ed.shikada@sanjoseca.gov

Wayne Shimabukuro, County of San Bernardino
Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty.gov

Donna Silva, Finance Director, City of Rancho Cordova
Finance Department, 2729 Prospect Park Drive, Rancho Cordova, CA 95670
Phone: (916) 851-8730
dsilva@cityofranchoCORDOVA.org

Lucy Simonson, County of Mendocino
501 Low Gap Road, Rm 1080, Ukiah, CA 95482
Phone: (707) 463-4388
simonsol@co.mendocino.ca.us

Andrew Sisk, County of Placer
2970 Richardson Drive, Auburn, CA 95603
Phone: (530) 889-4026
asisk@placer.ca.gov

Susan Slayton, Administrative Services Director, City of Morro Bay
Administrative Services, 595 Harbor Street, Morro Bay, CA 93442
Phone: (805) 772-6201
sslayton@morro-bay.ca.us

Nelson Smith, City of Bakersfield
1600 Truxtun Avenue, Bakersfield, CA 93301
Phone: N/A
nsmith@bakersfieldcity.us
Margarita Solis, City Treasurer, City of San Fernando
117 Macneil Street, San Fernando, CA 91340
Phone: (818) 898-1218
msolis@sfcity.org

Jim Spano, Chief, Mandated Cost Audits Bureau, State Controller's Office
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Greg Sparks, City Manager, City of Eureka
531 K Street, Eureka, CA 95501
Phone: (707) 441-4144
cityclerk@ci.eureka.ca.gov

Dennis Speciale, State Controller's Office
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Cathy Spinella, Finance Manager, City of Martinez
Finance Department, 525 Henrietta Street, Martinez, CA 94553
Phone: (925) 372-3579
cspinella@cityofmartinez.org

Kenneth Spray, Finance Director, City of Millbrae
621 Magnolia Avenue, Millbrae, CA 94030
Phone: (650) 259-2433
kspray@ci.millbrae.ca.us

Betsy St. John, City of Palmdale
38300 Sierra Highway, Suite D, Palmdale, CA 93550
Phone: N/A
bstjohn@cityofpalmdale.org

Susan A. Stanton, City Manager, City of Greenfield
Finance Department, 599 El Camino Real, Greenfield, CA 93927
Phone: (831) 674-5591
sstanton@ci.greenfield.ca.us

Robert Stark, County of Sutter
463 2nd Street, Suite 117, Yuba City, CA 95991
Phone: (530) 822-7127
rstark@co.sutter.ca.us

Jim Steele, City of South San Francisco
P.O. Box 711, South San Francisco, CA 94083
Phone: N/A
jim.steele@ssf.net

Jana Stuard, City of Norwalk
P.O. Box 1030, Norwalk, CA 90650
Phone: N/A
jstuard@norwalkca.gov
Leslie Suelter, City of Coronado
1825 Strand Way, Coronado, CA 92118
Phone: N/A
lsuelter@coronado.ca.us

Edmund Suen, Finance Director, City of East Palo Alto
Finance Department, 2415 University Ave, East Palo Alto, CA 94303
Phone: (650) 853-3122
financedepartment@cityofepa.org

Evelyn Suess, Principal Program Budget Analyst, Department of Finance Requester Representative
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
evelyn.suess@dof.ca.gov

Karen Suiker, City Manager, City of Trinidad
409 Trinity Street, PO Box 390, Trinidad, CA 95570
Phone: (707) 677-3876
citymanager@trinidad.ca.gov

Deborah Sultan, Finance Director, City of Sanger
Finance, 1700 7th Street, Sanger, CA 93657
Phone: (559) 876-6300
dsultan@ci.sanger.ca.us

David Sundstrom, County of Sonoma
585 Fiscal Drive, Room 100, Santa Rosa, CA 95403
Phone: (707) 565-3285
david.sundstrom@sonoma-county.org

Meg Svoboda, Senate Office of Research
1020 N Street, Suite 200, Sacramento, CA
Phone: (916) 651-1500
meg.svoboda@sen.ca.gov

Kim Szczurek, Administrative Services Director, Town of Truckee
Administrative Services, 10183 Truckee Airport Road, Truckee, CA 96161
Phone: (530) 582-2913
kszczurek@townoftruckee.com

Jesse Takahashi, City of Campbell
70 North First Street, Campbell, CA 95008
Phone: N/A
jesset@cityofcampbell.com

Amy Tang-Paterno, Educational Fiscal Services Consultant, California Department of Education
Government Affairs, 1430 N Street, Suite 5602, Sacramento, CA 95814
Phone: (916) 322-6630
ATangPaterno@ced.ca.gov

Jill Taura, City of Glendora
116 East Foothill Blvd, Glendora, CA 91741-3380
Rick Teichert, City of Moreno Valley
14177 Frederick Street, Moreno Valley, CA 92552-0805
Phone: N/A
richtardt@moval.org

