

**ITEM 6**  
**STAFF REPORT ON PUBLIC COMMENT AND PROPOSED**  
**MODIFICATIONS AFTER CLOSE OF PUBLIC COMMENT PERIOD**  
**GENERAL CLEANUP PROVISIONS**

PROPOSED AMENDMENTS TO  
CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5  
ARTICLES 1, 2, 3, 4, 5, 6, 7, 8, AND 10

SECTIONS 1181.2 THROUGH 1181.3; 1182.2; 1182.7; 1182.9; 1182.10; 1182.15;  
1183.1 THROUGH 1183.4; 1183.6; 1183.8 THROUGH 1183.13; 1183.15 THROUGH 1183.17;  
1184.1; 1185.1 THROUGH 1185.3; 1185.7; 1185.8; 1186.2; 1186.4; 1187.5; 1187.8; 1187.9;  
1187.12; 1187.14; 1187.15; 1190.1 THROUGH 1190.3; 1190.5

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**TABLE OF CONTENTS**

**Exhibit A**

CSDA, CSAC, and League Comments on Proposed Regulatory Amendments ..... 1-4

**Exhibit B**

Commission on State Mandates, Excerpt from the Transcript of the Friday July 28, 2017  
Commission Meeting ..... 1-18

**Exhibit C**

Modified Proposed Text (15 Day Changes) ..... 1-61

**Exhibit D**

Supporting Documentation ..... 1-15

LAO Report, Key Elements of Mandate Reform – Major Recommendations Proposed,  
May 10, 2004

ISOR, FSOR, for the Commission’s 2005 regulation package



July 24, 2017

Ms. Jill Magee  
Program Analyst  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**Re: Written Comments Regarding Proposed Regulatory Action Before the Commission on State Mandates.**

Public Hearing Date: July 28, 2017

Dear Ms. Magee:

The California Special Districts Association (CSDA), California State Association of Counties (CSAC), and League of California Cities (League), hereby submit these comments in response to the request for written comment on proposed regulations intended to clarify and streamline regulations governing the Commission on State Mandates (Commission). Our feedback is intended to assist the Commission as it considers whether the proposed regulatory changes will achieve the anticipated benefits of increased clarity for participating in the Commission’s processes and faster decision making.

As noted in the Commission’s “Notice of Proposed Rulemaking,” the Commission must determine that no reasonable alternative brought to the attention of the Commission would be more effective in carrying out the purpose of any proposal, or would be less burdensome and more cost effective for interested parties.<sup>1</sup> In keeping with the stated purpose of making the proposed changes cost effective and less burdensome for both the Commission and interested parties, our organizations offer the following comments with respect to the proposed regulations:

**1. Filing Period Requirements for Test Claims**

- a. Test Claim Filing – Section 1183.1

The Commission asserts the “Necessity and Anticipated Benefit” for the proposed change to Section 1183.1(c) of the California Code of Regulations is to apply a “clear, predictable, and precise one year period of limitation to the filing of all test claims, whether based on the effective date of the test claim statute or executive order or the date that costs were first incurred under the test claim statute or executive order, consistent with Government Code section 17551(c).”

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<sup>1</sup> Cal. Gov. Code § 11346.5(a)(13).

As currently enacted, California Code of Regulations Section 1183.1(c) has a clear, predictable and precise test claim submission deadline. It properly recognizes the distinction between the “effective date of a statute or executive order” and “first incurring increased costs” by clarifying that for the purposes of claiming based on the date of first incurring costs, “within 12 months” means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred. The existing language provides local governments that are considering filing a test claim a clearly defined deadline to submit a claim for costs incurred while also reflecting an understanding of the budget planning procedure for local governments.

The proposed change would strongly deter local governments from submitting test claims by hindering their ability to gather the relevant data and file in a timely manner. For example, under the proposed regulations, if the “effective date” or “date that costs were first incurred” were to fall on January 1, the result will be a reduction of 181 days, or 33.2% of time, from 546 days to file to 365 days. A July 1 “effective” or “first incurred” date would result in a 364 day, or 49.9%, reduction in time under the proposed regulations.

The proposed change builds on two previous efforts to shorten the test claim filing period. In 2002, Assembly Bill 3000 (Chapter No. 1124, Statutes of 2002) authorized the Commission to enforce a statute of limitations, requiring that local entities file test claims within three years following the effective date of the related requirement. As a result, the Commission experienced a decrease in the number of test claims submitted.<sup>2</sup> Subsequently, in 2005, the Legislature further reduced the existing statute of limitations for filing new test claims from three years to one year.<sup>3</sup> This reduction contributed to another decline in submissions.

**Proposed Alternative:** *Retain existing language in Section 1183.41(c).* The proposed change will result in fewer and less accurate claims. In many instances, the proposed changes will require local governments to file test claims before they can adequately track associated costs, much less audit those costs for accuracy. Moreover, the increased costs may not yet be realized or the process for tracking the increased costs may not be complete if the mandate is complicated or affects a long running project. In sum, the proposed regulation will either deter local governments from submitting an otherwise viable test claim because of the shortened deadline, or will force many to file a test claim prior to having accumulated all relevant data for the submission of the test claim.

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<sup>2</sup> California State Auditor Report: “*State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and in Controlling Costs and Liabilities*” (Report Number 2009-501), dated October 15, 2009.

<sup>3</sup> AB 2856.

## 2. Joint Test Claim Single Representative Requirement

### a. Test Claim Filing – Section 1183.1(g)(3)

The statement of reasons for this proposed change does not provide sufficient information to explain the purpose of the change or how it would be beneficial to the Commission or interested parties. The existing language for Section 1183.1(g) permits a joint effort between two or more claimants so long as, among other provisions, the claimants designate one contact person to act as the resource for information regarding the test claim for the Commission. (emphasis added).

The proposed regulation would change this requirement entirely, mandating that joint claimants designate one “sole representative” for all claimants, while striking language that denotes the representative acting as the “resource for information.” The revised language could be construed to require an unanimity of factual and legal concerns by all claimants. This would have a harmful effect on the efforts of joint claimants by requiring such unanimity, and by forcing them to select a single representative for their efforts despite the fact that they may have diverging concerns in certain circumstances on narrow issues that would not otherwise deter a joint test claim. This will result in an increased burden and cost to the Commission, as test claims that would otherwise have been filed as part of a joint effort will likely be filed as separate test claims under the proposed regulations.

**Proposed Alternative:** *Amend existing language as follows:*

1183.1(g)(3) The claimants have designated one ~~contact~~ person to act as the ~~resource~~ sole representative for all claimants for information for all claimants regarding the test claim.

Our organizations seek additional information and clarification regarding the problem the Commission proposes to solve with the proposed regulation, along with a thorough explanation of the necessity and anticipated benefit.

## 3. Filing and Service of All Documents

### a. Conduct of Hearing – Section 1182.10(b)

The proposed regulation regarding the “Conduct of Hearing” for an application for a finding of significant distress strikes out existing language that provides the hearings will not be conducted according to technical rules relating to evidence and witnesses, and permitting hearsay evidence in certain circumstances. No information is provided regarding the necessity or anticipated benefit of the proposed change.

The Commission is a quasi-judicial body, and therefore, should not be required to act in accordance with traditional “courtroom” rules and order. However, by striking out Section 1182.10(b), it is unclear whether or not the Commission will be required to act as such. Moreover, the proposed regulation conflicts with other regulations governing the conduct of hearings before the Commission. Section 1187.5, regarding evidence submitted to the

Commission in a quasi-judicial hearing, contains the same language being stricken in proposed regulation Section 1182.10(b).

**Proposed Alternative:** *Retain existing language in Section 1182.10(b).*

Our organizations seek information regarding the necessity or anticipated benefit of the proposed regulation, and seek to ensure that Commission hearings will continue to be conducted under the existing rules of California Code of Regulations section 1187.5(a).

4. **Filing and Service of All Documents**

- a. Various – Sections 1182.2(d), 1182.7(b), 1182.10(d), etc.

The numerous proposed regulations contain amendments wherein language has been inserted to require that “all representations of fact shall be supported by documentary or testimonial evidence[.]” Although common law definitions for “documentary evidence” and “testimonial evidence” exist, our organizations seek clarification regarding what the terms mean in the Commission’s quasi-judicial context.

**Proposed Alternative:** *Add definitions of “documentary evidence” and “testimonial evidence” to Section 1181.2.*

We would be happy to provide additional information or answer any follow-up questions the Commission may have. Please do not hesitate to contact Mustafa Hessabi at CSDA at (916) 442-7887, Dorothy Johnson at CSAC at (916) 327-7500, or Dan Carrigg at the League at (916) 658-8222.

Sincerely,



Mustafa Hessabi  
Legislative Analyst  
California Special Districts Association



Dorothy Johnson  
Legislative Representative  
California State Association of Counties



Dan Carrigg  
Deputy Executive Director, Legislative Director  
League of California Cities

**ORIGINAL  
RECEIVED**

AUG 07 2017

PUBLIC MEETING

**COMMISSION ON  
STATE MANDATES**

**COMMISSION ON STATE MANDATES**



**TIME:** 10:00 a.m.

**DATE:** Friday, July 28, 2017

**PLACE:** State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomate Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA  
Representative for MICHAEL COHEN, Director  
Department of Finance  
(Chair of the Commission)

LEE ADAMS III  
Sierra County Supervisor  
Local Agency Member

MARK HARIRI  
Representative for JOHN CHIANG  
State Treasurer

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member  
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
(Item 9)

HEIDI PALCHIK  
Assistant Executive Director

ERIC FELLER  
Senior Legal Counsel  
(Item 4)

MATTHEW B. JONES  
Commission Counsel

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF PRESENT

*(continued)*

JILL MAGEE  
Program Analyst  
*(Item 6)*

KERRY ORTMAN  
Program Analyst  
*(Item 7)*

CAMILLE N. SHELTON  
Chief Legal Counsel  
*(Item 3 and Item 8)*



PUBLIC TESTIMONY

**Appearing Re Item 3:**

For the State Controller's Office:

JIM VENNEMAN  
Audit Manager, Division of Audits  
State of California  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816

**Appearing Re Item 4:**

For the State Controller's Office:

LISA KUROKAWA  
Audit Manager, Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816



A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 6:**

DILLON GIBBONS  
California Special Districts Association  
1112 I Street, Suite 200  
Sacramento, California 95814

DOROTHY JOHNSON  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, California 95814

ANDY NICHOLS  
Nichols Consulting



Commission on State Mandates – July 28, 2017

ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>2</u>	<u>        </u>	<u>Commissioners Present</u>
<u>        </u>	<u>        </u>	<u>Ken Alex</u>
<u>        </u>	<u>        </u>	<u>Director</u>
<u>        </u>	<u>        </u>	<u>Office of Planning and Research</u>
<u>6</u>	<u>        </u>	<u>V. Hearings and Decisions <del>on Test Claims and</del></u>
<u>        </u>	<u>        </u>	<u>Parameters and Guidelines Pursuant to California</u>
<u>        </u>	<u>        </u>	<u>Code of Regulations, Title 2, Chapter 2.5, Article 7</u>
<u>7</u>	<u>        </u>	<u>A. <del>Proposed Adoption of</del> <u>Public Hearing on</u></u>
<u>        </u>	<u>        </u>	<u>Proposed Regulation Amendments</u>
<u>7</u>	<u>        </u>	<u>Item 9 Executive Director: <u>Budget, Workload</u></u>
<u>        </u>	<u>        </u>	<u>Update, and Tentative Agenda Items for the</u>
<u>        </u>	<u>        </u>	<u>September and December 2017 Meetings (info)</u>
<u>17</u>	<u>21</u>	<u>January 1<sup>st</sup>, <del>2015</del> <u>2018</u> [sic], effective date.</u>
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1 motion?

2 MEMBER RAMIREZ: I'll make the motion.

3 CHAIR ORTEGA: Moved by Ms. Ramirez.

4 MEMBER OLSEN: I'll second.

5 CHAIR ORTEGA: Second by Ms. Olsen.

6 All in favor approving the staff recommendation,  
7 please say "aye."

8 *(A chorus of "ayes" was heard.)*

9 CHAIR ORTEGA: It's approved unanimously.

10 We'll move on to Item 5.

11 MS. HALSEY: Item 5 is reserved for county  
12 applications for a finding of significant financial  
13 distress, or SB 1033 applications.

14 No SB 1033 applications have been filed.

15 Program Analyst Jill Magee will present Item 6, the  
16 public hearing on Proposed Regulation Amendments.

17 MS. MAGEE: Good morning.

18 The purpose of this public hearing on the proposed  
19 regulations is to take public comment. The written  
20 comment period for this rulemaking closed July 24<sup>th</sup>,  
21 2017.

22 The Commission received written comments from the  
23 California Special Districts Association, California  
24 State Association of Counties, and League of Cities on  
25 July 24<sup>th</sup>, 2017. However, the Commission did receive a

1 timely request for a public hearing on this matter; and  
2 that is what brings us here today.

3 A public hearing for a rulemaking is intended to  
4 provide the public an opportunity to voice opinions on  
5 the rulemaking. Agencies, however, are not required to  
6 provide a response to comments at the public hearing.  
7 Instead, all comments will be included in the rulemaking  
8 record; and Commission staff will prepare written  
9 responses to the comments as part of the final statement  
10 of reasons.

11 If changes to the proposed regulatory text are  
12 proposed by the commenters, Commission staff will prepare  
13 an analysis and recommendation on such changes for the  
14 Commission's consideration.

15 Procedurally, if staff recommends no changes to the  
16 proposed regulatory text, the matter, including written  
17 responses to all comments received, will be set for final  
18 adoption at the September 22<sup>nd</sup>, 2017, Commission hearing;  
19 and if the Commission adopts the regulations without  
20 additional changes at that time, it will retain its  
21 January 1<sup>st</sup>, 2015 [sic], effective date.

22 If changes to the proposed regulatory text are  
23 proposed and are recommended by staff, Commission staff  
24 will prepare the revised text analysis and recommendation  
25 for the Commission's consideration and approval at the

Commission on State Mandates – July 28, 2017

1 September 22<sup>nd</sup>, 2017, hearing.

2 If the Commission approves any substantive changes  
3 to the text, Commission staff will provide notice of an  
4 additional 15-day public-comment period and set the  
5 rulemaking package for adoption at the next regularly  
6 scheduled hearing, with an effective date of April 1<sup>st</sup>,  
7 2018.

8 Will those who wish to comment on this item please  
9 come forward and state your name for the record?

10 MR. NICHOLS: Andy Nichols, state mandated cost  
11 consultant for local government.

12 MS. JOHNSON: Dorothy Johnson, California State  
13 Association of Counties.

14 Mr. GIBBONS: Dillon Gibbons, with the California  
15 Special Districts Association.

16 CHAIR ORTEGA: Thank you.

17 Please, go ahead.

18 MR. NICHOLS: I am here this morning to just chat  
19 about the item regarding the test-claim period for filing  
20 based on a test-claim statute, whether it's the date of  
21 enactment or the cost-first-incurred date. And as CSDA  
22 and CSAC and the League identified in their letter, the  
23 proposed regulation, although I understand the  
24 Commission's motivation for trying to get a uniformity  
25 regarding the changes in the regulations, the concern

Commission on State Mandates – July 28, 2017

1 from local government, and consultants as well, is the  
2 effect it will have on the test-claim filing window.

3 And as a result, once again, as described in the letter,  
4 with the change occurring, it will reduce -- to use the  
5 two examples from that letter -- if there is a  
6 January 1 effective or first-cost date, this will reduce  
7 the eligible time period to file a test claim by  
8 181 days, or 33 percent of what it will become.

9 If the effective date, or cost-incurred date, is  
10 July 1 -- and these are the two most common examples  
11 whenever legislation is passed -- it will reduce it  
12 basically by 50 percent, or 364 days.

13 So the concern for locals in this matter is looking  
14 at the Commission, asserting that the necessity and  
15 anticipated benefit of making this change to a precise,  
16 clear, predictable one-year period of limits, a  
17 limitation to the filing of all test claims, right now,  
18 the existing regulation is very clear and concise and  
19 predictable: All test claims must be filed by June 30<sup>th</sup>,  
20 following the year that the costs are either first  
21 incurred or enacted. So in that respect, local  
22 government already knows when they have to get the test  
23 claim here to the Commission for its review.

24 The other issues that were mentioned in the letter,  
25 and I just wanted to expand upon, AB 3000 of 2002 reduced

1 what was a pretty wide-open window, down to three years.  
2 And follow-up legislation also described in that letter,  
3 back in 2005, reduced it to the current state that we  
4 have, with regard to this regulation.

5 Reducing this, as was noted in the Bureau of  
6 State Audits' report from -- I believe it was 2009 -- I  
7 apologize, I don't have that particular report in front  
8 of me -- but they identified both instances, that there  
9 was a dramatic decrease in the amount of test claims  
10 filed. And that is of concern to local government.

11 At the same time, I recognize AB 3000, there were  
12 some other moving parts that did result a large number  
13 of filings at one time; but since 2005, the test claims  
14 have dramatically dropped.

15 And I would even point to Item Number 9 in today's  
16 agenda, the Executive Director report. If you look to  
17 Roman numeral II, Item B, if I'm reading it correctly --  
18 I may be misinterpreting it -- it appears that dating  
19 back to last July of 2016, there have been two test  
20 claims filed by local government agencies. And if you  
21 look -- I decided to look at last July's Executive  
22 Director report. Under that same item, there appears to  
23 only have been one test claim filed. So we're talking  
24 over 4,000 local government agencies in the last  
25 24 months -- maybe I'm misinterpreting these numbers --

1 there have been three test claims?

2 Now, I don't believe it's the intent of the  
3 Commission; but if these changes are made to, once again,  
4 in every single example, reduce the time period that  
5 local government can file a test claim, we are starting  
6 to work that number towards zero. And that's the  
7 concern, is Article XIII B, Section 6. It's very  
8 difficult.

9 I know, for the Commission, it's very painstaking  
10 to go through and look back and find out what is and  
11 isn't preexisting and what is new and unique to local  
12 government. Local government has that same challenge;  
13 and they have one year to get it from the first date of  
14 cost incurment or enactment. And that is why there is a  
15 dramatic decrease since 2005, and as you've seen in the  
16 last two years -- once again, assuming I've got my  
17 numbers properly interpreted.

18 Thank you.

19 CHAIR ORTEGA: Thank you, Mr. Nichols.

20 Ms. Johnson?

21 MS. JOHNSON: Good morning.

22 Dorothy Johnson with the California State  
23 Association of Counties. We appreciate the opportunity  
24 to address the Commission on this issue. And we do hope  
25 that these comments will prove helpful in clarifying the



1 regulations and assist with expediting decision-making  
2 before this body.

3 I won't reiterate the comments made by Mr. Nichols;  
4 but I do want to stress that we do think that under the  
5 test-claim filing period requirement for section 1183.1,  
6 the more precise hard deadline of June 30<sup>th</sup> is  
7 appropriate and should be retained. This also aligns  
8 very well with the local budgeting process, which we  
9 think is helpful in ensuring the actual costs incurred  
10 will be more accurately reflected when it comes to  
11 reviewing the new programs or higher levels of services  
12 that are put upon counties and other local agencies.

13 The other item I wish to address -- and then I'll  
14 turn it over to my colleague from the special  
15 districts -- and this is reflected as well in our  
16 letter -- but it deals with the single-representative  
17 requirement proposal. And here, we're asking for further  
18 clarification.

19 CSAC, the League of California Cities, and the  
20 Special Districts Association, it's unclear to us why  
21 the opportunity for a single claimant to serve as a  
22 communication channel, but then also have to serve as the  
23 only representative for the body would be a service and  
24 create greater decision-making efficiency for the body.  
25 We do believe that there are often broad, common themes

1 for test claimants representing numerous agencies.  
2 However, those individual agencies may have further  
3 unique aspects that they wish to bring to the table; and  
4 we feel that opportunity would be severely limited with  
5 the proposed changes.

6 So what we've put in our letter as Item Number 2,  
7 we would like to see more information as to why having a  
8 single representative from multiple claimants is the  
9 appropriate solution forward, when using that single  
10 representative as a channel to communicate with the  
11 Commission, which is currently in place, seems to be an  
12 appropriate way to create efficiency in the  
13 decision-making process.

14 Thank you.

15 CHAIR ORTEGA: Thank you.

16 Mr. Gibbons?

17 Mr. GIBBONS: Ms. Chair, Members of the Commission,  
18 Dillon Gibbons with the California Special Districts  
19 Association.

20 I'd like to echo the comments of my colleagues and  
21 add a few more regarding some of the other proposed  
22 changes.

23 First, with regard to the proposed changes to the  
24 filing service of all documents and the conduct of the  
25 Commission hearings in section 1182.10(b), the proposed

1 regulation regarding the conduct hearing, strikes out  
2 existing language that provides that the hearing will not  
3 be conducted according to technical rules related to  
4 evidence and witnesses and permitting hearsay evidence in  
5 certain circumstances. Unfortunately, no information is  
6 provided regarding the necessity or anticipated benefit  
7 of the proposed change.

8 The Commission is a quasi-judicial body, and  
9 therefore should not be required to act in accordance  
10 with traditional courtroom rules. However, by striking  
11 out section 1182.10(b), it's unclear whether or not the  
12 Commission will be required to act as such and continue  
13 as that quasi-judicial body.

14 Moreover, the proposed regulation conflicts with  
15 other regulations governing the conduct of hearings  
16 before the Commission.

17 So section 1187.5, regarding evidence submitted to  
18 the Commission in a quasi-judicial hearing, will continue  
19 to contain the same language as it relates to hearsay  
20 evidence being submitted. But that is being stricken  
21 in the changes in 1182.10(b). So we have a proposed  
22 alternative, and that would be to, at this time, retain  
23 the existing language in 1182.10(b).

24 If the Commission still wishes to make changes to  
25 that section, we ask that you hold off on the changes

1 until the Commission staff is able to provide the public  
2 with information regarding the necessity or anticipated  
3 benefit of the proposed regulation and we have an  
4 opportunity to respond to those comments.

5 Now -- and I think I made a misstatement that there  
6 is no information provided regarding the necessity.  
7 There is some information, but it's not specific to that  
8 section. So I think that I want to be clear on that.

9 And for the impacts that that would have on our  
10 special districts and our local governments, the changes  
11 that are proposed would be significant cost increases  
12 regarding bringing a claim as far as our attorneys' fees.

13 If we're eliminating hearsay testimony, it will  
14 require tremendous investment of time and resources for  
15 agency staff to be preparing witnesses. Instead of  
16 having a GM be able to come in and say, "You know, I got  
17 this information from our auditor, I got this information  
18 from these folks; and here's what they said," we would  
19 have to be bringing in each one of them, is the  
20 understanding -- the way we read that proposed change.