Gina Tharani, Finance Director, City of Aliso Viejo
Finance Department, 12 Journey, Suite 100, Aliso Viejo, CA 92656-5335
Phone: (949) 425-2524
financial-services@cityofalisoviejo.com

Lynn Theissen, Finance Director, City of Chico
411 Main St., Chico, CA 95927
Phone: (530) 879-7300
lynn.theissen@chicoca.gov

Darlene Thompson, Finance Director / Treasurer, City of Tulare
Finance Department, 411 E Kern Ave., Tulare, CA 93274
Phone: (559) 684-4255
dthompson@ci.tulare.ca.us

John Thornberry, Finance Director, City of Carpinteria
Finance Department, 5775 Carpinteria Ave, Carpinteria, CA 93013
Phone: (805) 684-5405
johnt@ci.carpinteria.ca.us

James Throop, Finance Director, City of El Paso De Robles
Administrative Services, 1000 Spring Street, Paso Robles, CA 93446
Phone: (805) 227-7276
jthroop@prcity.com

Sheryl Thur, County of Glenn
516 West Sycamore Street, Willows, CA 95988
Phone: (530) 934-6402
sthur@countyofglenn.net

Cathleen Till, Finance Director, City of Lemon Grove
Finance Department, 3232 Main Street, Lemon Grove, CA 91945
Phone: (619) 825-3803
till@lemongrove.ca.gov

Donna Timmerman, Financial Manager, City of Ferndale
Finance Department, 834 Main Street, Ferndale, CA 95535
Phone: (707) 786-4224
finance@ci.ferndale.ca.us

Jolene Tollenaar, MGT of America
2001 P Street, Suite 200, Suite 200, Sacramento, CA 95811
Phone: (916) 443-9136
jolene_tollenaar@mgtamer.com

Eric Tsao, City of Torrance
Finance Department, 3031 Torrance Blvd., Torrance, CA 90503
Evelyn Tseng, City of Newport Beach
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Stefanie Turner, Finance Director, City of Rancho Santa Margarita
Finance Department, 22112 El Pasco, Rancho Santa Margarita, CA 92688
Phone: (949) 635-1808
sturner@cityofrsm.org

Brian Uhler, Legislative Analyst's Office
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
brian.uhler@lao.ca.gov

Marichi Valle, San Jose Unified School District
855 Lenzen Avenue, San Jose, CA 95126
Phone: (408) 535-6141
mvalle@sjusd.org

Julie Valverde, County of Sacramento
700 H Street, Room 3650, Sacramento, CA 95814
Phone: (916) 874-7248
valverdej@saccounty.net

James Vanderpool, City Manager, City of Buena Park
6650 Beach Boulevard, Buena Park, CA 90622
Phone: N/A
jvanderpool@buenapark.com

Sue Vannucci, City of Woodland
300 First Street, Woodland, CA 95695
Phone: N/A
svannucci@cityofwilliams.org

Ruby Vasquez, County of Colusa
546 Jay Street, Suite 202, Colusa, CA 95932
Phone: (530) 458-0424
rvasquez@countyofcolusa.com

Ezequiel Vega, Director, City of Watsonville
250 Main St., Watsonville, CA 95076
Phone: (831) 768-3450
ezequiel.vega@cityofwatsonville.org

Patty Virto, Finance Manager, City of Fillmore
Finance Department, 250 Central Avenue, Fillmore, CA 93015
Phone: (805) 524-3701
pvirtlo@ci.fillmore.ca.us

Rene Vise, Director of Administrative Services, City of Santa Maria
Department of Administrative Services, 110 East Cook Street Room 6, Santa Maria, CA
Nawel Voelker, Acting Director of Finance (Management Analyst), City of Belmont
Finance Department, One Twin Pines Lane, Belmont, CA 94002
Phone: (650) 595-7433
nvoelker@belmont.gov

Mary Jo Walker, County of Santa Cruz
701 Ocean Street, Room 100, Santa Cruz, CA 95060-4073
Phone: (831) 454-2500
Aud002@co.santa-cruz.ca.us

Melinda Wall, City of Lompoc
P.O. Box 8001, Lompoc, CA 93438-8001
Phone: N/A
m_wall@ci.lompoc.ca.us

Sarah Waller-Bullock, City of La Mesa
P.O. Box 937, La Mesa, CA 91944-0937
Phone: N/A
sbullock@ci.la-mesa.ca.us

George Warman Jr., City of Corte Madera
P.O. Box 159, Corte Madera, CA 94976-0159
Phone: N/A
gwarman@ci.corte-madera.ca.us

Dave Warren, Director of Finance, City of Placerville
Finance Department, 3101 Center Street, Placerville, CA 95667
Phone: (530) 642-5223
dwarren@cityofplacerville.org