21 And as it's currently written, there is confusion on  
22 how those regulations would be enforced or which ones we  
23 should follow. At least I'm confused.

24 So the second part -- this is a much shorter part --  
25 I'd like to comment on the proposed changes to the filing

1 and service documents. And this is various sections:  
2 There's section 1182.2(d), 1182.7(b), and 1182.10(d).  
3 The numerous proposed regulations contain amendments  
4 where language has been inserted into -- to require that  
5 all representations of facts shall be supported by  
6 documentary or testimonial evidence. And although  
7 there's common-law definitions of "documentary evidence"  
8 and "testimonial evidence," we would like to see  
9 clarification to be put into the proposed language that  
10 has the definitions as they would apply to this  
11 Commission for the documentary and testimonial evidence.  
12 And it just adds clarity for our districts and for our  
13 local governments.

14 That's it. Thank you.

15 CHAIR ORTEGA: Thank you, Mr. Gibbons.

16 Any other public comment on this item?

17 *(No response)*

18 CHAIR ORTEGA: Okay, so I think at this point, the  
19 plan would be to accept these comments, and then ask the  
20 staff to provide a written response. Then we could  
21 consider the issue in September.

22 Is there any objection to that?

23 Ms. Ramirez?

24 MEMBER RAMIREZ: No objection. I would just like to  
25 thank the members of the various agencies for coming and

Commission on State Mandates – July 28, 2017

1 talking to us.

2 Thank you.

3 CHAIR ORTEGA: Anything else?

4 *(No response)*

5 CHAIR ORTEGA: Okay. With that, that will be the  
6 direction.

7 And then we'll move on to Item 7.

8 MS. HALSEY: Program Analyst Kerry Ortman will  
9 present Item 7, the Legislative Update.

10 MS. ORTMAN: Good morning.

11 On June 27<sup>th</sup>, 2017, the Governor signed the 2017-18  
12 Budget Act, AB 97, which includes \$601 million in  
13 additional Proposition 98 related funding, of which  
14 \$287 million would be used to pay down the K-12 mandates  
15 backlog.

16 The Budget Act adds \$8 million and two mandates  
17 to the K-12 mandate block grant. Those would be the  
18 *California Assessment of Student Performance and*  
19 *Progress, or "CAASPP," and Training for School Employee*  
20 *Mandated Reporters.*

21 The Budget Act makes no changes to the list of  
22 suspended K-12 mandates or to funded or suspended  
23 community college and local government mandates as  
24 compared to the 2016-17 budget year.

25 We continue to monitor AB 268, which was introduced

REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

*In witness whereof*, I have hereunto set my hand on the 1<sup>st</sup> day of August 2017.



Daniel P. Feldhaus  
Daniel P. Feldhaus  
California CSR #6949  
Registered Diplomate Reporter  
Certified Realtime Reporter

CALIFORNIA CODE OF REGULATIONS

TITLE 2. ADMINISTRATION

DIVISION 2. FINANCIAL OPERATIONS

CHAPTER 2.5. COMMISSION ON STATE MANDATES

Article 1. General

§ 1181.1. Delegation of Certain Functions; Executive Director Appeals.

(a) Whenever it is stated in these rules that the "Commission" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the Commission on State Mandates specifically has reserved the same for its own exclusive action.

(b) Whenever it is stated that the "executive director" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, or it is not expressly stated that the Commission itself shall so act, the executive director of the Commission has the authority to act thereon.

(c) A real party in interest to a matter may appeal to the Commission for review of the actions and decisions of the executive director on that matter.

(1) The appellant shall submit the appeal in writing within 10 days of first being served written notice of the executive director's action or decision.

(2) The appellant shall file and serve the appeal in accordance with section 1181.3 of these regulations.

(3) The appeal shall explain the basis for the appeal, state the action being requested of the Commission, and include all facts and materials the applicant believes are relevant to the appeal.

(4) The executive director shall schedule the appeal for hearing and vote by the Commission as soon as practicable following receipt of the appeal.

(5) Other parties may submit comments on an appeal in accordance with section 1181.3 of these regulations.

(6) The Commission shall determine whether to uphold the executive director's decision by a majority vote of the members present. The decision shall be final and not subject to reconsideration.

(7) The executive director shall notify the appellant in writing within 10 days of the Commission's decision.

(d) Nothing herein prohibits the executive director from delegating to subordinates as provided in Government Code section 18572.

Note: Authority cited: Sections 17527(g), 17530 and 17531, Government Code. Reference: Section 17530, Government Code; and *Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188.

§ 1181.2. Definitions.

Unless otherwise indicated, the following definitions and those found in Government Code sections 17510 through 17524 apply to this chapter:



- 1 (a) "Affected state agency" means a state department or agency that is responsible, in whole or in  
2 part, for implementation, enforcement, or administration of any statutes or executive orders that  
3 are the subject of a matter.
- 4 (b) "Amendment" of a test claim means the addition of new allegations based on new statutes or  
5 executive orders to an existing test claim. The addition or substitution of parties and supporting  
6 declarations based on the original statutes or executive orders alleged in an existing test claim is  
7 not an "amendment."
- 8 (c) "Claimant" means the local agency or school district filing a test claim or incorrect reduction  
9 claim.
- 10 (d) "Commission staff" means the executive director, legal counsel, or other Commission  
11 employee authorized by the Commission or the executive director to represent the Commission  
12 on a specific claim or request, or to receive filings at the Commission office.
- 13 (e) "Completed" means that all requirements for a new filing for a test claim, proposed  
14 parameters and guidelines, request to amend parameters and guidelines, request for  
15 reconsideration, request to review claiming instructions, incorrect reduction claim or request for  
16 mandate redetermination have been satisfied by the claimant or requester.
- 17 (f) "Filing date" means the date received at the Commission's office during normal business  
18 hours by any of the methods described in section 1181.3 of these regulations.
- 19 (g) "Incorrect reduction claim" means a claim alleging that the Office of State Controller  
20 incorrectly reduced the reimbursement claim of a local agency or school district.
- 21 (h) "Informational hearing" means any hearing designed to gather and assess information to  
22 assist the Commission in formulating policies, informing the public of Commission actions, or  
23 obtaining public comment and opinion.
- 24 (i) "Interested party" means a local agency, school district, or state agency, with a beneficial  
25 interest in the matter.
- 26 (j) "Interested person" means any individual, local agency, school district, state agency,  
27 corporation, partnership, association, or other type of entity, who has ~~ing~~ an interest ~~in the~~  
28 ~~activities of the Commission~~ a matter before the Commission, but is not a party or interested  
29 party with respect to that matter.
- 30 (k) "New filing" means a test claim, incorrect reduction claim, request to amend parameters and  
31 guidelines, joint request for reasonable reimbursement methodology, request for review of  
32 claiming instructions, request for removal or inclusion in State Mandates Apportionment System,  
33 or request for mandate redetermination.
- 34 (l) "Party" includes a party's representative of record who is expressly authorized to act on the  
35 party's behalf. Party means the following for each matter as specified below:
- 36 (1) "Party to a Test Claim" means the test claimant, the Department of Finance, and other  
37 affected state agencies.
- 38 (2) "Party to an Incorrect Reduction Claim" means the claimant and the Office of State  
39 Controller.
- 40 (3) "Party to a Request to Amend Parameters and Guidelines" means the requester, the

- 1 Department of Finance, the Office of State Controller, affected state and local agencies, and  
2 affected school districts.
- 3 (4) "Party to a Joint Request for Reasonable Reimbursement Methodology" means the test  
4 claimant and the Department of Finance.
- 5 (5) "Party to a Request for Review of Claiming Instructions" means the requester and the Office  
6 of State Controller.
- 7 (6) "Party to a Request for Removal or Inclusion in State Mandates Apportionment System"  
8 means the requester, the Department of Finance, and the Office of State Controller.
- 9 (7) "Party to a Request for Mandate Redetermination" means the requester, the Department of  
10 Finance, the Office of State Controller, affected state and local agencies, and affected school  
11 districts.
- 12 (m) "Real Party in Interest" means any person or entity whose interest will be directly affected  
13 by the resolution of the matter.
- 14 (n) "Rulemaking proceeding" means any hearing designed to adopt, amend, or repeal any rule,  
15 regulation, or standard of general application that implements, interprets, or makes specific any  
16 provision of Title 2, Division 4, Part 7, beginning with Government Code section 17500 or any  
17 other statute enforced or administered by the Commission.
- 18 (o) "Statewide cost estimate" means the approximate sum of money that local agencies or school  
19 districts may have incurred to implement a state-mandated program or any increased level of  
20 service of an existing mandated program. A statewide cost estimate submitted by a test claimant  
21 shall be an estimate of the first full fiscal year of actual or estimated costs based on the statutes  
22 and executive orders alleged in a test claim, except as provided in Government Code section  
23 17557.1(a). A statewide cost estimate adopted by the Commission shall be an estimate based on  
24 the Commission's determination of a test claim for the initial period of reimbursement to be  
25 reported to the Legislature.
- 26 (p) "Statewide estimate of costs" is based on a reasonable reimbursement methodology proposed  
27 by a test claimant and the Department of Finance, adopted by the Commission, and reported to  
28 the Legislature pursuant to Government Code section 17557.2.
- 29 (q) "Subsequent change in law" means a change in law that requires a finding that an incurred  
30 cost is a cost mandated by the state, as defined by Government Code section 17514, or is not a  
31 cost mandated by the state pursuant to Government Code section 17556, or a change in mandates  
32 law. Amendments to article XIII B, section 6 of the California Constitution that were approved  
33 by the voters on November 2, 2004 and changes in the statutes or executive orders that impose  
34 new state-mandated activities and require a finding pursuant to Government Code section  
35 17551(a) are not a "subsequent change in law."
- 36 (r) "Teleconference" means a conference of individuals in different locations, connected by  
37 electronic means, through audio, video, or both.
- 38 (s) "Test claim" means the first claim filed with the Commission alleging that a particular statute  
39 or executive order imposes costs mandated by the state pursuant to Government Code section  
40 17521 and also includes a claim filed on a legislatively determined mandate pursuant to  
41 Government Code section 17574(c). The test claim procedure functions similarly to a class  
42 action and has been established to expeditiously resolve disputes affecting multiple agencies.

1 (t) "Written material" means any paper or electronic document relevant to a matter that is filed  
2 with the Commission except that "written material" does not include a "new filing" as defined in  
3 subdivision (k) of this section.

4 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
5 Sections 11123, 17516-17521, 17527(c), 17529, 17530, 17531, 17551, 17553, 17555, 17557,  
6 17557.1, 17557.2, 17558, 17558.5, 17558.7, 17558.8, 17559, 17561, 17561.5, 17570, 17572,  
7 17573, 17600 and 17612, Government Code; *Redevelopment Agency v. Commission on State*  
8 *Mandates* (1996) 43 Cal.App.4th 1188; and *City of San Jose v. State of California* (1996) 45  
9 Cal.App.4th 1802.

10 **§ 1181.3. Certification, Filing and Service of Written Materials and New Filings.**

11 (a) Certification. All new filings and written materials filed with the Commission shall be signed  
12 at the end of the document, under penalty of perjury, with the declaration that the filing is true  
13 and correct to the best of the declarant's personal knowledge, information, or belief. The date of  
14 signing, the declarant's title, address, telephone number, and email address, if applicable, shall  
15 be included.

16 ~~(a)~~ **(b)** Filing. Unless otherwise provided in this chapter, new filings and written materials may be  
17 filed electronically or by hard copy as described in this subdivision. If filed by hard copy, the  
18 filer shall simultaneously serve all written material in accordance with subdivision (b) of this  
19 regulation. Filing is complete upon receipt by the Commission. Filings shall not contain personal  
20 identifying information that violates state or federal privacy laws, including, but not limited to  
21 the provisions of California Civil Code section 1798 et seq. New filings and written materials  
22 may be filed by any of the following methods:

23 (1) E-Filing. ~~Submit~~File the original ~~to the Commission~~ by saving the signed original in a PDF  
24 file and submitting it via the Commission's e-filing system, available on the Commission's  
25 website. Documents e-filed with the Commission must be in a legible and searchable format that  
26 allows Commission staff to electronically date stamp the document to verify date of filing, and to  
27 append additional pages for posting on the Commission's web site with proof of service, in lieu  
28 of the filer serving the document to the entire mail list for the matter. E-filed documents should  
29 be filed in their original, searchable form, but the signature page shall be replaced with a scanned  
30 copy, rather than digitally signed. The filer is responsible for maintaining the signed original for  
31 the duration of the process for the matter, including any period of appeal. Notwithstanding any  
32 other provision in these regulations, if a new filing or written material is e-filed, no additional  
33 copies shall be submitted to Commission staff. The following shall apply to e-filing:

34 (A) By providing an e-mail address for the mailing list for a matter, a person consents to e-mail  
35 service for that matter.

36 (B) An automated notice that the document was successfully sent is immediately available to the  
37 person who e-files using the Commission's e-filing system and should be saved or printed for the  
38 filer's records. Commission staff shall also reply by e-mail confirming actual receipt of the  
39 legible, searchable document by the Commission within two business day of receipt. In the  
40 absence of a confirmation e-mail from Commission staff, it is the responsibility of the person  
41 who e-files to obtain confirmation that the Commission actually received the filing.

42 (C) By using e-filing, the filing person agrees, in the event of failure of e-filing, to re-file the  
43 document, no later than the business day after the business day on which notice of the failure of

1 e-filing is received by the filing party, by any means authorized by these rules, in order to  
2 maintain the original filing date. "Failure of e-filing" occurs when the filing person receives  
3 notification, in any manner, of non-receipt of an e-filed document or of any other inability of  
4 Commission staff to access the document. The filer and Commission staff may agree to any form  
5 for re-filing allowed by these regulations.

6 (D) Documents e-filed with the Commission do not need to be served and proof of service does  
7 not need to be provided for persons that have provided an e-mail address for the mailing list.  
8 Nothing in this regulation excuses a filer from serving hard copies of written material on persons  
9 who appear on the mailing list and have not provided an e-mail address for the mailing list or  
10 from providing a proof of service with the e-filing to the Commission for the service.

11 (E) Upon confirmation of actual receipt, Commission staff shall notify all persons on the mailing  
12 list for the matter that written material may be viewed on the Commission's website. For "new  
13 filings" as defined by section 1181.2(k) of these regulations, Commission staff shall notify all  
14 persons on the mailing list prepared pursuant to section 1181.4 of these regulations, of the  
15 availability of those filings on the Commission's website when Commission staff sends its notice  
16 of complete filing to the filing party.

17 (F) The Commission may serve any document by e-mail service, or by making it available at a  
18 particular URL, unless doing so would be contrary to state or federal law.

19 (G) The executive director may issue any order consistent with these rules to govern e-mail  
20 service for a particular matter.

21 (2) By first class mail. Submit the unbound original and seven copies to the Commission.

22 (3) By overnight delivery. Submit the unbound original and seven copies to the Commission.

23 (4) By personal service. Hand the unbound original and seven copies to Commission staff.

24 (b) Service. If written materials are filed in hard copy, the filing must simultaneously be served  
25 on everyone on the mailing list using the same method as was used for the filing. Unless  
26 otherwise provided in this section, a proof of service shall be included with any written material  
27 filed with Commission staff. Proof of personal service requires a declaration of the messenger of  
28 the time and place that the written material was served. Service is not required for new filings  
29 because mailing lists for matters are only prepared, pursuant to section 1181.4 of these  
30 regulations, after a new filing is deemed complete. Completed new filings will be served on the  
31 mailing list by Commission staff with the Notice of Complete Filing.

32 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.  
33 Reference: Section 1798 et seq., Civil Code; Sections 17530, 17551, 17557(d), 17558.7, 17570,  
34 17573(b), 17574(c) and 17573(g), Government Code.

35 **§ 1181.4. Mailing Lists and Numbering of Matters.**

36 (a) For all matters deemed complete, Commission staff shall prepare a mailing list of the names,  
37 addresses, phone numbers and e-mail addresses of the parties, interested parties, and interested  
38 persons who have requested inclusion on the mailing list. The mailing list will be uploaded to the  
39 Commission's website and an e-mail notification of its availability will be sent to everyone on  
40 the list who has provided an e-mail address. A hard copy will be provided by Commission staff  
41 to persons on the mailing list who have not provided an e-mail address and to any person who  
42 requests a hard copy.

1 (b) By providing an e-mail address for the mailing list for a matter, a person consents to e-mail  
2 service of documents for that matter.

3 (c) For the following new filings received by the Commission, the executive director shall issue  
4 sequential matter numbers, by fiscal year, as follows:

5 (1) Test Claim (TC)

6 (2) Incorrect Reduction Claim (I)

7 (3) Request to Amend Parameters and Guidelines (PGA)

8 (4) Joint Request for Reasonable Reimbursement Methodology (RRM)

9 (5) Request for Review of Claiming Instructions (RCI)

10 (6) Request for Removal or Inclusion in State Mandates Apportionment System (SMAS)

11 (7) Joint Request for Legislatively Determined Mandate (LDM)

12 (8) Request for Mandate Redetermination (MR)

13 Note: Authority cited: Sections 17527(g), 17553(a), 17570(d) and 11104.5, Government Code.

14 Reference: Sections 17530, 17551, 17557, 17557.1, 17571, 17557.2, 17570, 17573(b), 17573(g),  
15 17574(c) and 17615.1, Government Code.

16 **§ 1181.5. Appointment of Designees and Election and Duties of Officers.**

17 (a) If a Commission member, as defined by Government Code section 17525, with statutory  
18 authority to designate a deputy to represent him or her makes a designation, that designee may  
19 continue to serve on the Commission until the designation is revoked by the current Commission  
20 member.

21 (b) Commission members as defined by Government Code section 17525 shall be officers.  
22 Duties of Officers:

23 (1) Duties of Chairperson. The chairperson shall preside over all meetings of the Commission  
24 when present. The chairperson has all the rights and responsibilities of the other members,  
25 including the right to introduce motions or proposals and to speak and vote on them while  
26 presiding. The chairperson has the power to appoint one or more members of the Commission as  
27 a subcommittee to investigate and report to the Commission on any matter within the scope of  
28 the purposes of the Commission or to form advisory groups to assist the Commission or its  
29 subcommittees in fulfilling their purposes.

30 (2) Duties of Vice Chairperson. The vice chairperson shall preside over all meetings of the  
31 Commission at which the chairperson is not present. The vice chairperson has all the rights and  
32 responsibilities of the other members, including the right to introduce motions or proposals and  
33 to speak and vote on them while presiding.

34 (c) Time of Election. The Commission shall elect a chairperson and vice chairperson at the  
35 January meeting of each year, or at the next regularly scheduled meeting, if no meeting is held in  
36 January. In the calendar year following the statewide election of constitutional officers, the  
37 Commission may postpone its election. The Commission may authorize the executive director to  
38 conduct the election portion of its meeting.

1 (d) Vacancy. If an office (chairperson or vice-chairperson) held by a public member or local  
2 elected official becomes vacant, an election shall be conducted as soon as practicable to fill the  
3 vacant office.

4 (e) When Election Takes Effect. An election shall take effect immediately.

5 Note: Authority cited: Sections 17500 and 17527(g), Government Code. Reference: Sections 7.5,  
6 7.6, 7.9, 17525, 17528 and 17530, Government Code.

7 **§ 1181.6. Development and Approval of Commission Forms.**

8 (a) In consultation with interested parties and in accordance with applicable law and these  
9 regulations, the executive director shall develop the test claim form, incorrect reduction claim  
10 form, mandate redetermination form, and other forms, to simplify and improve the efficiency of  
11 the Commission's processes.

12 (b) The executive director shall conduct at least one workshop with interested parties,  
13 Department of Finance, Office of the State Controller, other affected state agencies, and  
14 interested persons before approval of a form.

15 (c) Upon development of a new form, the executive director shall notify claimants, interested  
16 parties, affected state agencies, and interested persons, and shall disseminate copies at least 10  
17 days before the operative date of a form.

18 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
19 17530, 17553, 17558.7(c), 17558.7(e) and 17570(d)(1), Government Code.

20 **§ 1181.7. Waiver of Requirement to Use Forms.**

21 The executive director may waive a requirement to use any form specified by these regulations.

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
23 17530, 17553, 17558.7(c), 17558.7(e) and 17570(d)(1), Government Code.

24 **§ 1181.8. Commission Meeting Quorum and Voting Requirements.**

25 (a) A majority of the existing membership of the Commission shall constitute a quorum.

26 (b) All actions of the Commission, with the exception of requests to reconsider a prior final  
27 decision as provided in section 1187.15, shall require the affirmative vote of at least a majority of  
28 the existing membership of the Commission.

29 (c) In the case of a tie vote, the Commission may:

30 (1) Re-hear the claim when the membership of the Commission changes or when an abstaining  
31 member completes review of the administrative record;

32 (2) Assign the claim to a hearing panel or to a hearing officer, pursuant to section 1187.2 et seq.,  
33 for hearing and preparation of a proposed decision for consideration by the Commission. If the  
34 Commission assigns the claim to a hearing panel, the selection of the hearing panel shall be by  
35 lot, or other means of random and impartial selection; or

36 (3) Direct staff to prepare another proposed decision based on an interpretation of the law and  
37 evidence in the record for consideration by the Commission.

1 (d) A majority of the votes cast by those members assigned to a hearing panel is required for the  
2 approval of a preliminary decision on claims and applications for a finding of significant  
3 financial distress.

4 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
5 17525, 17527(c) and 17532, Government Code; and Section 17000.6, Welfare and Institutions  
6 Code.

7 **§ 1181.9. Commission Meeting Notice, Agenda, and Consent Calendar.**

8 (a) Time and distribution. Notices and agendas of meetings shall be given to all members, to all  
9 parties and interested parties to proceedings on the agenda, and to all persons who request them  
10 in writing. The notice and agenda shall be provided no less than 10 days prior to the scheduled  
11 meeting.

12 (b) Agenda. The meeting agenda shall be prepared by the executive director and shall include  
13 any item proposed by any member, or the executive director.

14 (c) The agenda may include an item designated "the consent calendar."

15 (1) The consent calendar shall include those matters for which there is no known opposition by  
16 any of the parties or interested parties.

17 (2) At the request of any member, party or interested party, any matter shall be removed from the  
18 consent calendar and may be considered at the same meeting as a separate item of business.

19 (3) The chairperson may also remove any matter from a duly noticed meeting agenda and place it  
20 on the consent calendar, provided there is no objection from the parties, interested parties, any  
21 Commission member, or person present and wishing to comment on the matter.

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
23 11125, 11125.1, 17527(b), 17527(c) and 17530, Government Code.

24 **§ 1181.10. Commission Meeting Procedures.**

25 (a) Presiding Member. The chairperson shall preside over all meetings of the Commission when  
26 present. In the chairperson's absence, the vice chairperson shall preside. If neither the  
27 chairperson nor the vice chairperson is in attendance, the member present who has the greatest  
28 seniority on the Commission shall preside. The presiding member may yield the chair.

29 (b) Public Comments.

30 (1) Comments in Writing. Any person may submit comments in writing on any agenda item. To  
31 be included as a part of the administrative record for the matter, comments must be provided to  
32 the Commission members and be made available for public review either before or at the  
33 Commission hearing on the matter.

34 (A) Comments received at least 15 days in advance of the meeting shall be included in the  
35 Commission's meeting binders, a copy of which is available for public viewing at the  
36 Commission meeting.

1 (B) Comments received more than five days in advance of the meeting shall be included in the  
2 Commission's meeting binders, if feasible, or shall be provided to the Commission when the item  
3 is called, unless otherwise agreed to by the Commission or the executive director.

4 (C) For written comments received less than five days in advance of the meeting, the commenter  
5 shall provide 12 copies to Commission staff at the meeting. Commission staff shall provide  
6 copies of the comments to the Commission and shall place a copy on a table for public review  
7 when the item is called.

8 (2) Oral Comments. Any person present and so desiring shall be given an opportunity to make  
9 oral comments on any agenda item, provided, however, that the presiding member may limit or  
10 preclude comments as necessary for the orderly conduct of business.

11 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
12 11125.7, 17525 and 17526-17528, Government Code.

13 **§ 1181.11. Permanent Record of Commission Meetings.**

14 (a) The Commission shall keep minutes of its meetings. Minutes shall be approved by the  
15 Commission and, upon approval, shall be signed by the chairperson or other person designated  
16 by the chairperson. Signed minutes shall be the original evidence of actions taken at any  
17 meeting, including the text of any resolutions adopted.

18 (b) Commission public meetings shall be recorded by stenographic reporter or electronic  
19 recording or both. The transcript or recordings shall be kept for the period of time required by  
20 applicable law governing the retention of records of state agency public proceedings, or until  
21 conclusion of administrative or judicial proceedings, whichever is later.

22 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section  
23 17530, Government Code.

24 **§ 1181.12. Default Rules of Commission Meetings.**

25 In all cases not provided for by Government Code Section 17500 et seq., the Bagley-Keene Open  
26 Meeting Act (Government Code Section 11120 et seq.) and the Commission's rules and  
27 regulations, the authority shall be Robert's Rules of Order (revised), unless otherwise designated  
28 by the Commission at the annual election meeting.

29 Note: Authority cited: Sections 17500, 17527(g) and 17553(a), Government Code. Reference:  
30 Sections 11120 et seq. and 17526, Government Code.

31 **§ 1181.13. Commission Meeting by Teleconference.**

32 The Commission may hold an open or closed meeting by teleconference if it is difficult or  
33 impossible for the Commission to achieve a quorum. A meeting held by teleconference shall  
34 comply with the Bagley-Keene Open Meeting Act.

35 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
36 11123, 17526, 17527(b) and 17527(c), Government Code.



1           **Article 2. Applications for a Finding of Significant Financial Distress**

2           **§ 1182.1. Reduction in Aid Levels; Definitions.**

3           When the county has made a compelling case that basic county services cannot be maintained  
4           without a reduction in the level of aid established by Welfare and Institutions Code section  
5           17000.5, the Commission shall make a finding of significant financial distress.

6           In making such a finding, the following definitions shall apply:

7           (a) "Application" means a county application filed pursuant to this article requesting the  
8           Commission determine that the county has made a compelling case that basic county services  
9           cannot be maintained without a reduction in the level of General Assistance aid established by  
10           Welfare and Institutions Code section 17000.5, and finding that as a result, the county is in  
11           significant financial distress, as defined in Welfare and Institutions Code section 17000.6.

12           (b) "Applicant" means the county that filed the request for a finding of significant financial  
13           distress.

14           (c) A "compelling case" sufficient to cause a finding of significant financial distress must be  
15           established by clear and convincing evidence.

16           (d) "Basic county services" means those services which are fundamental or essential. The  
17           services shall include, but are not limited to, those services required by state or federal law, and  
18           may vary from county to county.

19           (e) "Maintained" means the level of service which the county must provide in order to adequately  
20           or effectively furnish basic county services.

21           Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare  
22           and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

23           **§ 1182.2. Filing of an Application for a Finding of Significant Financial Distress.**

24           (a) Pursuant to Welfare and Institutions Code section 17000.6, in order for the board of  
25           supervisors of any county to obtain a finding of significant financial distress, the board of  
26           supervisors must submit a written application to the Commission on State Mandates.

27           (b) The applicant shall certify, file, and serve an original application, including supporting  
28           documents, with the Commission in accordance with section 1181.3 of these regulations.

29           (c) All applications shall contain at least the following:

30           (1) A table of contents, indicating page numbers.

31           (2) A copy of a resolution from the county board of supervisors stating that compliance with the  
32           standards set forth in Welfare and Institutions Code section 17000.5 will result in significant  
33           financial distress to the county for a specified period of time, up to 36 months.

34           (3) A written narrative, including a summary, detailing the relevant financial or other budgetary  
35           information and documents necessary for a county to make a compelling case that basic county  
36           services, including public safety, cannot be maintained without a reduction in the standard of aid  
37           as provided in Welfare and Institutions Code section 17000.5. The narrative shall also include:

38           (A) The monthly caseload of General Assistance recipients for each of the 12 months preceding  
39           the date the application is filed.

- 1 (B) The current monthly rate of the General Assistance Standard of Aid.
- 2 (C) The proposed reduced rate of the General Assistance Standard of Aid.
- 3 (D) An overview of county finances, including, but not limited to county revenue sources;  
4 budget reserve data; budget expenditures; mandated expenditures and maintenance of effort  
5 costs.
- 6 (E) A detailed summary of program needs and expenditure flexibility, including, but not limited  
7 to department-by-department data on unmet program needs for basic county services.
- 8 (F) The county's total population at the time the application is filed, and the total county  
9 population for the two fiscal years prior to the year in which the application was filed.
- 10 (d) The written narrative shall be submitted under penalty of perjury. ~~In addition, the financial~~  
11 ~~and other budgetary documents shall be certified under penalty of perjury. If representations of~~  
12 fact are made, they shall be supported by documentary or testimonial evidence, submitted in  
13 accordance with section 1187.5 of these regulations.
- 14 (e) Each page of the application, including all supporting documentation, shall be consecutively  
15 numbered.
- 16 (f) The original application, including all supporting documentation, shall be unbound and  
17 single-sided.
- 18 (g) The executive director shall notify an applicant within 10 days of receipt of an application  
19 whether its application is incomplete. If the application is incomplete, the executive director may  
20 return the application to the county. An application shall be considered incomplete if the  
21 elements in subdivisions (b) through (f) of this section have not been satisfied, are illegible or are  
22 not included. The requirements for Commission public hearings and decisions, as set forth in  
23 Welfare and Institutions Code section 17000.6(c), apply only to complete applications.
- 24 (h) Within 10 days of receipt of a completed application, the executive director shall notify the  
25 applicant that the application is complete, and notify the applicant of the schedule. The executive  
26 director shall also send the application to interested persons located in the applicant county.
- 27 (i) Prior to filing an application, a county may request a tentative date for conducting the hearing  
28 in the county. If a complete application is not received by a specified date, a new tentative  
29 hearing date may be set.

30 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare  
31 and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

32 **§ 1182.3. Extension of Period for Preliminary and Final Decision and Current Period of**  
33 **Financial Distress.**

- 34 (a) If an application is filed while another county's application is pending, the executive director  
35 may extend both the preliminary decision period up to 120 days and the final decision period up  
36 to 150 days from the filing date of the application, unless otherwise provided in the current  
37 Budget Act. If the preliminary and final decision periods are extended, any current period of  
38 significant financial distress of the applicant that has been set, pursuant to Welfare and  
39 Institutions Code Section 17000.6(b), shall also be extended for the same period.

1 (b) Within 10 days of receipt of a county's application, the executive director shall provide  
2 written notice to the applicant of extensions of the preliminary decision and final decision  
3 periods and of any current period of significant financial distress of the applicant.

4 Note: Authority cited: Stats. 1998, c. 324, Item 8885-001-0001, Prov. (2), p. 622 (and subsequent  
5 Budget Acts); Section 17527(g), Government Code; and Section 17000.6(b), Welfare and  
6 Institutions Code. Reference: Section 17000.6(c), Welfare and Institutions Code.

7 **§ 1182.4. Notice.**

8 (a) Upon receipt of a complete application for a finding of significant financial distress, the  
9 Commission shall provide to the applicant a written 30-day notice of the hearing, to be held in  
10 the county.

11 (b) The notice shall be publicly posted by the applicant at the county court house and one county  
12 welfare office where General Assistance recipients are generally present. The Commission shall  
13 publish two notices in a newspaper of general circulation in the county. The first notice shall be  
14 published at least 30 days prior to the hearing date. The second notice shall be published at least  
15 10 days prior to the hearing date. The cost of publishing the notices shall be paid for by the  
16 Commission. Notice shall also be posted on the Commission's website.

17 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6(b), Welfare  
18 and Institutions Code. Reference: Section 11125, Government Code; and Section 17000.6(c),  
19 Welfare and Institutions Code.

20 **§ 1182.5. Pre-Hearing Conference.**

21 A pre-hearing conference may be scheduled by the executive director for the purpose of  
22 identifying issues and determining methods of resolving the issues. The county and other parties  
23 known to have an interest in the county's application shall be invited to participate. This  
24 conference shall not limit the issues that can be presented to or considered by the Commission at  
25 public hearing.

26 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
27 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code; and Section  
28 17530, Government Code.

29 **§ 1182.6. Assignment to Hearing Panels/Hearing Officers.**

30 The chairperson may assign an application to a hearing panel consisting of one or more members  
31 of the Commission, which shall act on behalf of the Commission, or to a hearing officer for  
32 hearing and preparation of a preliminary decision. Assignments by the chairperson of members  
33 on the hearing panels shall be rotated among the members with the composition of the members  
34 so assigned being varied and changed to assure that there shall never be a fixed and continued  
35 composition of members.

36 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
37 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code; and Sections  
38 17528 and 17532, Government Code.

1    **§ 1182.7. Request for Supplemental Information.**

2    (a) The executive director may request supplemental information from the applicant to assist the  
3    Commission in its review and analysis of the application. The applicant shall provide the  
4    supplemental information under the timeline established by the executive director.

5    (b) The supplemental information and any attached financial or other budgetary documents shall  
6    be ~~submitted under penalty of perjury~~ certified, filed, and served in accordance with section  
7    1181.3 of these regulations. ~~Any attached financial or other budgetary documents shall be~~  
8    ~~certified under penalty of perjury.~~ If representations of fact are made, they shall be supported by  
9    documentary or testimonial evidence, submitted in accordance with section 1187.5 of these  
10   regulations.

11   Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
12   Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code, and Section  
13   17530, Government Code.

14   **§ 1182.8. Review of Completed Application for a Finding of Significant Financial Distress**  
15   **and Preparation of Staff Analysis.**

16   (a) Before the hearing is conducted in the applicant county, the executive director shall prepare  
17   and distribute a staff analysis of the application, which shall include, but not be limited to, a  
18   review of written comments filed by interested persons, and rebuttals filed by the applicant. The  
19   staff analysis may also include a review of the applicant's revenue sources, including the  
20   applicant's flexibility in directing its resources; review of the applicant's budget expenditures,  
21   statutory relief, contingencies, and fund balances; an analysis of the applicant's department-by-  
22   department evaluation of unmet need in basic county services; and a preliminary  
23   recommendation whether the Commission should approve or deny the application. The staff  
24   analysis shall describe the application and assist the Commission in determining whether or not  
25   to make a finding of significant financial distress.

26   (b) The executive director shall send the staff analysis out for comment at least 10 days prior to  
27   the hearing conducted in the applicant county.

28   Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
29   Institutions Code. Reference: Section 17530, Government Code; and Section 17000.6, Welfare  
30   and Institutions Code.

31   **§ 1182.9. Written Comments.**

32   The applicant and any interested persons may file written comments concerning the staff analysis  
33   with the Commission. Written comments shall be certified, filed, and served with the  
34   ~~Commission~~ in accordance with section 1181.3 of these regulations. If representations of fact are  
35   made, they shall be supported by documentary or testimonial evidence, submitted in accordance  
36   with section 1187.5 of these regulations. The written comments shall be reviewed by  
37   Commission staff and may be incorporated into any revised or supplemental staff analysis of the  
38   application.

39   Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
40   Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

1    **§ 1182.10. Conduct of Hearing.**

2    (a) Each party shall have the right to present witnesses, to introduce exhibits, and to propose  
3    questions to the chairperson, hearing panel, or hearing officer for opposing witnesses in support  
4    or rebuttal of any matter relevant to the issues even though that matter was not covered in the  
5    direct examination.

6    ~~(b) The hearings will not be conducted according to technical rules relating to evidence and  
7    witnesses. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on  
8    which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and  
9    unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of  
10   supplementing or explaining other evidence but shall not be sufficient in itself to support a  
11   finding unless it would be admissible over objection in civil actions.~~

12   ~~(e)~~ (b) The Commission, hearing panel, or hearing officer may question any party or witness, may  
13   admit any relevant and material evidence, and may limit the length of testimony to a specific  
14   amount of time for any party or witness.

15   ~~(d)~~ (c) The taking of evidence and testimony in a hearing shall be controlled by the Commission,  
16   hearing panel, or hearing officer in the manner best suited to ascertain the facts.

17   ~~(e)~~ (d) Oral or written representations of fact offered by any person shall be ~~under oath~~  
18   ~~or affirmation.~~ supported by documentary or testimonial evidence, submitted in accordance with  
19   section 1187.5 of these regulations. ~~Written representations of fact must be signed under penalty~~  
20   ~~of perjury by persons who are authorized and competent to do so and must be based upon the~~  
21   ~~declarant's personal knowledge or information or belief.~~

22   ~~(f)~~ (e) Public hearings, pursuant to this article, shall be recorded by stenographic reporter or  
23   electronic recording or both. The transcript or recordings shall be kept for the period of time  
24   required by applicable law governing the retention of records of state agency public proceedings,  
25   or until conclusion of administrative or judicial proceedings, whichever is later.

26   Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
27   Institutions Code. Reference: Section 11125.7, Government Code; and Section 17000.6, Welfare  
28   and Institutions Code.

29    **§ 1182.11. Representation at Hearing.**

30    (a) The board of supervisors of a county shall designate a county representative.

31    (b) The county representative shall be the lead spokesperson and shall present all matters  
32    respecting the interest of the county in the proceeding.

33    (c) Withdrawal of appearance of any representative may be effected by filing a written notice of  
34    withdrawal and by serving a copy on the Commission.

35    Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
36    Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

37    **§ 1182.12. Continuance of Hearings and Further Hearings.**

38    (a) The Commission, hearing panel, or hearing officer may continue a hearing to another time or  
39    place.

1 (b) Due to the strict time frames contained in Welfare and Institutions Code section 17000.6(c),  
2 continuances will be granted only under compelling and urgent circumstances.

3 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
4 Institutions Code. Reference: Section 11129, Government Code; and Section 17000.6,  
5 Welfare and Institutions Code.

6 **§ 1182.13. Preliminary and Final Decisions; Action on Decisions.**

7 (a) Within 60 days after receipt of an application, the executive director shall notify the county of  
8 the Commission, hearing panel, or hearing officer's preliminary decision that the county did or  
9 did not make a compelling case that it will incur significant financial distress pursuant to Welfare  
10 and Institutions Code section 17000.6. If the time period is extended pursuant to section 1182.3  
11 of these regulations, notice of the preliminary decision shall be provided within 120 days after  
12 receipt of an application, or as otherwise provided by the current Budget Act.

13 (b) If an application is heard by a hearing panel, the panel shall direct staff to prepare the  
14 preliminary decision in a form that may be adopted as the final decision by the Commission.  
15 When an application is heard by a hearing officer, a preliminary decision shall be presented in a  
16 form that may be adopted by the Commission as its final decision on the application. When an  
17 application is heard before the Commission itself the Commission shall direct staff to prepare a  
18 final decision in accord with the Commission's vote, which will be presented to the Commission  
19 for adoption as its final decision.

20 (c) Within 90 days after receipt of an application, the executive director shall give notice to the  
21 county of the Commission's final decision that the county did or did not make a compelling case  
22 that it will incur significant financial distress pursuant to Welfare and Institutions Code section  
23 17000.6. If the time period is extended pursuant to section 1182.3 of these regulations, notice of  
24 the final decision shall be provided within 150 days after receipt of an application, or as  
25 otherwise provided by the current Budget Act.

26 (d) If the preliminary decision prepared by the hearing panel or hearing officer is not adopted by  
27 the Commission as its final decision, the Commission may direct appropriate modification of the  
28 preliminary decision and thereafter adopt it as the Commission final decision or decide the  
29 application upon the record, with or without taking additional evidence, or may refer the  
30 application to a hearing panel or hearing officer to take additional evidence. If the application is  
31 so assigned to a hearing panel or hearing officer, the hearing panel or hearing officer shall  
32 prepare a preliminary decision, as provided in subdivision (b), which shall be based upon the  
33 additional evidence and the transcript and other papers which are a part of the record of the prior  
34 hearing.

35 (e) The affirmative vote of at least a majority of the existing membership of the Commission is  
36 required for the adoption of a final decision by the Commission. A copy of the final decision  
37 shall be filed by the Commission as a public record.

38 (f) A Commission final decision which makes a finding of significant financial distress will be  
39 effective for a period not to exceed 36 months. The final decision shall specify whether the  
40 effective date of the period of significant financial distress shall commence on the date of the  
41 final decision or on a date no more than 60 days from the date of the final decision.

1 Note: Authority cited: Stats. 1998, c. 324, Prov. (2), Item 8885-001-0001, p. 622 (and  
2 subsequent Budget Acts); Section 17527(g), Government Code; and Section 17000.6, Welfare  
3 and Institutions Code. Reference: Sections 17527(c), 17530 and 17532, Government Code; and  
4 Section 17000.6, Welfare and Institutions Code.

5 **§ 1182.14. Form of Decision.**

6 The final decision shall be based on the record, shall be in writing, and shall include a statement  
7 of reasons for the decision, findings, and conclusions. A copy of the final decision shall be  
8 mailed to or served on the applicant county.

9 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
10 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

11 **§ 1182.15. Reapplications.**

12 (a) A county may file a reapplication for a finding of significant financial distress with the  
13 Commission.

14 (b) The application requirements and procedures relating to applications and ~~hearing procedures~~  
15 prescribed in article 2 of these regulations shall also apply to reapplications. The applicant shall  
16 also provide the following information in its reapplication:

17 (1) How the applicant utilized the savings in reduction of the General Assistance Standard of Aid  
18 realized from the preceding finding of significant financial distress.

19 (2) The difference in the county's total population between the date the preceding application was  
20 filed and the date the reapplication is filed.

21 (3) Any staff changes or changes to working conditions, including but not limited to reduced  
22 work hours or salary increases or decreases that occurred since the date the preceding application  
23 was filed.

24 (4) Any statutes enacted since the date the preceding application was filed that change county  
25 revenue sources or expenditures, or impose new mandates upon the county.

26 (5) Tables that include the difference between proposed and approved unmet need in the  
27 preceding application, and the proposed unmet need in the reapplication. Tables may also be  
28 submitted by a predetermined computer medium.

29 (c) A county filing a reapplication of a previously approved finding of significant financial  
30 distress must present a compelling case of significant financial distress continuing since the last  
31 approved finding by the Commission.

32 (d) For a previously denied application, a county may file a reapplication when the fiscal  
33 situation in the county has changed.

34 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
35 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

36 **§ 1182.16. Withdrawal of Applications.**

37 An application may be withdrawn by written notice any time before a final decision is issued or  
38 upon request at the time of hearing. When the Commission receives a notice or request to  
39 withdraw, the Commission may issue a decision dismissing the application.

1 Note: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and  
2 Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

3 **Article 3. Test Claims**

4 **§ 1183.1. Test Claim Filing.**

5 (a) In order to obtain a mandate determination, a local agency or school district shall file a test  
6 claim with the Commission. A local agency or school district may file a test claim as follows:

7 (1) A county auditor, auditor-controller, or director of finance who has assumed the duties of  
8 controller, may file ~~on~~ behalf of a county.

9 (2) A city manager, director of finance, or other officer with a delegation by ordinance or  
10 resolution from the city council, may file on behalf of a city.

11 (3) A district superintendent may file on behalf of a school district.

12 (4) A chancellor, vice chancellor, director of finance, or other officer with authority delegated by  
13 the governing body by ordinance or resolution, may file on behalf of a community college  
14 district.

15 (5) A general manager or other officer with authority delegated by the governing body by  
16 ordinance or resolution may file on behalf of a special district.

17 (b) Claimants may agree to submit a test claim as a joint effort, as provided in section 1183.1(g)  
18 of these regulations. Otherwise, the first claim filed on a statute or executive order by a similarly  
19 situated claimant is the test claim and no duplicate test claims will be accepted by the  
20 Commission. Other similarly situated affected agencies may participate in the process by  
21 submitting comments in writing on any agenda item as provided in section 1181.10 of these  
22 regulations, and may attend any Commission hearing on the test claim and provide written or  
23 oral comments to the Commission. Affected agencies that are not similarly situated, meaning  
24 that test claim statutes affect them differently, may file a test claim on the same statutes as the  
25 first claim, but must demonstrate how and why they are affected differently.

26 (c) Except as provided in Government Code sections 17573 and 17574, any test claim or  
27 amendment filed with the Commission ~~must~~ shall be filed not later than 12 months (365 days)  
28 following the effective date of a statute or executive order, ~~or~~ If costs are not incurred within 12  
29 months following the effective date of a statute or executive order, then a test claim may be filed  
30 within 12 months (365 days) of first incurring increased costs as a result of a statute or executive  
31 order, whichever is later. For purposes of claiming based on the date of first incurring costs,  
32 "within 12 months" means by June 30 of the fiscal year following the fiscal year in which  
33 increased costs were first incurred by the test claimant.

34 (d) All test claims, or amendments thereto, shall be filed on a form developed by the executive  
35 director and shall contain all of the elements and supplemental documents required by statute,  
36 regulation and the form. When an omnibus bill is pled, claimant shall file only the relevant pages  
37 of the statute, including the Legislative Counsel's Digest and the specific statutory changes at  
38 issue.