Tara Webley, County of Tulare
411 East Kern Ave., Tulare, CA 93274
Phone: N/A
twebley@co.tulare.ca.us

Renee Wellhouse, David Wellhouse & Associates, Inc.
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Kevin Werner, City Administrator, City of Ripon
Administrative Staff, 259 N. Wilma Avenue, Ripon, CA 95366
Phone: (209) 599-2108
kwerner@cityofripon.org

David White, City of Fairfield
1000 Webster Street, Fairfield, CA 94533
Phone: N/A
dwhite@fairfield.ca.gov

Michael Whitehead, Administrative Services Director & City Treasurer, City of Rolling
Hills Estates
Administrative Services, 4045 Palos Verdes Drive North, Rolling Hills Estates, CA 90274
Phone: (310) 377-1577
MikeW@RollingHillsEstatesCA.gov

Gina Will, Finance Director, City of Paradise
Finance Department, 5555 Skyway, Paradise, CA 95969
Phone: (530) 872-6291
gwill@townofparadise.com

David Wilson, City of West Hollywood
8300 Santa Monica Blvd., West Hollywood, CA 90069
Phone: N/A
dwilson@weho.org

Chris Woidzik, Finance Director, City of Avalon
Finance Department, 410 Avalon Canyon Rd., Avalon, CA 90704
Phone: (310) 510-0220
Scampbell@cityofavalon.com

Jeff Woltkamp, County of San Joaquin
44 N San Joaquin St. Suite 550, Stockton, CA 95202
Phone: (209) 468-3925
jwoltkamp@sjgov.org

Paul Wood, Director of Finance, City of Carmel
Finance Department, P.O. Box CC, Carmel, CA 93921
Phone: (831) 620-2000
pwood@ci.carmel.ca.us

Rita Woodard, County of Tulare
County Civic Center, 221 South Mooney Blvd, Room 101-E, Visalia, CA 93291-4593
Phone: (559) 636-5200
rwoodard@co.tulare.ca.us

Susie Woodstock, City of Newark
37101 Newark Blvd., Newark, CA 94560
Phone: N/A
susie.woodstock@newark.org

Phil Wright, Director of Administrative Services, City of West Sacramento
Finance Division, 1110 West Capitol Avenue, 3rd Floor, West Sacramento, CA 95691
Phone: (916) 617-4575
Philw@cityofwestsacramento.org

Jane Wright, Finance Manager, City of Ione
Finance Department, 1 East Main Street, PO Box 398, Ione, CA 95640
Phone: (209) 274-2412
JWright@ione-ca.com

Hasmik Yaghobyan, County of Los Angeles
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov
Curtis Yakimow, Town Manager, Town of Yucca Valley
57090 Twentynine Palms Highway, Yucca Valley, CA 92284
Phone: (760) 369-7207
townmanager@yucca-valley.org

Annie Yaung, City of Monterey Park
320 West Newmark Avenue, Monterey Park, CA 91754
Phone: N/A
ayaung@montereypark.ca.gov

Carl Yeats, City of Burlingame
501 Primrose Rd., Burlingame, CA 94010
Phone: N/A
cyeats@burlingame.org

Bobby Young, City of Costa Mesa
77 Fair Drive, Costa Mesa, CA 92626
Phone: N/A
Bobby.Young@costamesaca.gov
withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this article. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund from proceeds received from the sale of bonds for the purpose of carrying out this article.

998.552. All money deposited in the fund that is derived from premium and accrued interest on bonds sold, in excess of any amount of premium used to pay costs of issuing the bonds, shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

998.553. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, all or a portion of the cost of bond issuance may be paid out of the bond proceeds, including any premium derived from the sale of the bonds. These costs shall be shared proportionally by each program funded through this bond act.

998.554. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, including other authorized forms of interim financing that include, but are not limited to, commercial paper, in accordance with Section 16312 of the Government Code, for purposes of carrying out this article. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this article. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this article.

998.555. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this article includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this article or any previously issued refunding bonds.

998.556. Notwithstanding any other provision of this article, or of the State General Obligation Bond Law, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment of earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal tax law or to obtain any other advantage under federal law on behalf of the funds of this state.

998.557. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this article are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

PROPOSITION 42

This amendment proposed by Senate Constitutional Amendment 3 of the 2013–2014 Regular Session (Resolution Chapter 123, Statutes of 2013) expressly amends the California Constitution by amending sections thereof; therefore, new provisions proposed to be added are printed in italic type to indicate that they are new.

PROPOSED AMENDMENTS TO SECTION 3 OF ARTICLE I AND SECTION 6 OF ARTICLE XIII B

First—that Section 3 of Article I thereof is amended to read:

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.
(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

Second—That Section 6 of Article XIII B thereof is amended to read:

SEC. 6. (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 enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.

(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.