39 (e) ~~The claimant shall file the~~ A test claim, or amendment thereto, and accompanying documents  
40 with the Commission shall be certified, filed, and served in accordance with section 1181.3 of



1 these regulations. All representations of fact shall be supported by documentary or testimonial  
2 evidence, submitted in accordance with section 1187.5 of these regulations.

3 (f) Within 10 days of receipt of a test claim, or amendment thereto, Commission staff shall notify  
4 the claimant if the test claim is complete or incomplete. Test claims will be considered  
5 incomplete if any of the elements required in subdivisions (c) and (d) of this section are illegible  
6 or are not included. If a complete test claim is not received within 30 calendar days from the date  
7 the incomplete test claim was returned, the executive director may disallow the original test  
8 claim filing date. A new test claim may be accepted on the same statute or executive order  
9 alleged to impose a reimbursable state-mandated program.

10 (g) Test claims may be prepared as a joint effort between two or more claimants and filed with  
11 the Commission if the claimants attest to all of the following in the test claim filing:

12 (1) The claimants allege state-mandated costs result from the same statute or executive order;

13 (2) The claimants agree on all issues of the test claim; and

14 (3) The claimants have designated one ~~contact~~ person to act as the ~~resource~~ sole representative  
15 for all claimants for information regarding the test claim.

16 (h) Any test claim, or portion of a test claim, that the Commission lacks jurisdiction to hear for  
17 any reason may be dismissed by the executive director with a written notice stating the reason for  
18 dismissal.

19 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections  
20 17521, 17530, 17551, 17553, 17557(e), 17573, 17574, 24000, 24300.5, 26881, 26900, 26970,  
21 26972, 34852, 35034, 35035, 37209, 40805.5 and 56723, Government Code.

## 22 **§ 1183.2. Review of Test Claim.**

23 (a) Within 10 days of receipt of a completed test claim, or amendment thereto, Commission staff  
24 shall make a copy of the test claim or amendment available to those named on the mailing list  
25 prepared in accordance with section 1181.4 of these regulations and shall post it on the  
26 Commission's web site.

27 (b) Written comments concerning the test claim shall be certified, filed, and served within 30  
28 days from the date the test claim or amendment is issued for comment and in accordance with  
29 ~~the provisions of~~ section 1181.3 of these regulations.

30 (c) Content and Form. Written comments on the test claim shall contain the following  
31 documentary evidence, if applicable:

32 (1) If representations of fact are made, they ~~must~~ shall be supported by documentary or  
33 testimonial evidence, submitted ~~with the comments~~ in accordance with section 1187.5 of these  
34 regulations.

35 (2) A copy of relevant portions of state constitutional provisions, federal statutes, and executive  
36 orders, and a copy of administrative decisions and court decisions that may impact the alleged  
37 mandate, unless the authorities are also cited in the test claim. The specific statutes and chapters,  
38 articles, sections, regulatory registers, and page numbers must be identified. Published court  
39 decisions arising from state mandate determinations by the Board of Control and the  
40 Commission on State Mandates, article XIII B, section 6 of the California Constitution, and  
41 Government Code sections 17500 et seq., are exempt from the requirements of this subdivision.

1 ~~(d) The written comments and supporting documentation shall be signed at the end of the~~  
2 ~~document by an authorized representative, with the declaration that it is true and complete to the~~  
3 ~~best of the representative's personal knowledge or information or belief. The date of signing, the~~  
4 ~~representative's title, address, and telephone number shall be included. If the authorized~~  
5 ~~representative can be reached via e-mail, the e-mail address shall also be included.~~

6 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
7 17530 and 17553(a), Government Code.

### 8 **§ 1183.3. Claimant's Rebuttal.**

9 (a) Written rebuttals to written comments concerning a test claim may be filed, and shall be  
10 certified, filed, and served in accordance with section 1181.3 of these regulations within 30 days  
11 of service of the written comments.

12 (b) Content and Form. ~~A written rebuttal shall contain the following documentary evidence, if~~  
13 ~~applicable:~~

14 (1) ~~If new representations of fact are made, they must~~shall be supported by documentary or  
15 testimonial evidence, submitted ~~with the rebuttal~~ in accordance with section 1187.5 of these  
16 regulations. ~~All documentary evidence shall be in accordance with section 1187.5 of these~~  
17 ~~regulations.~~

18 (2) ~~Include a~~ copy of relevant portions of state constitutional provisions, federal statutes, and  
19 executive orders, and a copy of administrative decisions and court decisions that are cited in the  
20 rebuttal, unless the authorities are also cited in the test claim or any opposition thereto. Published  
21 court decisions arising from state mandate determinations by the Board of Control and the  
22 Commission on State Mandates, article XIII B, section 6 of the California Constitution, and  
23 Government Code sections 17500 et seq., are exempt from the requirement to submit a copy. The  
24 specific statutes and chapters, articles, sections, regulatory registers, and page numbers of the  
25 authorities shall be identified in the written rebuttal. ~~Published court decisions arising from state~~  
26 ~~mandate determinations by the Board of Control and the Commission on State Mandates, article~~  
27 ~~XIII B, section 6 of the California Constitution, and Government Code sections 17500 et seq.,~~  
28 ~~are exempt from the requirements of this subsection.~~

29 ~~(e) The rebuttal shall be signed at the end of the document by the claimant or its authorized~~  
30 ~~representative, with the declaration that the rebuttal is true and complete to the best of the~~  
31 ~~declarant's personal knowledge or information or belief. The date of signing, and the declarant's~~  
32 ~~title, address, and telephone number shall be included. If the declarant can be reached by e-mail,~~  
33 ~~the declarant's e-mail address shall also be included.~~

34 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
35 17530 and 17553(a), Government Code.

### 36 **§ 1183.4. Claimant's Motion to Consolidate or Sever Test Claims.**

37 Within 30 days of the filing date of a test claim deemed complete, a claimant may file a motion  
38 with the executive director to consolidate part or all of any test claim with another test claim, or  
39 to sever any part of any test claim, if necessary to ensure the complete, fair, or timely  
40 consideration of any test claim.

1 (a) Any motion to consolidate or to sever shall be certified, filed, and served in accordance with  
2 section 1181.3 of these regulations. If written representations of fact are made, they shall be  
3 supported by documentary or testimonial evidence, submitted in accordance with section 1187.5  
4 of these regulations.

5 (b) Within 30 days after receipt of a motion to consolidate or sever, the executive director may  
6 consolidate or sever any test claim.

7 Note: Authority cited: Section 17527(g) and 17553(a), Government Code. Reference: Sections  
8 17530, 17553 and 17554, Government Code.

9 **§ 1183.5. Executive Director's Authority to Consolidate or Sever Test Claims.**

10 (a) The executive director may consolidate part or all of any test claim with another test claim or  
11 sever a test claim, if necessary to ensure the complete, fair, or timely consideration of any test  
12 claim.

13 (b) At least 10 days before the action is taken, the executive director shall simultaneously serve  
14 on the parties and interested parties on the mailing list described in section 1181.2 of these  
15 regulations, and post on the Commission's website, a notice of any proposed action to  
16 consolidate or sever.

17 Note: Authority cited: Section 17527(g), 17553 and 17554, Government Code. Reference:  
18 Sections 17530, 17553 and 17554, Government Code.

19 **§ 1183.6. Review of Completed Test Claim and Preparation of Proposed Decision.**

20 (a) Before the hearing on the test claim, Commission staff shall prepare a proposed decision for  
21 the test claim, which shall include but not be limited to a review of the written comments filed.  
22 The proposed decision shall describe and analyze the test claim to assist the Commission in  
23 determining whether the alleged statutes or executive orders contain a reimbursable state-  
24 mandated program under article XIII B, section 6 of the California Constitution.

25 (b) At least eight weeks before the hearing, or at a time required by the executive director or  
26 stipulated to by the parties, Commission staff shall prepare a draft proposed decision and  
27 distribute it to the parties, interested parties, and those on the mailing list described in section  
28 1181.3 of these regulations, and shall post it on the Commission's website.

29 (c) Anyone may file written comments concerning the draft proposed decision. If representations  
30 of fact are made, they ~~must~~ shall be supported by documentary or testimonial evidence, submitted  
31 ~~with the comments~~ in accordance with section 1187.5 of these regulations. Written comments  
32 shall be certified, filed, and served as described in accordance with section 1181.3 of these  
33 regulations, by the date determined and publicized by the executive director. A three-week  
34 period for comments shall be given, subject to the executive director's authority to expedite all  
35 matters pursuant to Government Code section 17530. All written comments timely filed shall be  
36 reviewed by Commission staff and may be incorporated into the proposed decision for the test  
37 claim.

38 (d) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
39 other evidence filed after the three-week comment period described in subdivision (c) of this  
40 section. The Commission need not rely on, and staff need not respond to, late comments,

1 exhibits, or other evidence submitted in response to a draft proposed decision after the comment  
2 period expires.

3 Note: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections  
4 17514, 17530, 17551 and 17553, Government Code.

5 **§ 1183.7. Content of Parameters and Guidelines.**

6 The parameters and guidelines shall describe the claimable reimbursable costs and contain the  
7 following information:

8 (a) Summary of the Mandate. A summary of the mandate identifying the statutes or executive  
9 orders that contain the mandate and the increased level of service and activities found to be  
10 required under those statutes or executive orders.

11 (b) Eligible Claimants. A description of the local governmental entities eligible to file for  
12 reimbursement.

13 (c) Period of Reimbursement. A description of the period of reimbursement specifying the  
14 beginning and ending (if applicable) of the reimbursement period.

15 (d) Reimbursable Activities. A description of the specific costs and types of costs that are  
16 reimbursable, including one-time costs and on-going costs, and reasonably necessary activities  
17 required to comply with the mandate. "Reasonably necessary activities" are those activities  
18 necessary to comply with the statutes, regulations and other executive orders found to impose a  
19 state-mandated program. Activities required by statutes, regulations and other executive orders  
20 that were not pled in the test claim may only be used to define reasonably necessary activities to  
21 the extent that compliance with the approved state-mandated activities would not otherwise be  
22 possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All  
23 representations of fact to support any proposed reasonably necessary activities shall be supported  
24 by documentary evidence submitted in accordance with section 1187.5 of these regulations.

25 (e) Claim Preparation. Instruction on claim preparation, including instructions for direct and  
26 indirect cost reporting for actual costs incurred, or application of a reasonable reimbursement  
27 methodology.

28 (f) Record Retention. Notice of the Office of the State Controller's authority to audit claims and  
29 the amount of time supporting documents must be retained during the period subject to audit.

30 (g) Any Offsetting Revenues and Reimbursements that reduce the cost of any reimbursable  
31 activity, including the identification of:

32 (1) Dedicated state and federal funds appropriated for this program.

33 (2) Non-local agency funds dedicated for this program.

34 (3) Local agency's general purpose funds for this program.

35 (4) Fee authority to offset part of the costs of this program.

36 (h) Any Offsetting Savings. Identification of any offsetting savings provided by the test claim  
37 statute or executive order, or other statute or executive order, which decreases the cost of any  
38 reimbursable activity and permits or requires the discontinuance or reduction in the level of  
39 service of the program.

1 (i) Claiming Instructions. Notice of the Office of the State Controller's duty to issue claiming  
2 instructions, which constitutes notice of the right of local agencies and school districts to file  
3 reimbursement claims, based upon the decision and parameters and guidelines adopted by the  
4 Commission.

5 (j) Remedies Before the Commission. Instructions for filing requests to review claiming  
6 instructions and requests to amend parameters and guidelines with the Commission.

7 (k) Legal and Factual Basis. Notice that the legal and factual basis for the parameters and  
8 guidelines are found in the administrative record for the test claim, which is on file with the  
9 Commission.

10 Note: Authority cited: Sections 17517.5, 17527(g) and 17553(a), Government Code. Reference:  
11 Sections 17518.5, 17530, 17553, 17556(e), 17557 and 17558, Government Code.

12 **§ 1183.8. Submission and Review of Proposed Parameters and Guidelines; Submission of**  
13 **Comments.**

14 (a) Within 30 days of adoption of the decision on a test claim, or the early termination or  
15 expiration of a reasonable reimbursement methodology, the successful test claimant shall submit,  
16 to the Commission, proposed parameters and guidelines, pursuant to Government Code section  
17 17557(a). Proposed parameters and guidelines shall be certified, filed, and served in accordance  
18 with section 1181.3 of these regulations. If representations of fact are made, they shall be  
19 supported by documentary or testimonial evidence, submitted in accordance with section 1187.5  
20 of these regulations.

21 (b) If any of the elements described in section 1183.7 are missing or are not adequately  
22 addressed, Commission staff shall, within 10 days of receipt, deem the proposed parameters and  
23 guidelines incomplete and shall return the proposal to the claimants with a description of the  
24 subjects that are to be redrafted or supplemented.

25 (c) Within 10 days of receipt of completed proposed parameters and guidelines, Commission  
26 staff shall send a copy to those who are on the mailing list described in section 1181.4 of these  
27 regulations, and shall post it on the Commission's website.

28 (d) Commission staff shall notify all recipients that they shall have the opportunity to review and  
29 provide written comments concerning the proposed parameters and guidelines within 15 days of  
30 service.

31 (e) Written comments shall be certified, filed, and served in accordance with section 1181.3 of  
32 these regulations. If representations of fact are made, they shall be supported by documentary or  
33 testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

34 (f) Within 15 days of service of the comments, parties, interested parties, and interested persons  
35 may submit written rebuttals to the Commission, ~~and shall file and serve their rebuttals~~ Rebuttals  
36 shall be certified, filed, and served in accordance with section 1181.3 of these regulations. If  
37 representations of fact are made, they shall be supported by documentary or testimonial  
38 evidence, submitted in accordance with section 1187.5 of these regulations.

39 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
40 17530, 17553(a), 17557 and 17557.2, Government Code.

1 **§ 1183.9. Expedited Process for Proposed Parameters and Guidelines.**

2 (a) After adoption of a decision on a test claim, but before claimant submits proposed parameters  
3 and guidelines, Commission staff may expedite the parameters and guidelines process by  
4 preparing and issuing draft expedited parameters and guidelines to assist the claimant. The draft  
5 expedited parameters and guidelines shall be served to everyone on the mailing list described in  
6 section 1181.4 of these regulations, and shall be posted on the Commission's website.

7 In lieu of filing an original proposal pursuant to Government Code section 17557(a), the  
8 successful test claimant may file comments on the draft expedited parameters and guidelines  
9 with the Commission which may include proposed modifications. Such comments shall be  
10 certified, filed, and served in accordance with section 1181.3 of these regulations. If  
11 representations of fact are made, they shall be supported by documentary or testimonial  
12 evidence, submitted in accordance with section 1187.5 of these regulations.

13 (b) Parties, interested parties, and interested persons may file comments on the draft expedited  
14 parameters and guidelines within 21 days of service of Commission staff's draft proposal. Such  
15 comments shall be certified, filed, and served in accordance with section 1181.3 of these  
16 regulations. If representations of fact are made, they shall be supported by documentary or  
17 testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

18 (c) Within 15 days of service of the comments submitted pursuant to subdivision (b) of this  
19 section, parties, interested parties, and interested persons may file and serve rebuttals. Such  
20 rebuttals shall be certified, filed, and served in accordance with section 1181.3 of these  
21 regulations. If representations of fact are made, they shall be supported by documentary or  
22 testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

23 Note: Authority cited: Sections 17517.5, 17527(g), 17530 and 17553(a), Government Code.  
24 Reference: Sections 17553(a), 17556(e) and 17557, Government Code.

25 **§ 1183.10. Reasonable Reimbursement Methodology.**

26 (a) Government Code section 17518.5 defines a "reasonable reimbursement methodology" as a  
27 formula for reimbursing local agencies and school districts for costs mandated by the state, as  
28 defined in Section 17514.

29 (b) For purposes of developing a reasonable reimbursement methodology pursuant to  
30 Government Code sections 17557 or 17557.1, the following definitions apply:

31 (1) "Costs to implement the mandate in a cost-efficient manner" include only those costs for the  
32 activities that were determined to be reimbursable by the Commission in the decision on the test  
33 claim, and the costs for the most reasonable methods of complying with the mandate pursuant to  
34 section 1183.12(d), of these regulations.

35 (2) When surveying or otherwise gathering cost data to develop a formula, "representative  
36 sample of claimants" does not include eligible claimants that do not respond to surveys or  
37 otherwise participate in submitting cost data.

38 (c) An interested party may submit cost information or other cost projections that can be the  
39 basis of a reasonable reimbursement methodology, and letters in support of a draft reasonable  
40 reimbursement methodology submitted pursuant to Government Code section 17557.1. Such  
41 information shall be certified, filed and served in accordance with section 1181.3 of these

1 regulations. All representations of fact shall be supported by documentary or testimonial  
2 evidence, submitted in accordance with section 1187.5 of these regulations.

3 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
4 17518.5, 17557 and 17557.1, Government Code.

5 **§ 1183.11. Joint Reasonable Reimbursement Methodology and Statewide Estimate of Costs.**

6 (a) Notwithstanding Government Code section 17557, within 30 days of the adoption of a  
7 decision on a test claim, the successful test claimant and the Department of Finance may notify  
8 the executive director in writing of their intent to follow the process described in Government  
9 Code sections 17557.1-17557.2 to develop a reasonable reimbursement methodology and  
10 statewide estimate of costs.

11 (b) The written notification shall provide all information and filing dates, as specified in  
12 Government Code section 17557.1(a), and shall be certified, filed, and served in accordance with  
13 section 1181.3 of these regulations.

14 (c) At the request of the test claimant and the Department of Finance, the executive director may  
15 provide for up to four extensions of the 180-day period for submittal of the draft reasonable  
16 reimbursement methodology and proposed statewide estimate of costs for the initial claiming  
17 period and budget year. Any request must be based on good cause as described in section 1187.9  
18 and also include an update of all information and filing dates provided in the original written  
19 notification submitted pursuant to Government Code section 17557.1(a). If no submittal of a  
20 draft and no request for an extension has been made by the filing date specified in the notice of  
21 intent to develop a reasonable reimbursement methodology, or if all extensions have been  
22 exhausted, the executive director shall issue a letter notifying the test claimant of the duty to  
23 submit proposed parameters and guidelines within 30 days under Government Code section  
24 17557(a).

25 (d) The test claimant and Department of Finance shall certify, file, and serve any filings made  
26 pursuant to Government Code section 17557.1 in accordance with section 1181.3 of these  
27 regulations.

28 (e) Commission staff shall notify all recipients that they shall have the opportunity to review and  
29 provide written comments concerning the draft reasonable reimbursement methodology and  
30 proposed statewide estimate of costs within 15 days of service.

31 (f) Written comments ~~may be~~ shall be certified, filed, and served in accordance with section  
32 1181.3 of these regulations.

33 (g) Within seven days of service of the written comments, the test claimant and Department of  
34 Finance may submit written rebuttals which shall be certified, filed, and served in accordance  
35 with section 1181.3 of these regulations.

36 (h) At least 10 days prior to the next hearing, Commission staff shall review comments and issue  
37 a staff recommendation on whether the Commission should approve the draft reasonable  
38 reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to  
39 Government Code section 17557.2.

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
41 17557, 17557.1 and 17557.2, Government Code.

1 **§ 1183.12. Reasonable Reimbursement Methodology, Included in Parameters and**  
2 **Guidelines.**

3 (a) If the claimant indicates in the proposed parameters and guidelines or comments that a  
4 reasonable reimbursement methodology, as defined in Government Code section 17518.5,  
5 should be considered for inclusion in the parameters and guidelines, or if the Department of  
6 Finance, Office of the State Controller, any affected state agency, or eligible claimant proposes  
7 consideration of a reasonable reimbursement methodology, Commission staff may schedule an  
8 informal conference in accordance with section 1187.4 of these regulations to discuss the  
9 methodology and plan for submittal of a reasonable reimbursement methodology.

10 (b) A proposed reasonable reimbursement methodology, as described in Government Code  
11 section 17518.5, shall include any documentation or assumption relied upon to develop the  
12 proposed methodology.

13 (c) Commission staff shall notify all recipients that they shall have the opportunity to review and  
14 provide written comments concerning the proposed reasonable reimbursement methodology  
15 within 15 days of service.

16 (d) Proposed reasonable reimbursement methodologies and comments regarding those proposals  
17 shall be certified, filed, and served in accordance with section 1181.3 of these regulations. If  
18 representations of fact are made, they shall be supported by documentary or testimonial  
19 evidence, submitted in accordance with section 1187.5 of these regulations.

20 (e) Within 15 days of service of the written comments prepared by other parties and interested  
21 parties, the party that proposed the reasonable reimbursement methodology may submit a written  
22 rebuttal to the Commission, and shall certify, file, and serve the rebuttal in accordance with  
23 section 1181.3 of these regulations. If representations of fact are made, they shall be supported  
24 by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these  
25 regulations.

26 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
27 17518.5, 17557, 17557.1 and 17557.2, Government Code.

28 **§ 1183.13. Adoption of Parameters and Guidelines.**

29 (a) After review of the test claim decision, claimant's proposed parameters and guidelines or  
30 draft expedited parameters and guidelines, written comments, and rebuttals, Commission staff  
31 shall prepare a draft proposed decision and parameters and guidelines. Commission staff's  
32 recommendation may include a reasonable reimbursement methodology developed pursuant to  
33 Government Code section 17518.5.

34 (b) Written comments on the draft proposed decision and parameters and guidelines shall be  
35 certified, filed, and served in accordance with section 1181.3 of these regulations, by the date  
36 noticed by the executive director. A three-week period for comments shall be given, subject to  
37 the executive director's authority to expedite all matters pursuant to Government Code section  
38 17530. If representations of fact are made, they shall be supported by documentary or testimonial  
39 evidence, submitted in accordance with section 1187.5 of these regulations. All written  
40 comments timely filed shall be reviewed by Commission staff and may be incorporated into the  
41 proposed decision and parameters and guidelines.



1 (c) It is the Commission’s policy to discourage the introduction of late comments, exhibits, or  
2 other evidence filed after the three-week comment period described in subdivision (b) of this  
3 section. The Commission need not rely on, and staff need not respond to, late comments,  
4 exhibits, or other evidence submitted in response to a draft proposed decision and parameters and  
5 guidelines after the comment period expires.

6 (d) The Commission shall conduct a hearing in accordance with article 7 of these regulations  
7 before adoption of the proposed decision and parameters and guidelines.

8 (e) Within 10 days of the adoption of decision and parameters and guidelines, the executive  
9 director shall send copies to the Office of the State Controller and to everyone on the mailing list  
10 described in section 1181.4 of these regulations, and shall post a copy on the Commission's  
11 website.

12 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
13 17518.5, 17530, 17553(a) and 17557, Government Code.

14 **§ 1183.14. Statewide Cost Estimate.**

15 (a) If the Commission determines that there are state-mandated costs pursuant to Government  
16 Code sections 17514, it shall adopt a statewide cost estimate of the amount within 12 months  
17 after receipt of a completed test claim unless extended to 18 months by the Commission or  
18 executive director.

19 (b) Commission staff may develop the statewide cost estimate based on initial reimbursement  
20 claims filed with the Office of the State Controller, application of a reasonable reimbursement  
21 methodology, or use a different methodology based on recommendations from the test claimant,  
22 the Department of Finance, or other interested parties.

23 (c) Before presenting a statewide cost estimate to the Commission for adoption, Commission  
24 staff shall disclose to the parties and interested parties the methodology, basis for any  
25 assumptions made, and sources of any data used to develop the estimate.

26 (d) Before adopting the statewide cost estimate, the Commission shall hold at least one  
27 informational hearing under article 8 of these regulations.

28 (e) Upon adoption of the statewide cost estimate by the Commission, a summary of the  
29 parameters and guidelines and the statewide cost estimate shall be included in the Commission's  
30 report to the Legislature required by Government Code section 17600.

31 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
32 17518.5, 17553, 17557(a), 17557.2 and 17600, Government Code.

33 **§ 1183.15. Jointly Proposed Request for Early Termination of Reasonable Reimbursement**  
34 **Methodology.**

35 (a) The test claimant and the Department of Finance may file a joint request for early termination  
36 of a reasonable reimbursement methodology with the Commission by submitting a request made  
37 pursuant to Government Code section 17557.2(e) which shall be certified, filed, and served in  
38 accordance with section 1181.3 of these regulations.

1 (b) Commission staff shall notify all recipients that they shall have the opportunity to review and  
2 provide written comments on the joint request for early termination of a reasonable  
3 reimbursement methodology within 15 days of service.

4 (c) Written comments ~~may be~~ shall be certified, filed, and served in accordance with section  
5 1181.3 of these regulations.

6 (d) Within seven days of service of the written comments, the test claimant and Department of  
7 Finance may submit written rebuttals which shall be certified, filed, and served in accordance  
8 with section 1181.3 of these regulations.

9 (e) At least 10 days prior to the next hearing, Commission staff shall review comments and issue  
10 recommendation on whether the Commission should approve the joint request for early  
11 termination of a reasonable reimbursement methodology pursuant to Government Code section  
12 17557.2(e).

13 (f) If the Commission approves a joint request for early termination, the Commission shall notify  
14 the test claimant of the duty to submit proposed parameters and guidelines to the Commission  
15 pursuant to Government Code section 17557(a), and section 1183.13 of these regulations.

16 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section  
17 17557.2, Government Code.

18 **§ 1183.16. Expiration of Reasonable Reimbursement Methodology.**

19 (a) At least one year before the expiration of a reasonable reimbursement methodology,  
20 Commission staff shall notify the test claimant and the Department of Finance, that they may do  
21 one of the following within 60 days:

22 (1) Jointly propose amendments to the reasonable reimbursement methodology by submitting:  
23 (A) the draft reasonable reimbursement methodology, (B) a description of the steps the test  
24 claimant and the Department of Finance undertook to determine the level of support by local  
25 agencies or school districts for the draft reasonable reimbursement methodology, (C) an  
26 agreement that the reasonable reimbursement methodology developed and approved  
27 under Government Code section 17557.2 shall be in effect for a period of five years unless a  
28 different term is approved by the Commission, and (D) an estimate of the mandate's annual cost  
29 for the subsequent budget year.

30 (2) Jointly propose that the reasonable reimbursement methodology remain in effect.

31 (3) Allow the reasonable reimbursement methodology to expire and notify the Commission that  
32 the test claimant will submit proposed parameters and guidelines to the Commission pursuant to  
33 Government Code section 17557(a) and section 1183. 8 of these regulations or request that  
34 Commission staff prepare expedited parameters and guidelines pursuant to section 1183.9 of  
35 these regulations to replace the reasonable reimbursement methodology.

36 (b) Copies of the notice provided under subdivision (a) shall be filed and served in accordance  
37 with section 1181.3 of these regulations.

38 (c) The test claimant and the Department of Finance may jointly propose amendments to the  
39 reasonable reimbursement methodology or the continuation of a reasonable reimbursement  
40 methodology by submitting a request made pursuant to Government Code section 17557.2(f),  
41 which shall be certified, filed, and served in accordance with section 1181.3 of these regulations.

1 (d) Commission staff shall notify all recipients that they shall have the opportunity to review and  
2 provide written comments on the jointly proposed amendments or request for continuation of the  
3 reasonable reimbursement methodology within 30 days of service.

4 (e) Written comments shall be certified, filed, and served in accordance with section 1181.3 of  
5 these regulations.

6 (f) Within 15 days of service of the written comments prepared by other parties and interested  
7 parties, the test claimant and Department of Finance may submit written rebuttals which shall be  
8 certified, filed, and served in accordance with section 1181.3 of these regulations.

9 (g) At least 10 days prior to the next hearing, Commission staff shall review comments and issue  
10 a staff recommendation on whether the Commission should approve the jointly proposed  
11 amendments or the continuation of a reasonable reimbursement methodology pursuant to  
12 Government Code section 17557.2(g).

13 (h) Within 10 days of the adoption of the jointly proposed amendments or the continuation of a  
14 reasonable reimbursement methodology, the executive director shall send copies to the Office of  
15 the State Controller, and to parties and interested parties who are on the mailing list described in  
16 section 1181.4 of these regulations.

17 (i) If the test claimant or the Department of Finance fail to respond within 60 days to the notice  
18 described in subdivision (a) of this section, Commission staff shall prepare and issue draft  
19 expedited parameters and guidelines, pursuant to section 1183.9 of these regulations, within 30  
20 days of the parties' failure to respond.

21 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
22 17557, 17557.1 and 17557.2, Government Code.

23 **§ 1183.17. Amendments to Parameters and Guidelines.**

24 (a) All requests pursuant to Government Code section 17557 to amend parameters and guidelines  
25 shall include the proposed language for the specific sections of the existing parameters and  
26 guidelines that are to be changed, and include a narrative explaining why the amendment is  
27 required.

28 A request to amend parameters and guidelines may be filed to make any of the following  
29 changes to the parameters and guidelines:

30 (1) Delete any reimbursable activity that is repealed by statute or executive order after the  
31 adoption of the original or last amended parameters and guidelines.

32 (2) Update offsetting revenue and offsetting savings that apply to the mandated program and do  
33 not require a new legal finding that there are "no costs mandated by the state" under Government  
34 Code section 17556(e).

35 (3) Include a reasonable reimbursement methodology for all or some of the reimbursable  
36 activities in accordance with Government Code section 17518.5. Any request to include a  
37 reasonable reimbursement methodology based on, in whole or in part, costs that have been  
38 included in claims submitted to the Controller, shall include a statement to this effect on the  
39 cover or first page of the request.

40 (4) Clarify reimbursable activities consistent with the original decisions on the test claim and  
41 parameters and guidelines.

- 1 (5) Add new reimbursable activities that are reasonably necessary for the performance of the  
2 original state-mandated program pursuant to section 1183.1(d) of these regulations.
- 3 (6) Define what is not reimbursable consistent with the original decisions on the test claim and  
4 parameters and guidelines.
- 5 (7) Consolidate the parameters and guidelines for two or more programs.
- 6 (8) Amend the "boilerplate" language.
- 7 (b) For purposes of this section, "boilerplate" language is defined as the language in the  
8 parameters and guidelines that is not unique to the state-mandated program that is the subject of  
9 the parameters and guidelines.
- 10 (c) The addition or substitution of requesters and supporting declarations based on the original  
11 facts alleged in an existing parameters and guidelines amendment request is not an  
12 "amendment." However, new proposals for amendments must be submitted as a new parameters  
13 and guidelines amendment request.
- 14 (d) A claimant or state agency requesting an amendment to existing parameters and guidelines  
15 shall certify, file, and serve the request in accordance with section 1181.3 of these regulations. If  
16 representations of fact are made, they shall be supported by documentary or testimonial  
17 evidence, submitted in accordance with section 1187.5 of these regulations.
- 18 (e) Within 10 days of receipt of a request to amend parameters and guidelines, Commission staff  
19 shall send a copy to those who are on the mailing list described in section 1181.4 of these  
20 regulations, and shall post the request on the Commission's website.
- 21 (f) Commission staff shall notify all recipients that they shall have the opportunity to review and  
22 provide written comments concerning the proposed amendment of the parameters and guidelines  
23 within 21 days of service.
- 24 (g) Written comments on the request to amend the parameters and guidelines shall be certified,  
25 filed, and served in accordance with section 1181.3 of these regulations. If representations of fact  
26 are made, they shall be supported by documentary or testimonial evidence, submitted in  
27 accordance with section 1187.5 of these regulations.
- 28 (h) Written rebuttals to the comments may be filed within 21 days of service of the comments.  
29 Written rebuttals shall be certified, filed, and served in accordance with section 1181.3 of these  
30 regulations. If representations of fact are made, they shall be supported by documentary or  
31 testimonial evidence, submitted in accordance with section 1187.5 of these regulations.
- 32 (i) After review of the proposed amendment to the parameters and guidelines, written comments,  
33 and rebuttals submitted, Commission staff shall prepare a draft proposed decision and  
34 recommend whether the requester's proposed amendment to the parameters and guidelines  
35 should be adopted.
- 36 (j) Written comments on the draft proposed decision and recommendation on the proposed  
37 amendment to the parameters and guidelines shall be certified, filed, and served with the  
38 Commission in accordance with section 1181.3 of these regulations, by the date noticed by the  
39 executive director. A three-week period for comments shall be given, subject to the executive  
40 director's authority to expedite all matters pursuant to Government Code section 17530. If  
41 representations of fact are made, they shall be supported by documentary or testimonial

1 evidence, submitted in accordance with section 1187.5 of these regulations. All written  
2 comments timely filed shall be reviewed by Commission staff and may be incorporated into the  
3 proposed decision and recommendation on the proposed amendment to the parameters and  
4 guidelines.

5 (k) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
6 other evidence filed after the three-week comment period described in subdivision (j) of this  
7 section. The Commission need not rely on, and staff need not respond to, late comments,  
8 exhibits, or other evidence submitted in response to a draft proposed decision after the comment  
9 period expires.

10 (l) An amendment shall be made only after the Commission has conducted a hearing in  
11 accordance with article 7 of these regulations.

12 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
13 17518.5, 17530, 17553 and 17557, Government Code.

14 **§ 1183.18. Timelines.**

15 (a) In computing any period of time prescribed by these regulations and applicable statutes,  
16 including the filing date as defined in section 1181.2 of these regulations, the following rules  
17 shall apply:

18 (1) The day of the act, event, or default from which the designated period of time begins to run  
19 shall not be included. The last day of the period so computed shall be included, unless it is a  
20 Saturday, Sunday, or state holiday.

21 (2) Days representing extensions of time and postponements of hearings granted to the parties  
22 shall be tolled and may not be counted toward the date on which a statewide cost estimate must  
23 be adopted by the Commission.

24 (3) Days following a test claimant's submission of incomplete information to the Commission,  
25 from the date on which Commission staff returns the incomplete information to the claimant up  
26 to the date on which the Commission receives complete information from the test claimant, shall  
27 be tolled and may not be counted toward the date on which a statewide cost estimate must be  
28 adopted by the Commission.

29 (4) If a party or interested party to a test claim notifies Commission staff that a reasonable  
30 reimbursement methodology may be developed for inclusion in pending parameters and  
31 guidelines, the days following the date of the notification up to the date on which a reasonable  
32 reimbursement methodology is developed, shall be tolled and may not be counted toward the  
33 date on which a statewide cost estimate must be adopted by the Commission. The days tolled  
34 shall not exceed 60 days from the date of the notification.

35 (5) If the test claimant and the Department of Finance notify the Commission staff in writing of  
36 their intent to develop a reasonable reimbursement methodology and statewide estimate of costs  
37 for the initial claiming period and budget year for reimbursement pursuant to Government Code  
38 section 17557.1, the days following the date of the notification up to the date on which a draft  
39 reasonable reimbursement methodology and proposed statewide estimate of costs are developed  
40 and submitted to the Commission, shall be tolled and may not be counted toward the date on  
41 which a statewide cost estimate must be adopted by the Commission. The days tolled shall not  
42 exceed 180 days from the date of the notification.

1 (6) Three days shall be added to any prescribed period in which a party or interested party is  
2 required or permitted to do an act after service of a document upon that party or interested party  
3 by mail. The three days added for mail service shall be tolled and may not be counted toward the  
4 date on which a statewide cost estimate must be adopted.

5 (7) Solely for the purpose of determining when a statewide cost estimate shall be adopted, test  
6 claims that are amended, severed, or consolidated shall be deemed received on the effective date  
7 of the last amendment, severance, or consolidation, unless otherwise stipulated by the parties and  
8 approved by the executive director.

9 (8) Days between the effective date of the parameters and guidelines and the date the initial  
10 reimbursement claims are due to the Office of the State Controller shall be tolled and may not be  
11 counted toward the date on which a statewide cost estimate must be adopted by the Commission.

12 (b) The following timelines shall be used by Commission staff as a reference for the timely  
13 processing of test claims, adoption of statewide cost estimates or statewide estimates of costs:

14 (1) Timeline for a Test Claim, Parameters and Guidelines, and Statewide Cost Estimate (12  
15 Months)

16 *PARTY/ACTIVITIES* *DAY NUMBER*

17 **TEST CLAIM**

18 CLAIMANT files test claim with the commission.	0
19 COMMISSION staff begins counting days on the first day after receipt.	1
20 COMMISSION staff reviews test claim to determine if complete	by 10
21 COMMISSION staff sends test claim to state agencies for review.	by 10
22 COMMISSION staff convenes informal conference with parties, if	
23 necessary.	by 30
24 STATE AGENCIES file comments on test claim.	by 40
25 CLAIMANT submits rebuttal.	by 70
26 COMMISSION staff prepares the draft proposed	
27 decision on the test claim and serves on parties.	by 100
28 PARTIES submit comments on draft proposed decision	
29 on the test claim.	by 130
30 COMMISSION staff completes analysis and issues proposed decision.	
31	by 160
32 COMMISSION hears test claim and adopts decision.	by 180
33 COMMISSION staff issues decision and serves on parties.	by 190
34 COMMISSION staff notifies Legislature of decision	by 210

35 **PARAMETERS AND GUIDELINES**

36 CLAIMANT submits proposed Parameters and Guidelines.	by 210
37 STATE AGENCIES AND PARTIES may file comments.	by 235
38 CLAIMANT rebuts comments.	by 250
39 COMMISSION staff issues draft proposed decision and	
40 parameters and guidelines and serves on parties.	by 265
41 PARTIES submit comments on draft proposed decision and	
42 parameters and guidelines.	by 275
43 COMMISSION staff issues proposed decision and	

1	parameters and guidelines and serves on parties.	by 279
2	COMMISSION conducts hearing and adopts proposed decision and	
3	parameters and guidelines.	by 293
4	COMMISSION staff issues decision and	
5	parameters and guidelines.	by 303

6 STATEWIDE COST ESTIMATE

7	COMMISSION staff prepares draft statewide cost estimate.	by 335
8	ALL PARTIES comment on draft statewide cost estimate.	by 345
9	COMMISSION staff prepares proposed statewide cost estimate.	by 350
10	COMMISSION conducts hearing and adopts statewide cost estimate.	by 365
11	COMMISSION staff reports Statewide Cost Estimate to the Legislature.	by 395

12 (2) Timeline for a Test Claim, Reasonable Reimbursement Methodology, and Statewide  
13 Estimate of Costs

14 PARTY/ACTIVITIES DAY NUMBER

15 TEST CLAIM WITH REASONABLE REIMBURSEMENT METHODOLOGY (RRM) AND  
16 STATEWIDE ESTIMATE OF COSTS (SEC)

17	CLAIMANT files test claim with the Commission.	0
18	COMMISSION staff begins counting days on the first day after receipt.	1
19	COMMISSION staff reviews test claim to determine if complete.	by 10
20	COMMISSION staff sends test claim to state agencies for review.	by 10
21	COMMISSION staff convenes informal conference with parties,	
22	if necessary.	by 30
23	STATE AGENCIES file comments on test claim.	by 40
24	CLAIMANT submits rebuttal.	by 70
25	COMMISSION staff prepares the draft proposed decision	
26	on the test claim and serves on parties.	by 100
27	PARTIES submit comments on the draft proposed decision	
28	on the test claim.	by 130
29	COMMISSION staff completes analysis and issues proposed	
30	decision.	by 160
31	COMMISSION hears test claim and adopts decision.	by 180
32	COMMISSION staff issues decision and serves on parties.	by 190
33	COMMISSION staff notifies Legislature of decision.	by 210

34 REASONABLE REIMBURSEMENT METHODOLOGY (RRM)  
35 AND STATEWIDE ESTIMATE OF COSTS (SEC)

36	CLAIMANT AND DEPARTMENT OF FINANCE	
37	(DOF) notify Commission in writing of their	
38	intent to follow the process in 17557.1 to develop a RRM	
39	and SEC (within 30 days after adoption of test claim decision).	by 210
40	CLAIMANT AND DOF submit plan no later than 6 months after the date of	
41	letter of intent and sixty (60) days before hearing.	by 400
42	COMMISSION staff notifies parties of comment period.	by 410
43	INTERESTED PARTIES submit comments on the draft RRM and SEC.	by 425

- 1 CLAIMANT AND DOF submit written rebuttal. by 432
- 2 COMMISSION staff issues submitted comments and staff
- 3 recommendation. by 450
- 4 COMMISSION conducts hearing, approves the draft RRM, and adopts the
- 5 proposed SEC for the initial claiming period and budget year. by 460
- 6 COMMISSION staff submits RRM to the CONTROLLER. by 470
- 7 COMMISSION staff reports SEC to the Legislature. by 490

8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
 9 17527, 17532, 17553, 17555, 17557(e), 17557.1 and 17557.2, Government Code.

10 **Article 4. Review of Office of State Controller's Claiming Instructions**

11 **§ 1184.1. Review of Office of State Controller's Claiming Instructions.**

- 12 (a) Upon request of a local agency or school district, the Commission shall review claiming
- 13 instructions issued by the Office of State Controller.
- 14 (b) A request to review claiming instructions shall include the following:
- 15 (1) A copy of the disputed claiming instructions.
- 16 (2) If available, correspondence or other documentation that verifies the local agency or school
- 17 district sought to resolve the dispute through the Office of State Controller.
- 18 (3) A narrative that details the suggested changes and the reasons why the local agency or school
- 19 district finds the claiming instructions need to be modified.
- 20 (4) The name, address, telephone number, and e-mail address of the agency contact person.
- 21 (c) An original request to review claiming instructions shall be ~~submitted to the Commission by~~
- 22 ~~the local agency or school district~~ certified, filed, and served in accordance with section 1181.3
- 23 of these regulations. If representations of fact are made, they shall be supported by documentary
- 24 or testimonial evidence, submitted in accordance with section 1187.5 of these regulations.
- 25 (d) Within 10 days of receipt of a request to review claiming instructions, Commission staff shall
- 26 notify the local agency or school district that submitted the request if the submittal is complete or
- 27 incomplete. A request to review the claiming instructions shall be considered incomplete if any
- 28 of the elements required in subdivision (b) or (c) of this section are illegible or not included.
- 29 Incomplete requests shall be returned to the local agency or school district. If a complete request
- 30 is not received by the Commission within 30 days from the date the incomplete request was
- 31 returned, the Commission shall deem the request to be withdrawn.
- 32 (e) Within 10 days of receipt of a complete request to review claiming instructions, Commission
- 33 staff shall send a copy to all persons who are on the mailing list described in section 1181.4 of
- 34 these regulations. Commission staff shall provide notice that written comments concerning the
- 35 request to review claiming instructions may be submitted within 30 days of service of the notice
- 36 of complete filing. A copy of the notice shall also be posted on the Commission's website.
- 37 (f) Written comments shall be certified, filed, and served in accordance with section 1181.3 of
- 38 these regulations. If representations of fact are made, they shall be supported by documentary or
- 39 testimonial evidence, submitted in accordance with section 1187.5 of these regulations.



- 1 (g) Within 30 days of service of the written comments, the requester may submit a written  
2 rebuttal to the Commission which shall be certified, filed, and served in accordance with section  
3 1181.3 of these regulations. If representations of fact are made, they shall be supported by  
4 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these  
5 regulations.
- 6 (h) Before hearing a request to review claiming instructions, Commission staff shall prepare a  
7 draft proposed decision that shall include a review of the request and any comments filed, and a  
8 staff recommendation on whether the request should be approved or denied.
- 9 (i) The requester and any state agency or interested party may file written comments on the draft  
10 proposed decision. Written comments shall be certified, filed, and served ~~as described in~~  
11 accordance with section 1181.3 of these regulations, by the date determined and publicized by  
12 the executive director. If representations of fact are made, they ~~must~~shall be supported by  
13 documentary or testimonial evidence submitted ~~with the comments~~ in accordance with section  
14 1187.5 of these regulations. A three-week period for comments shall be given, subject to the  
15 executive director's authority to expedite all matters pursuant to Government Code section  
16 17530. All written comments timely filed shall be reviewed by Commission staff and may be  
17 incorporated into the proposed decision on the request to review and modify the claiming  
18 instructions.
- 19 (j) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
20 other evidence filed after the three-week comment period described in subdivision (i) of this  
21 section. The Commission need not rely on, and staff need not respond to, late comments,  
22 exhibits, or other evidence submitted in response to a draft proposed decision after the comment  
23 period expires.
- 24 (k) The Commission shall conduct a hearing in accordance with article 7 of these regulations on  
25 the request to review claiming instructions.
- 26 (l) If the Commission determines that the claiming instructions need to be modified, the  
27 Commission shall direct the Office of State Controller to modify the claiming instructions to  
28 conform to the parameters and guidelines.
- 29 (m) An approved change to the claiming instructions shall be subject to the following schedule:
- 30 (1) A request for review filed before the deadline for initial claims as specified in the claiming  
31 instructions shall apply to all years eligible for reimbursement as defined in the original  
32 parameters and guidelines.
- 33 (2) A request for review filed after the initial claiming deadline must be submitted on or before  
34 the annual reimbursement claim filing deadline set out in Government Code section 17560  
35 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.
- 36 (n) A request to review claiming instructions may be withdrawn by written application to the  
37 executive director any time before a decision is adopted or by oral application at the time of  
38 hearing. The requesters shall file and serve the written application in accordance with section  
39 1181.3 of these regulations. Commission staff shall post a copy of the notice on the  
40 Commission's website for 60 days prior to dismissal of the request to review claiming  
41 instructions. If no other local agency or school district takes over the request to review claiming  
42 instructions by substitution of parties within 60 days of service and posting of the application to  
43 withdraw, the executive director shall issue a letter to everyone on the mailing list described in

1 section 1181.4 of these regulations dismissing the request to review claiming instructions and  
2 shall post the letter on the Commission's website.

3 Note: Authority cited: Sections 17527(g) and 17527(h), Government Code. Reference: Sections  
4 17530, 17560 and 17571, Government Code.

## 5 **Article 5. Incorrect Reduction Claims**

### 6 **§ 1185.1. Incorrect Reduction Claim Filing.**

7 (a) To obtain a determination that the Office of State Controller incorrectly reduced a  
8 reimbursement claim, a claimant shall file an "incorrect reduction claim" with the Commission  
9 as follows:

10 (1) A county auditor, auditor-controller, or director of finance who has assumed the duties of  
11 controller, may file of behalf of a county.

12 (2) A city manager, director of finance, or other officer with a delegation by ordinance or  
13 resolution from the city council, may file on behalf of a city.

14 (3) A district superintendent may file on behalf of a school district.

15 (4) A chancellor, vice chancellor, director of finance, or other officer with authority delegated by  
16 the governing body by ordinance or resolution, may file on behalf of a community college  
17 district.

18 (5) A general manager or other officer with authority delegated by the governing body by  
19 ordinance or resolution may file on behalf of a special district.

20 (b) If a claimant intends to pursue an incorrect reduction claim on behalf of a class of claimants,  
21 it must notify the Commission of its intent to do so at the time it files its incorrect reduction  
22 claim and meet the requirements of section 1185.3 of these regulations.

23 (c) All incorrect reduction claims shall be filed with the Commission no later than three years  
24 following the date a claimant first receives from the Office of State Controller a final state audit  
25 report, letter, or other written notice of adjustment to a reimbursement claim, which complies  
26 with Government Code section 17558.5(c) by specifying the claim components adjusted, the  
27 amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the  
28 claimant, and the reason for the adjustment. The filing shall be returned to the claimant for lack  
29 of jurisdiction if this requirement is not met.

30 (d) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement  
31 claim filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.

32 (e) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by  
33 the Commission.

34 (f) All incorrect reduction claims, or amendments thereto, shall contain at least the following  
35 elements and documents:

36 (1) A copy of the Office of State Controller's claiming instructions that were in effect during the  
37 fiscal years of the reimbursement claims.

38 (2) A written detailed narrative that describes the alleged incorrect reductions. The narrative shall  
39 include a comprehensive description of the reduced or disallowed areas of costs.

1 (3) All representations of fact shall be supported by testimonial or documentary evidence, ~~and~~  
2 ~~shall be submitted with the claim~~ in accordance with section 1187.5 of these regulations.

3 (4) A copy of any final state audit report, letter, or other written notice of adjustment from the  
4 Office of State Controller that explains the claim components adjusted, amounts reduced, and the  
5 reasons for the reduction or disallowance.

6 (5) A copy of the subject reimbursement claims the claimant submitted to the Office of State  
7 Controller.

8 (g) An incorrect reduction claim, or amendment thereto, shall be certified, filed, and served in  
9 accordance with section 1181.3 of these regulations~~shall be signed at the end of the document,~~  
10 ~~under penalty of perjury by the claimant or its authorized representative, with the declaration that~~  
11 ~~the incorrect reduction claim is true and complete to the best of the declarant's personal~~  
12 ~~knowledge or information or belief. The date signed, the declarant's title, address, telephone~~  
13 ~~number, and e-mail address shall be included.~~

14 (h) The claimant shall file the original incorrect reduction claim, or amendment thereto, and  
15 accompanying documents with the Commission in accordance with section 1181.3 of these  
16 regulations.

17 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
18 17530, 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

19 **§ 1185.2. Review of Incorrect Reduction Claims.**

20 (a) Within 10 days of receipt of an incorrect reduction claim, Commission staff shall notify the  
21 claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims  
22 will be considered incomplete if any of the elements in section 1185.1(a) and (b) and (d) through  
23 (h) are illegible or not included or if the requirements of those subdivisions are not met.  
24 Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect  
25 reduction claim is not received by the Commission within 30 days from the date the incomplete  
26 claim was returned to the claimant, the executive director shall deem the filing to be withdrawn.

27 (b) Any incorrect reduction claim, or portion of an incorrect reduction claim, that the  
28 Commission lacks jurisdiction to hear for any reason, including that the incorrect reduction claim  
29 was not filed within the period of limitation required by section 1185.1(c) of these regulations,  
30 may be dismissed by the executive director with a written notice stating the reason for dismissal.

31 (c) Within 10 days of receipt of a complete incorrect reduction claim, Commission staff shall  
32 provide a copy of the claim to the Office of State Controller.

33 (d) Commission staff shall notify the Office of State Controller that written comments and  
34 supporting documentation in connection with an incorrect reduction claim shall be filed no more  
35 than 90 days from the date the copy of the claim is provided to the Office of State Controller.  
36 Written comments and supporting documentation ~~may~~shall be certified, filed, and served in  
37 accordance with section 1181.3 of these regulations. ~~If the written comments make~~  
38 ~~representations of fact are made, they~~ representations shall be supported by documentary or  
39 testimonial evidence ~~and shall be submitted with the comments~~ in accordance with section  
40 1187.5 of these regulations.

41 (e) The claimant and interested parties may submit written rebuttals to the Office of State  
42 Controller's comments within 30 days of service of the Office of State Controller's comments.

1 Written rebuttals and supporting documentation shall be certified, filed, and served pursuant to  
2 accordance with section 1181.3. ~~If the written rebuttal involves representations of fact are made,~~  
3 ~~they representations~~ shall be supported by documentary or testimonial evidence ~~and shall be~~  
4 ~~submitted with the rebuttal~~ in accordance with section 1187.5 of these regulations.

5 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
6 17551(d), 17553(d), 17558.5(c) and 17558.7(a), Government Code.

7 **§ 1185.3. Consolidation of Claims Initiated by an Individual Claimant.**

8 (a) On behalf of a class of claimants, an individual claimant may initiate the consolidation of  
9 claims alleging an incorrect reduction as described in Government Code section 17558.7, if all of  
10 the following apply:

11 (1) The method, act, or practice that the claimant alleges led to the reduction has led to similar  
12 reductions of other parties' claims, and all of the claims involve common questions of law or  
13 fact.

14 (2) The common questions of law or fact among the claims predominate over any matter  
15 affecting only an individual claim.

16 (3) The consolidation of similar claims by individual claimants would result in consistent  
17 decision making by the Commission.

18 (4) The claimant filing the consolidated claim would fairly and adequately protect the interests of  
19 the other claimants.

20 (b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the  
21 Commission of its intent at the time of filing on a form provided by the Commission. The  
22 consolidated incorrect reduction claim shall be filed in accordance with section 1185.1 of these  
23 regulations and contain a narrative that explains the elements in subdivision (a) of this section.  
24 All representations of fact shall be supported by documentary or testimonial evidence, submitted  
25 in accordance with section 1187.5 of these regulations.

26 (c) Within 10 days of receipt of a consolidated incorrect reduction claim, Commission staff shall  
27 notify the claimant if the consolidated incorrect reduction claim is complete or incomplete. A  
28 consolidated incorrect reduction claim is incomplete if the claim has not been filed in accordance  
29 with subdivision (b) of this section, or is illegible. Incomplete consolidated incorrect reduction  
30 claims shall be returned to the claimant. If a complete consolidated incorrect reduction claim is  
31 not received by the Commission within 30 days from the date the incomplete claim was returned  
32 to the claimant, the executive director shall deem the filing to be withdrawn.

33 (d) Any consolidated incorrect reduction claim, or portion of a consolidated incorrect reduction  
34 claim, that the Commission lacks jurisdiction to hear for any reason may be dismissed by the  
35 executive director in accordance with section 1185.2(b) of these regulations.

36 (e) If the consolidated incorrect reduction claim is complete, Commission staff shall request the  
37 Office of the State Controller to provide the Commission, within 30 days, a list of claimants for  
38 whom the Controller has reduced similar claims under the same mandate, and the date each  
39 claimant was notified of an adjustment.

40 (f) Upon receipt of the list from the Office of the State Controller, the Commission shall notify  
41 the list of other claimants experiencing similar reductions by the Controller under the same

1 mandate and other interested parties of the original claimant's intent to consolidate an incorrect  
2 reduction claim.

3 Note: Authority cited: Sections 17527(g), 17553(a) and 17558.7(g), Government Code.  
4 Reference: Sections 17558.5(c) and 17558.7, Government Code.

5 **§ 1185.4. Joining a Consolidated Incorrect Reduction Claim.**

6 (a) Within 30 days of receipt of the Commission's notice regarding the original claimant's notice  
7 of intent to consolidate an incorrect reduction claim, any other eligible claimant may, on a form  
8 provided by the Commission, file a notice of intent to join the consolidated incorrect reduction  
9 claim.

10 (b) All notices of intent to join a consolidated incorrect reduction claim shall comply with  
11 section 1185.1(c) and contain at least the following elements and documents:

12 (1) A copy of the final state audit report, letter, or other written notice of adjustment from the  
13 Office of State Controller that explains the claim components adjusted, amounts reduced, and the  
14 reasons for the reduction.

15 (2) A copy of the subject reimbursement claims submitted to the Office of State Controller.

16 (3) A notice of intent to join a consolidated incorrect reduction claim shall include a certification  
17 by the joining claimant authorizing the original claimant to act as its representative in the  
18 consolidated incorrect reduction claim, and a declaration under penalty of perjury that the filing  
19 is true and complete to the best of the declarant's personal knowledge, ~~or~~ information, or belief.  
20 The date signed, the declarant's title, address, telephone number, and e-mail address shall be  
21 included. All representations of fact shall be supported by testimonial or documentary evidence  
22 and shall be submitted in accordance with section 1187.5 of these regulations.

23 (4) The joining claimant shall file one original notice of intent to join and accompanying  
24 documents with the Commission in accordance with section 1181.3 of these regulations.

25 (c) Within 10 days of receipt of a notice of intent to join a consolidated incorrect reduction claim,  
26 Commission staff shall notify the joining claimant if the notice of intent to join is complete or  
27 incomplete. Notices of intent to join a consolidated incorrect reduction claim will be considered  
28 incomplete if any of the elements required in subdivision (b) of this section are illegible or not  
29 included. Incomplete notices of intent shall be returned to the joining claimant. If a complete  
30 notice of intent to join a consolidated incorrect reduction claim is not received by the  
31 Commission within 30 days from the date the incomplete notice of intent was returned to the  
32 joining claimant, the Commission shall deem the filing to be withdrawn.

33 (d) Any notice of intent to join the consolidated incorrect reduction claim, or portion thereof, that  
34 the Commission lacks jurisdiction to hear for any reason, including that the notice was not filed  
35 within the period of limitation required by section 1185.1(c) of these regulations, may be  
36 dismissed by the executive director with a written notice stating the reason for dismissal.

37 Note: Authority cited: Sections 17527(g), 17553(a) and 17558.7(g), Government  
38 Code. Reference: Sections 17558.5(c) and 17558.7, Government Code.

1 **§ 1185.5. Opting Out of a Consolidated Incorrect Reduction Claim.**

2 Pursuant to Government Code section 17558.7(f), each claimant that files a notice of intent to  
3 join a consolidated incorrect reduction claim may opt out and not be bound by any determination  
4 made on the consolidated claim.

5 (a) To opt out of a consolidated incorrect reduction claim, claimants shall file a written notice  
6 with the Commission within 15 days of service of the Office of State Controller's comments. A  
7 copy of the notice must be served in accordance with section 1181.3.

8 (b) No later than one year after opting out, or within the period of limitation under section  
9 1185.1(c), whichever is later, a claimant that opts out of a consolidated claim shall file an  
10 individual incorrect reduction claim in accordance with section 1185.1 of these regulations in  
11 order to preserve its right to challenge a reduction made by the Controller on that same mandate.

12 (c) If a claimant opts out of a consolidated incorrect reduction claim and an individual incorrect  
13 reduction claim for that entity is already on file with the Commission, the individual filing is  
14 automatically reinstated.

15 Note: Authority cited: Sections 17527(g), 17553(a) and 17558.7(g), Government Code.  
16 Reference: Sections 17558.5 and 17558.7, Government Code.

17 **§ 1185.6. Executive Director's Authority to Consolidate or Sever Incorrect Reduction**  
18 **Claims.**

19 The executive director may consolidate or sever part or all of any incorrect reduction claim with  
20 another incorrect reduction claim, if necessary to ensure the complete, fair, or timely  
21 consideration of any incorrect reduction claim.

22 (a) At least 30 days before the action is taken, the executive director shall simultaneously serve  
23 on all persons on the mailing list described in section 1181.4 of these regulations a notice of any  
24 proposed action to consolidate or sever and shall post the notice on the Commission's website.

25 (b) During the 30-day notice period, a claimant may serve and file a written request that an  
26 individual incorrect reduction claim be severed from a proposed consolidation. Timely requests  
27 to sever shall be approved by the executive director.

28 (c) Late requests for severing an individual incorrect reduction claim shall be denied.

29 Note: Authority cited: Sections 17527(g), 17553(a) and 17558.8(b), Government Code.  
30 Reference: Sections 17530, 17554 and 17558.8, Government Code.

31 **§ 1185.7. Review of Completed Incorrect Reduction Claims and Preparation of Proposed**  
32 **Decision.**

33 (a) The Commission shall conduct a hearing in accordance with article 7 of these regulations  
34 before adopting a decision on an individual or consolidated incorrect reduction claim.

35 (b) Before hearing an individual or consolidated incorrect reduction claim, Commission staff  
36 shall prepare a proposed decision for the incorrect reduction claim that shall include a review of  
37 the incorrect reduction claim, comments and rebuttals filed on the claim and, to the extent that it  
38 is relevant to the claim, a review of the test claim decision and decision and parameters and  
39 guidelines. The proposed decision shall also include a staff recommendation on whether the  
40 claimant's reimbursement claim was incorrectly reduced.

1 (c) At least eight weeks before the hearing or at a time required by the executive director or  
2 stipulated to by the claimant and the Office of State Controller, Commission staff shall distribute  
3 the draft proposed decision to all those on the mailing list described in section 1181.4 of these  
4 regulations.

5 (d) A three-week period for comments shall be given, subject to the executive director's  
6 authority to expedite all matters pursuant to Government Code section 17530. Written comments  
7 may be filed and shall be certified, filed, and served as described in accordance with section  
8 1181.3 of these regulations, by the date determined and publicized by the executive director. ~~A~~  
9 ~~three-week period for comments shall be given, subject to the executive director's authority to~~  
10 ~~expedite all matters pursuant to Government Code section 17530.~~ If representations of fact are  
11 made, they shall be supported by documentary or testimonial evidence, submitted in accordance  
12 with section 1187.5 of these regulations. All written comments timely filed shall be reviewed by  
13 Commission staff and may be incorporated into the proposed decision for the incorrect reduction  
14 claim.

15 (e) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
16 other evidence filed after the three-week comment period described in subdivision (d) of this  
17 section. The Commission need not rely on, and staff need not respond to, late comments,  
18 exhibits, or other evidence submitted in response to a draft proposed decision after the comment  
19 period expires.

20 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
21 17530 and 17551(d), Government Code.

## 22 **§ 1185.8. Withdrawal of Incorrect Reduction Claims.**

23 (a) An incorrect reduction claim, except for a claim by the original claimant in a consolidated  
24 incorrect reduction claim, may be withdrawn by written application any time before a decision is  
25 adopted or by oral application at the time of hearing. If an application is made, the executive  
26 director shall issue a letter to the claimant and the State Controller dismissing the claim.

27 (b) An incorrect reduction claim, by the original claimant in a consolidated incorrect reduction  
28 claim, may be withdrawn by written application any time before a decision is adopted or by oral  
29 application at the time of hearing. The original claimant shall certify, file, and serve the written  
30 application in accordance with section 1181.3 of these regulations and Commission staff shall  
31 post a copy of the notice on the Commission's website for 60 days prior to dismissal of the  
32 incorrect reduction claim. If one of the joint claimants takes over the claim, it shall, within 60  
33 days of providing notice of its intent to take over the claim, perfect the filing by submitting the  
34 written narrative as required by section 1185.1. If none of the joint claimants takes over the claim  
35 by substitution of parties within 60 days of service and posting of the application to withdraw,  
36 the executive director shall issue a letter to everyone on the mailing list described in section  
37 1181.4 of these regulations dismissing the claim and providing the joint claimants with an  
38 opportunity to perfect their individual claims within 60 days of service by submitting the written  
39 narrative as required by section 1185.1. The letter shall be posted on the Commission's website.

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section  
41 17551(d), Government Code.

1    **§ 1185.9. Reinstatement of Costs.**

2    If the Commission determines that a reimbursement claim was incorrectly reduced, the  
3    Commission shall send the decision to the Office of State Controller and request that the Office  
4    of State Controller reinstate the costs that were incorrectly reduced.

5    Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section  
6    17551(d), Government Code.

7                                   **Article 6. State Mandates Apportionment System**

8    **§ 1186.1. Definitions: State Mandates Apportionment System.**

9    (a) Request for Inclusion. A Request for Inclusion is a factual statement about a mandated cost  
10   program and a petition for a review of the described program by the Commission on State  
11   Mandates. The review is intended to result in a decision whether or not to include the program in  
12   the State Mandates Apportionment System.

13   (b) Stable costs. Stable costs are those costs incurred by local agencies or school districts as a  
14   result of implementing a mandated cost program which, when reviewed on a statewide basis over  
15   a three-year period, have not fluctuated significantly.

16   (c) Request for Removal. A Request for Removal is a factual statement about significant  
17   modifications or amendments to a program which is part of the State Mandates Apportionment  
18   System. The statement is intended to result in the discontinuance of the program in the State  
19   Mandates Apportionment System.

20   Note: Authority cited: Sections 17527(g) and 17615, Government Code. Reference: Sections  
21   17615 and 17615.1, Government Code.

22   **§ 1186.2. Request for Inclusion.**

23   (a) Any local agency, school district, the Department of Finance or the State Controller's Office  
24   may request that the Commission review a mandated cost program for possible inclusion in the  
25   State Mandates Apportionment System in accordance with Government Code section 17615.1.

26   (b) In order to obtain a review and determination regarding inclusion in the system, a local  
27   agency, school district or state agency must certify, file, and serve a "Request for Inclusion" ~~with~~  
28   ~~the Commission~~ in accordance with section 1181.3 of these regulations.

29   (c) The request for inclusion must contain at least the following:

30   (1) The chapter number of the law which established the mandated cost program(s).

31   (2) A detailed narrative describing the mandated cost program with an explanation of the reasons  
32   why the mandated cost program should be included in the State Mandates Apportionment  
33   System.

34   (3) Any other pertinent information which will substantiate the request or which would have a  
35   bearing on the decision of the Commission in this matter.

36   (d) The Commission shall consider the recommendation submitted from the Controller for each  
37   new mandate submitted for inclusion in the State Mandates Apportionment System in  
38   accordance with Government Code section 17615.4(c).



1 (e) Requests for inclusion will be considered incomplete if any of the preceding elements or  
2 documents required in subdivision (c) of this section are illegible or not included. Incomplete  
3 requests for inclusion shall be returned to the requester for completion.

4 (f) Requests for inclusion filings and any state agency recommendations shall be subject to the  
5 requirements of article 7 of these regulations beginning at section 1187.1. If representations of  
6 fact are made, they shall be supported by documentary or testimonial evidence, submitted in  
7 accordance with section 1187.5 of these regulations.

8 Note: Authority cited: Sections 17527(g), 17615 and 17615.1, Government Code. Reference:  
9 Sections 17615, 17615.1 and 17615.4, Government Code.

10 **§ 1186.3. Adoption of Finding for Request for Inclusion.**

11 (a) The Commission, after reviewing the request for inclusion and conducting at least one  
12 hearing in accordance with article 7 of these regulations, shall adopt a finding that the mandated  
13 program will or will not be included in the State Mandates Apportionment System.

14 (b) The primary criteria to be used by the Commission in making a determination will include a  
15 review of the mandated program to determine if the program has a history of stable costs for  
16 most claimants, if the mandated program has been recently modified, and if inclusion would  
17 accurately reflect the costs of the state mandated program.

18 (c) Upon adoption of a finding that a mandated program should be included in the State  
19 Mandates Apportionment System, the Commission shall direct the Controller to include the  
20 program in the system.

21 Note: Authority cited: Sections 17527(g) and 17615.1, Government Code. Reference: Sections  
22 17615.1 and 17615.4, Government Code.

23 **§ 1186.4. Request for Removal.**

24 (a) Any local agency, school district, or state agency may request that the Commission review a  
25 mandated program included in the State Mandates Apportionment System that has been modified  
26 or amended by the Legislature or an executive order for possible removal of the program from  
27 the system in accordance with Section 17615.7 of the Government Code.

28 (b) In order to obtain a review and determination regarding removal of a program from the  
29 system, a local agency, school district, or state agency must certify, file, and serve a "Request for  
30 Removal" ~~with the Commission~~ in accordance with section 1181.3 of these regulations.

31 (c) The request for removal must contain at least the following elements:

32 (1) The chapter number or executive order of the law which established the mandated cost  
33 program.

34 (2) The chapter number of the law or the executive order which significantly modified or  
35 amended the costs of the program or a detailed description of the circumstances or events which  
36 have caused the changes.

37 (3) A detailed narrative describing the mandated cost program with an explanation of the reasons  
38 why the mandated program should no longer be included in the State Mandates Apportionment  
39 System.

1 (4) Any other information which will substantiate the request or which would have a bearing on  
2 the decision of the Commission in this matter.

3 (d) Requests for Removal will be considered incomplete if any of the preceding elements or  
4 documents required in subdivision (c) of this section are illegible or not included. Incomplete  
5 Requests for Removal shall be returned to the requester for completion.

6 (e) Request for removal filings and any state agency recommendations shall be subject to the  
7 requirements of article 7 of these regulations beginning at section 1187. If representations of fact  
8 are made, they shall be supported by documentary or testimonial evidence, submitted in  
9 accordance with section 1187.5 of these regulations.

10 Note: Authority cited: Sections 17527(g) and 17615.7, Government Code. Reference: Section  
11 17615.7, Government Code.

12 **§ 1186.5. Adoption of Finding for Request for Removal.**

13 (a) The Commission, after reviewing the request for removal and conducting at least one hearing  
14 in accordance in article 7 of these regulations, shall adopt a finding that the mandated program  
15 will or will not continue to be included in the State Mandates Apportionment System.

16 (b) The primary criteria to be used by the Commission in making a determination regarding  
17 removal will include whether the mandated program was significantly modified or amended by  
18 the Legislature or by executive order so as to affect the ongoing costs of the program in a way  
19 that the historical costs of the program are no longer an accurate reflection of continuing costs.

20 (c) Upon adoption of a finding that a mandated program should be removed from the system, the  
21 Commission shall direct the Controller to remove the program from the system. In that direction  
22 to the Controller, the Commission shall specify if the program will be removed temporarily or  
23 for an indefinite period of time.

24 Note: Authority cited: Sections 17527(g) and 17615.5, Government Code. Reference: Sections  
25 17615.5 and 17615.7, Government Code.

26 **§ 1186.6. Reviewing an Apportionment or Base Year Entitlement.**

27 (a) Upon request of a local agency, school district or state agency the Commission shall review  
28 the apportionment or base year entitlement pursuant to Government Code section 17615.8(a).

29 (b) In order to obtain a review of an apportionment or base year entitlement a "Request for  
30 Review" shall be filed with the Commission.

31 (c) The request for review shall contain at least the following elements:

32 (1) Identification of the mandated program that is alleged to require review.

33 (2) A detailed narrative describing the need to modify the apportionment or base year  
34 entitlement.

35 (3) A statement to the effect that the other mandated programs included in the local agency or  
36 school district's apportionment are not overfunded in an amount sufficient to offset any  
37 underfunding.

38 (4) Cost information that outlines the amount of the funding for the total apportionment and the  
39 calculations necessary to show that the program needing modification either under or over

1 reimburse the local agency or school district's actual costs by 20 percent or by \$1,000, whichever  
2 is less.

3 Note: Authority cited: Sections 17527(g) and 17615.8(a), Government Code. Reference: Section  
4 17615.8, Government Code.

5 **§ 1186.7. Adjustment to Apportionment.**

6 (a) The Commission, after reviewing an apportionment or base year entitlement and conducting  
7 at least one hearing in accordance with article 7 of these regulations, shall adopt a finding that  
8 the apportionment or base year entitlement will or will not be adjusted.

9 (b) If the Commission determines that a local agency or school district's apportionment falls  
10 short of reimbursing for all mandates upon which the apportionment or base year entitlement is  
11 based by 20 percent or by \$1,000, whichever is less, then the Commission shall direct the  
12 Controller to adjust the apportionment accordingly.

13 (c) If the Commission determines that a local agency or school district's apportionment  
14 adequately reflects the costs incurred by the local agency or school district for all mandates upon  
15 which that apportionment is based, the Commission may, in its discretion, direct the Controller  
16 to withhold the costs of the Commission's review from the next apportionment to the local  
17 agency or school district. A direction to withhold costs from the next apportionment will be  
18 made only when the Commission determines that the request to review an apportionment was  
19 frivolous and without merit.

20 Note: Authority cited: Sections 17527(g) and 17615.8(a), Government Code. Reference: Section  
21 17615.8, Government Code

22 **Article 7. Quasi-Judicial Hearing Procedures and Decisions**

23 **§ 1187.1. Scheduling and Noticing the Hearing.**

24 (a) A "matter," subject to hearings and decisions under article 7 of these regulations, shall  
25 include test claims, proposed parameters and guidelines, requests to amend parameters and  
26 guidelines, incorrect reduction claims, requests for inclusion or removal from the State Mandates  
27 Apportionment System, requests for review of apportionment or base year entitlement for  
28 programs included in the State Mandates Apportionment System, requests for review of the  
29 Office of State Controller's claiming instructions, and requests for mandate redetermination.

30 (b) A matter is set for hearing when Commission staff issues its draft proposed decision. A  
31 written notice of the date, time, and place of hearing shall be provided to everyone on the  
32 mailing list as described in section 1181.4 of these regulations and shall be posted on the  
33 Commission's web site.

34 Note: Authority cited: Sections 17527(g), 17553(a), 17558.7(g) and 17558.8(b), Government  
35 Code. Reference: Sections 17551, 17553(a), 17557, 17571, 17615.1, 17615.4, 17615.7, 17615.8  
36 and 17615.9, Government Code.

37 **§ 1187.2. Assignment to Hearing Panels/Hearing Officers.**

38 (a) After an informational hearing, in accordance with Article 8 of these regulations, the  
39 Commission's chairperson may assign a matter before the Commission to a hearing panel

1 consisting of one or more members or to a hearing officer for hearing and preparation of a  
2 proposed decision that may be adopted as the decision in the case.

3 (b) Assignments by the Commission chairperson of members on hearing panels shall be rotated  
4 among the members with the composition of the members so assigned being varied and changed  
5 to assure that there shall never be a fixed and continued composition of members.

6 (c) A matter shall be heard and decided by the Commission itself at the request of any two  
7 members of the Commission.

8 Note: Authority cited: Sections 17527(c), 17527(g) and 17553(a), Government Code. Reference:  
9 Sections 17532 and 17551, Government Code.

10 **§ 1187.3. Objection to Hearing Panel, Hearing Officer, or Commission Member.**

11 (a) Any party may ask that a matter be heard by the Commission itself rather than by a hearing  
12 panel or hearing officer.

13 (b) Any party may request the disqualification of any hearing officer or Commission member  
14 before the taking of evidence at a hearing by filing an affidavit stating with particularity the  
15 grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the  
16 request concerns a Commission member, the issue shall be determined by the other members of  
17 the Commission. Where the request concerns the hearing officer, the issue shall be determined  
18 by the Commission itself, if the Commission itself hears the case with the hearing officer;  
19 otherwise the issue shall be determined by the hearing officer.

20 Note: Authority cited: Sections 17527(c), 17527(g) and 17553(a), Government Code. Reference:  
21 Sections 17527, 17532 and 17551, Government Code.

22 **§ 1187.4. Informal Conference.**

23 (a) An informal conference may be scheduled by the Commission or the executive director of  
24 their own accord or by request of a party or interested party to the matter in question. The parties  
25 and interested parties to the matter shall be invited to participate. With the consent of the parties,  
26 the informal conference may be a teleconference.

27 (b) At least 10 days before any informal conference, Commission staff shall serve notice of the  
28 conference to those on the mailing list for the matter in question as established pursuant to  
29 section 1181.4 of these regulations.

30 (c) The purpose of an informal conference may be to:

31 (1) Set dates for receiving comments or claimant rebuttal; completing the proposed decision; and  
32 hearing the matter.

33 (2) Give the claimant or requester the opportunity to present the matter and to respond to  
34 questions from Commission staff and parties and interested parties for the purpose of resolving  
35 or clarifying issues of fact or law.

36 (3) Consider whether a reasonable reimbursement methodology may be developed and included  
37 in the parameters and guidelines.

38 (4) Review a draft reasonable reimbursement methodology and proposed statewide estimate of  
39 costs that are jointly prepared by the test claimant and the Department of Finance pursuant to  
40 Government Code section 17557.1.

- 1 (5) Identify issues and determine methods of resolving those issues.
- 2 (d) Any party may notify the executive director of any interested parties who should be invited to  
3 attend an informal conference.
- 4 (e) Anything said, any document disclosed, and any new representations of fact made during an  
5 informal conference shall not be made part of the administrative record of a test claim unless  
6 properly admitted into the record through the submission of an amendment to a test claim,  
7 written comment, rebuttal, or public testimony.
- 8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
9 17518.5, 17530, 17551, 17553(a) and 17557.1, Government Code.

10 **§ 1187.5. Evidence Submitted to the Commission.**

- 11 (a) The hearings will not be conducted according to technical rules relating to evidence and  
12 witnesses. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on  
13 which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and  
14 unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of  
15 supplementing or explaining other evidence but shall not be sufficient in itself to support a  
16 finding unless it would be admissible over objection in civil actions.
- 17 (b) Oral or written representations of fact offered by any person at an article 7 hearing shall be  
18 under oath or affirmation. All written representations of fact submitted to the Commission must  
19 be signed under penalty of perjury by persons who are authorized and competent to do so and  
20 must be based upon the declarant's personal knowledge, ~~or~~ information, or belief.
- 21 (c) Official notice may be taken in the manner and of the information described in Government  
22 Code Section 11515.
- 23 (d) Each party shall have the right to present witnesses, introduce exhibits, and propose to the  
24 chairperson questions for opposing witnesses. Evidence may be submitted to support or rebut  
25 any issue. If declarations are to be used in lieu of testimony, the party proposing to use the  
26 declaration shall comply with Government Code Section 11514.

27 Note: Authority cited: Sections 17527(e), 17527(g), 17553, 17557, 17610, 17621 and 17622,  
28 Government Code. Reference: Sections 11514, 11515, 17527(e), 17551, 17553, and 17557,  
29 17559, and 17570, Government Code.

30 **§ 1187.6. Conduct of Hearing.**

- 31 (a) Each party shall have the right to present witnesses, to introduce exhibits, and to propose to  
32 the chairperson questions for opposing witnesses in support or rebuttal of any matter relevant to  
33 the issues even though that matter was not covered in the direct examination.
- 34 (b) The presiding member, Commission members, hearing panel member or hearing officer may  
35 question any party or witness and may admit any relevant and material evidence.
- 36 (c) The taking of evidence in a hearing shall be controlled by the Commission or hearing officer  
37 in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to  
38 taking evidence, the issues and the order of presenting evidence will be explained.
- 39 (d) The hearing will ordinarily proceed in the following manner. Staff of the Commission will  
40 summarize the matter. The claimant will state its position and present its evidence. The

1 Department of Finance or other affected state agency will thereafter state its position and present  
2 its evidence. The claimant will then be given an opportunity to reply.

3 (e) The Commission or hearing officer may call a party, or any other person who is present, to  
4 testify under oath or affirmation. Any member of the Commission, its executive director, or  
5 hearing officer may question witnesses.

6 (f) The Commission or the executive director may require that prepared written testimony or  
7 other evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly  
8 consideration of issues at the hearing.

9 (g) Commission public hearings shall be recorded by stenographic reporter or electronic  
10 recording or both. The transcript or recordings shall be kept for the period of time required by  
11 applicable law governing the retention of records of state agency public proceedings, or until  
12 conclusion of administrative or judicial proceedings, whichever is later.

13 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
14 17527(c), 17532, 17551 and 17553(a), Government Code.

15 **§ 1187.7. Witnesses and Subpoenas.**

16 (a) A party shall arrange for the presence of its own witnesses at a hearing on a claim.

17 (b) A subpoena may be issued upon a majority vote of the Commission. A party requesting a  
18 subpoena shall submit a written application to the Commission at least six weeks prior to the  
19 Commission meeting at which the request will be considered.

20 (c) An application for a subpoena to compel the attendance of a witness shall be made by  
21 affidavit and shall give the name and address of the person to be subpoenaed, shall describe the  
22 matters to be testified on, shall set forth in detail the relevance to the issues involved in the claim,  
23 shall specify the date, time, and place of the hearing on the claim and that, to the best of the  
24 applicant's personal knowledge, ~~or~~ information, or belief, the person to be subpoenaed has  
25 knowledge of the matters. If the applicant is unable to obtain the name of the person who has  
26 knowledge of the matters, the name of the director of the state or local agency or superintendent  
27 of a school district may be used for the application.

28 (d) An application for subpoena duces tecum for the production by a witness of books, papers,  
29 correspondence, memoranda, or other records, including records of the claimant, shall be made  
30 by affidavit and shall give the name and address of the person to be subpoenaed, shall describe  
31 the matters or things desired to be produced, shall set forth in detail the relevance to the issues  
32 involved in the claim, shall specify the date on which the matters shall be produced, and that, to  
33 the best of the applicant's personal knowledge, ~~or~~ information, or belief, the witness has the  
34 matters or things in his or her possession or under his or her control and that none of the matters  
35 or things desired to be produced are public records accessible to the public pursuant to Section  
36 6250 et seq., of the Government Code. If the applicant is unable to obtain the name of the person  
37 who has possession or control of the matters or things desired to be produced, the name of the  
38 director or superintendent or custodian of records of the state or local agency or school district  
39 may be used for the application.

40 (e) When a request for subpoena or subpoena duces tecum is approved by the Commission, the  
41 subpoena or subpoena duces tecum shall be issued signed by the executive director, but  
42 otherwise be blank.

1 (f) Before service, all appropriate portions of the blank subpoena or subpoena duces tecum shall  
2 be completed by the requesting party, and the name, address, and telephone number of the  
3 requesting party shall be included on the form. Service of subpoenas and subpoenas duces tecum  
4 shall be made with a copy of the affidavit and shall be arranged for by requesting parties.

5 (g) Except as otherwise provided in this section, service of subpoenas or subpoenas duces tecum  
6 shall be in accordance with the provisions of Section 1985 et seq., of the Code of Civil  
7 Procedure.

8 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
9 17527(d), 17551 and 17553(a), Government Code.

10 **§ 1187.8. Representation at Hearing.**

11 (a) A party may appear in person or through an authorized representative. When using an  
12 authorized representative, a party shall designate in writing the authorized representative to act as  
13 its sole representative and shall certify, file, and serve written notice identifying the authorized  
14 representative in accordance with section 1181.3 of these regulations.

15 (b) A representative of a party shall be deemed to control all matters respecting the interest of  
16 that party in the proceeding. All correspondence and communications shall be forwarded to the  
17 authorized representative.

18 (c) Withdrawal of appearance of any representative may be effected by filing and serving a  
19 written notice of withdrawal in accordance with section 1181.3 of these regulations. Any change  
20 in representation shall be authorized by the party in writing and filed and served in accordance  
21 with section 1181.3 of these regulations.

22 Note: Authority cited: 17527(c), 17527(g), 17551, 17553(a), 17555, 17620, 17621 and 17622,  
23 Government Code. Reference: Sections 17527(c), 17551 and 17553, Government Code.

24 **§ 1187.9. Extensions of Time to File Comments or Rebuttals and Postponements and**  
25 **Continuances of Hearings.**

26 (a) Requests for Extensions of Time

27 Any party or interested party to a matter may request an extension of time by filing a request  
28 with the executive director before the date set for filing of comments or rebuttals with  
29 Commission staff on that matter. The request shall fully explain the reasons for the extension,  
30 propose a new date for filing, and be simultaneously certified, filed, and served in accordance  
31 with section 1181.3 of these regulations. If representations of fact are made, they shall be  
32 supported by documentary or testimonial evidence, submitted in accordance with section 1187.5  
33 of these regulations. So long as a postponement of a hearing would not be required, there is no  
34 prejudice to any party or interested party, and there is no other good reason for denial, the  
35 request shall be approved. A party to a matter may request an extension of time that would  
36 necessitate rescheduling a hearing, but shall also include a request for postponement of the  
37 hearing, pursuant to section 1187.9(b). Within two business days of receipt of the request, the  
38 executive director shall determine whether the extension will be granted and notify all persons on  
39 the mailing list prepared pursuant to section 1181.4 of these regulations.

40 (b) Requests for Postponement of Hearing

1 A party to an article 7 matter may request a postponement of a hearing on that matter, until the  
2 next regularly scheduled hearing. Although postponements of hearings are disfavored, each  
3 request for a postponement must be considered on its own merits. The request shall fully explain  
4 the reasons for the postponement, and be certified, filed, and served in accordance with section  
5 1181.3 of these regulations. If representations of fact are made, they shall be supported by  
6 documentary or testimonial evidence, submitted in accordance with section 1187.5 of these  
7 regulations. Within two business days of receipt of the request, the executive director shall  
8 determine whether the postponement will be granted and notify all persons on the mailing list  
9 prepared pursuant to section 1181.4 of these regulations. The executive director may postpone  
10 the matter only on an affirmative showing of good cause.

11 (1) Circumstances that may indicate good cause include:

12 (A) The unavailability of a party, party representative, or witness because of death, illness, or  
13 other excusable circumstances;

14 (B) The substitution of a party representative, but only where there is an affirmative showing that  
15 the substitution is required in the interests of justice;

16 (C) The addition of a new party if:

17 1. The new party has not had a reasonable opportunity to prepare for hearing; or

18 2. The other parties have not had a reasonable opportunity to prepare for hearing in regard to the  
19 new party's involvement in the matter;

20 (D) A party's excused inability to obtain essential testimony, documents, or other material  
21 evidence despite diligent efforts;

22 (E) A significant, unanticipated change in the status of the matter as a result of which the matter  
23 is not ready for hearing; or

24 (F) The number and complexity of the issues.

25 (2) Other factors to be considered: In determining whether to grant a postponement, the  
26 executive director shall consider the facts and circumstances that are relevant to the  
27 determination. These may include:

28 (A) The proximity of the hearing date;

29 (B) Whether there was any previous postponement, extension of time, or delay of hearing due to  
30 any party;

31 (C) The length of the postponement requested;

32 (D) The availability of alternative means to address the problem that gave rise to the request for a  
33 postponement;

34 (E) The prejudice that parties or witnesses will suffer as a result of the postponement;

35 (F) If the matter was granted expedited scheduling, the reasons for that status and whether the  
36 need for a postponement outweighs the need to avoid delay;

37 (G) The Commission's backlog of matters and the impact of granting a postponement on other  
38 pending matters;



- 1 (H) Whether the claimant or requester representative is engaged in a trial or other hearing that  
2 conflicts with the Commission hearing;
- 3 (I) Whether, pursuant to Government Code 17554, all parties have stipulated to a postponement;  
4 and
- 5 (J) Whether the interests of justice are best served by a postponement, by moving forward with  
6 the hearing on the matter, or by imposing conditions on the postponement.

7 (3) Approval of Requests for Postponement

8 (A) A request filed by the claimant or requester at least 15 days before the hearing shall be  
9 approved by the executive director for good cause.

10 (B) A request filed by stipulation of the parties, including the claimant or requester, shall be  
11 approved by the executive director for good cause.

12 (C) A request filed by the claimant or requester less than 15 days before the hearing may be  
13 approved by the executive director for good cause.

14 (D) A request filed by an interested party may be approved by the executive director for good  
15 cause. If a state agency makes a request before filing comments on the test claim, that request  
16 shall be accompanied by a notice of intent to oppose the test claim in whole or in part.

17 (4) Postponement on Commission Staff's Own Motion: The executive director may postpone a  
18 hearing on a matter for good cause and shall notify all persons on the mailing list prepared  
19 pursuant to section 1181.4 of these regulations.

20 (c) Continuance of a Hearing

21 (1) Prior to the adoption of its written decision on the matter being heard, the Commission on its  
22 own motion, or upon a clear showing of good cause at the request of a party, may continue a  
23 hearing to another time or place. Written notice of the time and place of the continued hearing,  
24 except as provided herein, shall be in accordance with section 1187.1 of these regulations. When  
25 a continuance is ordered during a hearing, oral notice of the time and place of the continued  
26 hearing may also be given to each party present at the hearing.

27 (2) In determining whether there is good cause for a continuance within the meaning of  
28 subdivision (a) the following policy should be taken into consideration: Continuances are not  
29 favored by the Commission. The parties are expected to submit for decision all matters in  
30 controversy at a single hearing and to produce at the hearing all necessary evidence, including  
31 witnesses, documents and all other matters considered essential in the proof of a party's  
32 allegations. Continuances will be granted only upon a clear showing of good cause.

33 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
34 17527, 17551 and 17553(a), Government Code; and California Rules of Court, Rule 3.1332.

35 **§ 1187.10. Decision; Action on Proposed Decision.**

36 (a) The Commission shall adopt a decision for all matters subject to hearings and decisions under  
37 article 7 of these regulations.

38 (b) If a matter is heard before the Commission itself, the Commission may adopt the proposed  
39 decision on the same day as the hearing.

1 (c) If a matter is heard by a hearing panel or a hearing officer alone, the panel or hearing officer  
2 shall prepare a proposed decision that may be adopted as the decision of the Commission at the  
3 next Commission meeting.

4 (d) A copy of the proposed decision shall be filed by Commission staff as a public record and a  
5 copy of the proposed decision shall be served by Commission staff on each party. The  
6 Commission itself may adopt the proposed decision or decide the case itself, provided that the  
7 Commission itself shall decide no matters provided for in this subdivision without affording the  
8 parties the opportunity to present either oral or written argument before the Commission.

9 (e) If the proposed decision of Commission staff is not adopted by the Commission, as provided  
10 in subsections (b) or (c), the Commission shall direct appropriate modification of the proposed  
11 decision and thereafter adopt it as the Commission's decision.

12 (f) Except as provided for in subdivision (b), the proposed decision shall be prepared within a  
13 reasonable time following submission of the matter to the hearing officer or panel, and within a  
14 reasonable time after the evidentiary hearing. It shall be served on the parties promptly  
15 thereafter.

16 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
17 17532, 17551 and 17553(a), Government Code.

18 **§ 1187.11. Form of Decision.**

19 (a) Any decision adopted pursuant to evidence introduced at an adjudicatory hearing shall be in  
20 writing, be based on the record, and shall include a statement of reasons for the decision,  
21 findings and conclusions. A copy of the decision shall be served on those identified on the  
22 mailing list established pursuant to section 1181.4 of these regulations. The effective date of the  
23 decision is the date it is first mailed or served.

24 (b) After a decision has been adopted and served, it shall not be changed except to correct  
25 clerical errors, in which case a corrected decision shall be prepared and served on all persons on  
26 the mailing list prepared pursuant to section 1181.4 of these regulations.

27 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code; and *Topanga*  
28 *Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. Reference:  
29 Sections 17551 and 17553(a), Government Code.

30 **§ 1187.12. Withdrawal of a Matter.**

31 A matter, or any portion of a matter, other than a test claim, may be withdrawn by written  
32 application of the claimant or requester any time before a decision is adopted, or by oral  
33 application at the time of hearing. A test claim, or portion thereof, may be withdrawn by the  
34 claimant upon written application to the executive director any time before a decision is adopted  
35 or after enactment of a legislatively determined mandate on the same statute or executive order  
36 pursuant to Government Code section 17574. The claimant or requester shall certify, file, and  
37 serve the written application in accordance with section 1181.3 of these regulations. Dismissal of  
38 items withdrawn pursuant to this section shall be in accordance with the procedures described in  
39 section 1187.15 of these regulations.

40 Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
41 17551 and 17553, Government Code.

1    **§ 1187.13. Abandonment of a Matter.**

2    (a) The executive director may deem a matter "abandoned" if any of the following events occurs:

3    (1) The claimant does not respond, within 60 days of service, to a written notification sent to the  
4    superintendent of the school district or chief administrative officer of the local agency or director  
5    of a state agency that the matter will be deemed "abandoned."

6    (2) The claimant or requester provides written notification to the Commission of its withdrawal  
7    from a test claim.

8    (3) The matter has been postponed or placed on inactive status by the claimant or requester for a  
9    period of more than one year. However, delays or postponements under the following  
10   circumstances will not be considered for purposes of computing whether a matter has been  
11   postponed or placed on inactive status by the claimant for more than one year:

12   (A) Delays or postponements made at the request of the Commission or opposing party to the  
13   claim or request;

14   (B) Delays or postponements, made at the request of the claimant or requesting party, pending  
15   the resolution of a matter currently before the Commission of an issue similar to or related to the  
16   postponed matter; and

17   (C) Delays or postponements, made at the request of the claimant or requesting party, pending  
18   the resolution of litigation of an issue similar to or related to the postponed matter.

19   Note: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections  
20   17530 and 17553(a), Government Code.

21   **§ 1187.14. Substitution of Parties and Dismissal of a Matter.**

22   (a) A matter, other than a test claim, that has been withdrawn in accordance with 1187.12 or  
23   deemed abandoned in accordance with section 1187.13, may be dismissed by the executive  
24   director. Commission staff shall provide written notice of dismissal to everyone on the mailing  
25   list for the matter to be dismissed.

26   (b) A test claim that has been withdrawn or deemed abandoned may be dismissed by the  
27   Commission on its own motion or by a motion of a party after notice and an opportunity to be  
28   heard has been made to the claimant, parties and interested parties as provided below.

29   (1) For test claims that are withdrawn, deemed abandoned, or filed by an agency that is not  
30   eligible to seek reimbursement because it is not subject to the taxing and spending limitations of  
31   article XIII A and B of the California Constitution, Commission staff shall serve written notice to  
32   initiate dismissal of the test claim to everyone on the mailing list for the matter. The notice shall  
33   announce that another local agency or school district may take over the claim by substitution of  
34   parties within 60 days of the issuance of the notice. The notice shall also announce the  
35   opportunity to provide written comments on the proposed dismissal of the test claim. A copy of  
36   the notice shall also be posted on the Commission's website.

37   (2) Written comments shall be certified, filed, and served in accordance with section 1181.3 of  
38   these regulations. If representations of fact are made, they shall be supported by documentary or  
39   testimonial evidence, submitted in accordance with section 1187.5 of these regulations.

1 (3) If no other local agency or school district takes over the test claim by substitution of parties  
2 within 60 days of the issuance of the notice, the Commission shall hear the proposed dismissal of  
3 the test claim.

4 (c) The hearing on a dismissal of a matter shall be conducted in accordance with article 7 of  
5 these regulations.

6 Note: Authority cited: Sections 17527(c), 17527(g) and 17553(a), Government Code. Reference:  
7 Sections 17551 and 17553(a), Government Code.

8 **§ 1187.15. Reconsideration of an Adopted Decision.**

9 (a) Notwithstanding section 1187.11(b) of these regulations, the Commission may make  
10 substantive changes to an adopted decision under this section or order a reconsideration of all or  
11 part of a matter on petition of any party. The power to order a reconsideration or amend a test  
12 claim decision shall expire 30 days after the adopted decision is delivered or mailed to the  
13 claimant. If additional time is needed to evaluate a petition for reconsideration filed before the  
14 expiration of the 30-day period, the Commission may grant a stay of that expiration for no more  
15 than 30 days, solely for the purpose of considering the petition. A request for reconsideration  
16 shall be deemed automatically stayed for the 30-day period. If no action is taken on a petition  
17 within the time allowed for ordering reconsideration, the petition shall be deemed denied.

18 (b) Except as provided elsewhere in this section, any party, interested party, or Commission  
19 member may request that the Commission reconsider and change an adopted decision to correct  
20 an error of law.

21 (c) All requests for reconsideration shall be certified, filed, and served ~~submitted to the~~  
22 ~~Commission~~ in accordance with section 1181.3 of these regulations and shall contain the  
23 following:

24 (1) The name and address of the requesting party;

25 (2) A copy of the Commission's adopted decision;

26 (3) A detailed statement of the reasons for the request, including:

27 (A) An explanation of the reasons for the request for reconsideration; and,

28 (B) All documentation the requester intends to submit to support the request;

29 (4) A description of the proposed change; and ;

30 (5) If representations of fact are made, they shall be supported by documentary or testimonial  
31 evidence, submitted in accordance with section 1187.5 of these regulations.

32 (d) Commission member requests may be made orally during a regularly scheduled Commission  
33 meeting. Commission staff shall prepare the written request, as specified in subsections (c)(1-4)  
34 above.

35 (e) Any signatory to a written agreement that settles a matter may not request reconsideration of  
36 that matter if the matter is settled with prejudice.

37 (f) Before the Commission considers the request for reconsideration, Commission staff shall  
38 prepare a written analysis regarding whether the adopted decision is contrary to law which shall  
39 include but not be limited to a review of the written comments filed by other state agencies,

1 interested parties, and the requester. Commission staff shall make a recommendation in the  
2 analysis on whether the request for reconsideration should be granted. The Commission shall  
3 consider the request for reconsideration at a scheduled meeting. Five affirmative votes shall be  
4 required to grant the request for reconsideration.

5 (g) If the Commission grants the request for reconsideration, a hearing shall be conducted to  
6 determine if the adopted decision in question must be revised to correct an error of law.

7 (1) The following procedures shall govern the Commission's reconsideration of the adopted  
8 decision:

9 (A) At least eight weeks before the Commission is scheduled to consider whether an adopted  
10 decision is contrary to law, or at another time required by the executive director, Commission  
11 staff shall prepare a draft proposed decision and distribute it to those identified on the mailing list  
12 for the matter established pursuant to section 1181.4 of these regulations and any person who  
13 requests a copy.

14 (B) Written comments may be filed with Commission staff concerning the draft proposed  
15 decision. All representations of fact shall be supported by documentary or testimonial evidence,  
16 submitted in accordance with section 1187.5 of these regulations. Written comments shall be  
17 certified, filed, and served in accordance with section 1181.3 of these regulations. A three-week  
18 period for comments shall be given, subject to the executive director's authority to expedite all  
19 matters pursuant to Government Code section 17530. All written comments timely filed shall be  
20 reviewed by Commission staff and may be incorporated into the proposed decision regarding  
21 whether the adopted decision is contrary to law and presented to the Commission before the  
22 scheduled meeting.

23 (2) The procedures set forth in article 7 shall govern the Commission's hearings and decisions  
24 process, except that five affirmative votes shall be required to change an adopted decision.

25 (h) If the Commission changes an adopted decision, the procedures set forth in Sections 1183.7  
26 through 1183.14 of these regulations shall govern the adoption of parameters and guidelines and  
27 the statewide cost estimate, if applicable.

28 (i) Failure to seek Commission reconsideration of an adopted decision shall not affect a  
29 claimant's or state agency's right to seek judicial review pursuant to Government Code section  
30 17559(b).

31 (j) This section only applies to reconsiderations requested pursuant to Government Code section  
32 17759(a); it does not apply to remands or reconsiderations directed by the courts or by statute.

33 Note: Authority cited: Sections 17527(c), 17527(g), 17553(a) and 17559(a), Government Code.  
34 Reference: Sections 17532, 17551 and 17559, Government Code.

## 35 **Article 8. Rulemaking and Informational Hearings**

### 36 **§ 1188.1. Scheduling and Noticing of an Informational Hearing**

37 (a) The Commission may, upon its own motion, set an informational hearing on any subject  
38 within its jurisdiction. Matters subject to informational hearings under article 8 of these  
39 regulations include: a proposed assignment of an article 7 matter to a hearing officer, a  
40 rulemaking proceeding, the adoption of a statewide cost estimate, and any other subject that

1 meets the definition of "informational hearing" in section 1181.2 of these regulations and is not  
2 subject to hearings under article 7 of these regulations.

3 (b) An article 8 matter is set for hearing when Commission staff issues its notice and agenda  
4 providing the date, time, and place of the hearing to everyone on the mailing list described in  
5 section 1181.4 of these regulations.

6 (c) Commission staff shall provide notice of an informational hearing in accordance with  
7 Government Code section 11120 et seq. The notice shall include the following:

8 (1) A statement of the authority pursuant to which the hearing is ordered, and a reference to any  
9 code sections or other provisions of law pursuant to which the information is to be gathered or  
10 disseminated;

11 (2) A statement of the nature and purpose of the proceedings;

12 (3) A statement requiring the presence and participation of any persons the Commission may  
13 direct, consistent with the nature and purpose of the proceedings;

14 (4) A statement indicating the time during which written comments will be received and the  
15 manner by which the comments shall be filed;

16 (5) A statement that any person may make oral comments on the subject of the hearing; and

17 (6) A statement setting forth additional procedures deemed necessary by the Commission and not  
18 inconsistent with these regulations.

19 Note: Authority cited: Sections 17527(c) and 17527(g), Government Code. Reference: Sections  
20 11125, 17527(c) and 17532, Government Code.

21 **§ 1188.2. Rulemaking.**

22 (a) Petitions:

23 (1) Any person may petition the Commission to request rulemaking hearings. The petition shall  
24 be filed and served in accordance with section 1181.3 of these regulations and shall include:

25 (A) The name, address, and telephone number of the petitioner;

26 (B) The substance or nature of the regulation, amendment, or repeal requested;

27 (C) The reasons for the request; and

28 (D) Reference to the authority of the Commission to take the action requested.

29 (2) The petition shall be filed with the executive director who shall, within seven days after its  
30 filing, determine whether the petition contains the information specified in subsection (1).

31 (A) If the executive director determines that the petition is complete, it shall be certified in  
32 writing as complete and the petitioner shall be so notified.

33 (B) If the executive director determines that the petition is not complete, it shall be returned to  
34 the petitioner accompanied by a statement of its defects. The petitioner may correct the petition  
35 and resubmit it at any time.

36 (3) Upon certification by the executive director, the Commission shall, within 60 days from the  
37 filing of the petition, deny the petition, stating the reason for the denial in writing, or grant the  
38 petition, directing staff to prepare an appropriate order pursuant to subdivision (b) of this section.

1 (b) Commission Order to Institute a Rulemaking Proceeding. The Commission may, upon its  
2 own motion or upon granting a petition filed pursuant to subdivision (a) of this section, adopt an  
3 order to institute a rulemaking proceeding in accordance with the procedures of Government  
4 Code sections 11346.2, 11346.4, 11346.8, and 11346.9.

5 (c) Notice.

6 (1) Notice of a rulemaking proceeding shall be given in accordance with Government Code  
7 section 11346.4.

8 (2) At least 10 days prior to the first hearing in a proceeding ordered pursuant to subdivision (b)  
9 of this section, the executive director shall cause notice of the hearing to be mailed to every  
10 person requested to participate in the proceedings, and to any person who the executive director  
11 determines to be concerned with the subject matter of the proceeding, and shall post a copy of  
12 the notice on the Commission's website.

13 (3) In addition to the requirements of subsections (c)(1) and (2) of this section, notice of  
14 additional hearing shall be required at least 10 days prior to the commencement of the hearing  
15 unless continuation is orally announced in a public hearing.

16 (4) Nothing in this section shall preclude the Commission from publishing notice in additional  
17 forms or media as the executive director may prescribe.

18 (5) A copy of the order adopted pursuant to subdivision (b) of this section shall accompany the  
19 initial notice prepared and mailed pursuant to this section, unless a copy of the order has been  
20 previously mailed to those persons who would receive the notice.

21 Note: Authority cited: Section 17527(g), Government Code. Reference: Sections 11340.6,  
22 11346.2, 11346.4, 11346.8, 11346.9, 17527(c), 17527(g), 17530, 11346.4 and 17551,  
23 Government Code.

## 24 **Article 10. Mandate Redetermination Process**

### 25 **§ 1190.1. Filing a Request to Adopt a New Test Claim Decision.**

26 (a) A local agency or a school district, statewide association of local agencies or school districts,  
27 the Department of Finance, Office of the State Controller, or other affected state agency, may file  
28 a request to adopt a new test claim decision to supersede a previously adopted test claim decision  
29 by making a showing that the state's liability pursuant to Article XIII B, section 6(a) of the  
30 California Constitution for the previously adopted test claim decision has been modified based  
31 on a "subsequent change in law" as defined by Government Code section 17570(a)(2). Such a  
32 request is known as a "request for mandate redetermination."

33 (b) All requests for mandate redetermination shall be filed on a form developed by the executive  
34 director and shall contain a detailed analysis of how and why the state's liability for mandate  
35 reimbursement has been modified pursuant to article XIII B, section 6(a) of the California  
36 Constitution and all of the elements and accompanying documents required by the form and  
37 Government Code section 17570(d). If representations of fact are made, they shall be supported  
38 by documentary or testimonial evidence, submitted in accordance with section 1187.5 of these  
39 regulations.

40 (c) The detailed analysis of how and why the state's liability for mandate reimbursement has  
41 been modified pursuant to article XIII B, section 6(a) of the California Constitution based on a

1 "subsequent change in law" as defined by Government Code section 17570 requires more than a  
2 written narrative or simple statement of the facts and law. It requires the application of the law  
3 (Gov. Code § 17570 (a) and (b)) to the facts (i.e. the alleged subsequent change in law)  
4 discussing, for each activity addressed in the prior test claim decision, how and why the state's  
5 liability for that activity has been modified. Specific references shall be made to statutes and  
6 chapters, articles, sections, and page numbers that are alleged to impose or not impose a  
7 reimbursable state-mandated program.

8 (d) ~~The requester shall file a~~A request for mandate redetermination and accompanying  
9 documents ~~with the Commission~~shall be certified, filed, and served in accordance with section  
10 1181.3 of these regulations.

11 (e) Within 10 days of receipt of a request for mandate redetermination, Commission staff shall  
12 notify the requester if the request is complete or incomplete and refer the requester to these  
13 regulations. Requests for mandate redetermination shall be considered incomplete if any of the  
14 elements required in subdivisions (b), (c), or (d) of this section are illegible or are not included. If  
15 a complete request for mandate redetermination is not received within 30 calendar days from the  
16 date the incomplete request was returned, the executive director shall disallow the original  
17 request filing date. New requests for mandate redetermination may be accepted on the same  
18 subsequent change in law alleged to modify the state's liability pursuant to article XIII B, section  
19 6(a) of the California Constitution.

20 (f) A request for mandate redetermination shall be filed on or before June 30 following a fiscal  
21 year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal  
22 year.

23 (g) A requester may not add a new subsequent change in law to a request for mandate  
24 redetermination after the request has been deemed complete.

25 (h) Any request for mandate redetermination that fails to allege a "subsequent change in law," as  
26 defined by Government Code section 17570, shall be returned by the executive director with a  
27 written notice stating the reason that the request is being returned. These filings may include, but  
28 are not limited to, requests that meet the requirements for a proposed parameters and guidelines  
29 amendment or a new test claim filing.

30 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
31 Sections 17530 and 17570, Government Code.

32 **§ 1190.2. Review and Response.**

33 (a) Within 10 days of receipt of a complete request for mandate redetermination, Commission  
34 staff shall send a written notice to the Department of Finance, Office of the State Controller, any  
35 affected state agency, the original test claimant, and any known interested party, that:

36 (1) A copy of the request for mandate redetermination has been posted on the Commission's  
37 website, and

38 (2) Written comments concerning the request for mandate redetermination may be filed within  
39 30 days and evidence may also be presented at the hearing on the request for mandate  
40 redetermination.

41 (b) Content and Form. Written comments on the request for mandate redetermination shall  
42 contain the following documentary evidence, if applicable:



1 (1) If representations of fact are made, they must be supported by documentary or testimonial  
2 evidence, ~~which shall be submitted in accordance with section 1187.5 of these regulations with~~  
3 ~~the response. All documentary evidence shall be authenticated by declarations under penalty of~~  
4 ~~perjury signed by persons who are authorized and competent to do so and must be based on the~~  
5 ~~declarant's personal knowledge or information or belief.~~

6 (2) A copy of relevant portions of state constitutional provisions, state and federal statutes, and  
7 executive orders, and a copy of administrative decisions and court decisions that may impact the  
8 alleged mandate, unless the authorities are also cited in the request to adopt a new test claim  
9 decision. The specific statutes and chapters, articles, sections, and page numbers must be  
10 identified. Published court decisions arising from state mandate determinations by the Board of  
11 Control and the Commission, article XIII B, section 6 of the California Constitution, and  
12 Government Code sections 17500 et seq., are exempt from the requirements of this subsection.  
13 When an omnibus bill is relevant to the response, only the relevant pages of the statute, including  
14 the Legislative Counsel's Digest and the specific statutory changes at issue shall be filed.

15 ~~(e) The written comments and supporting documentation shall be signed at the end of the~~  
16 ~~document, under penalty of perjury by an authorized representative, with the declaration that it is~~  
17 ~~true and complete to the best of the representative's personal knowledge or information or belief.~~  
18 ~~The date of signing, the representative's title, address, telephone number, and e-mail address~~  
19 ~~shall be included.~~

20 ~~(dc) Filing. Written comments and supporting documentation concerning a request for mandate~~  
21 ~~redetermination shall be certified, filed, and served in accordance with Section 1181.3 of these~~  
22 ~~regulations. Any representations of fact shall be supported by documentary evidence, submitted~~  
23 ~~with the comments, in accordance with section 1187.5 of these regulations.~~

24 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
25 Section 17570, Government Code.

### 26 **§ 1190.3. Rebuttal.**

27 (a) Parties and interested parties shall be given an opportunity to rebut written comments  
28 concerning a request for mandate redetermination by filing written rebuttals within 30 days of  
29 service of the comments.

30 (b) Content and Form. A written rebuttal shall contain the following documentary evidence, if  
31 applicable:

32 (1) If ~~new~~ representations of fact are made, they must be supported by documentary or  
33 testimonial evidence, ~~which shall be submitted with the rebuttal~~ in accordance with section  
34 1187.5 of these regulations.

35 (2) A copy of relevant portions of state constitutional provisions, federal statutes, and executive  
36 orders, and a copy of administrative decisions and court decisions that are cited in the rebuttal,  
37 unless the authorities are also cited in the request to adopt a new test claim decision or any  
38 response thereto. The specific statutes and chapters, articles, sections, and page numbers shall be  
39 identified. Published court decisions arising from state mandate determinations by the Board of  
40 Control and the Commission, article XIII B, section 6 of the California Constitution, and  
41 Government Code sections 17500 et seq., are exempt from the requirements of this subsection.

1 When an omnibus bill is relevant to the rebuttal, only the relevant pages of the statute, including  
2 the Legislative Counsel's Digest and the specific statutory changes at issue shall be filed.

3 (c) The rebuttal to a comment concerning a request for mandate redetermination shall be  
4 certified, filed, ~~with Commission staff~~ and served in accordance with section 1181.3 of these  
5 regulations.

6 ~~(d) The rebuttal shall be signed at the end of the document, under penalty of perjury, with the  
7 declaration that the rebuttal is true and complete to the best of the declarant's personal knowledge  
8 or information or belief. The date of signing, the declarant's title, address, telephone number, and  
9 e-mail address shall be included.~~

10 Note: Authority cited: Sections 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
11 Section 17570, Government Code.

12 **§ 1190.4. Executive Director's Authority to Consolidate Requests for Mandate**  
13 **Redetermination.**

14 (a) The executive director may consolidate two or more requests for mandate redetermination for  
15 the second hearing, if some or all of the same statutes, regulations or executive orders are at  
16 issue, if necessary to ensure the complete, fair, or timely consideration of any request for  
17 mandate redetermination.

18 (b) At least 10 days before the action is taken, the executive director shall serve on the parties  
19 and interested parties on the mailing list described in section 1181.4 of these regulations, and  
20 post on the Commission's website, a notice of any proposed action to consolidate.

21 Note: Authority cited: Section 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
22 Sections 17530, 17554 and 17570, Government Code.

23 **§ 1190.5. Hearing Process and Form of Decision.**

24 Notwithstanding any other provision of these regulations, mandate redetermination process  
25 hearings and decisions shall be subject to article 7 of these regulations. There shall be a two-step  
26 hearing process for requests to adopt a new test claim decision as follows:

27 (a) The First Hearing:

28 (1) The first hearing shall be limited to the issue of whether the requester has made an adequate  
29 showing which identifies a subsequent change in law as defined by Government Code section  
30 17570, material to the prior test claim decision, that may modify the state's liability pursuant to  
31 article XIII B, section 6(a) of the California Constitution. The Commission shall find that the  
32 requester has made an adequate showing if it finds that the request, when considered in light of  
33 all of the written comments and supporting documentation in the record of this request, has a  
34 substantial possibility of prevailing at the second hearing.

35 (2) At least eight weeks before the hearing or at another time required by the executive director  
36 or stipulated to by the parties, Commission staff shall prepare a draft proposed decision and  
37 distribute it to the parties, interested parties, and any person who requests a copy, and shall post  
38 it on the Commission's website. A request for mandate redetermination is set for the first hearing  
39 when Commission staff issues its draft proposed decision. A written notice of the date, time, and  
40 place of the first hearing shall be served on everyone on the mailing list described in section  
41 1181.4 of these regulations and posted on the Commission's website.

1 (3) Written comments concerning the draft proposed decision may submitted to Commission  
2 staff. Written comments shall be certified, filed, and served as described in accordance with  
3 section 1181.3 of these regulations, by the date determined and publicized by the executive  
4 director. A three-week period for comments shall be given, subject to the executive director's  
5 authority to expedite all matters pursuant to Government Code section 17530. If representations  
6 of fact are made, they shall be supported by documentary or testimonial evidence, submitted in  
7 accordance with section 1187.5 of these regulations. All written comments timely filed shall be  
8 reviewed by Commission staff and may be incorporated into the proposed decision of the request  
9 to adopt a new test claim decision.

10 (A) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
11 other evidence filed after the three-week comment period described in subdivision (a)(3) of this  
12 section. The Commission need not rely on, and staff need not respond to, late comments,  
13 exhibits, or other evidence submitted in response to a draft proposed decision.

14 (4) Before the first hearing on the request for mandate redetermination, Commission staff shall  
15 prepare a proposed decision limited to the issue of whether the requester has made a showing  
16 that identifies a subsequent change in law, material to the prior test claim decision, which may  
17 modify the state's liability pursuant to article XIII B, section 6(a) of the California Constitution.  
18 This proposed decision shall consider the request, written comment, rebuttals and supporting  
19 documentation filed by the parties and interested parties. The proposed decision for the first  
20 hearing shall find that the requester has made an adequate showing if staff finds that the request,  
21 when considered in light of all of the written comments and supporting documentation in the  
22 record of this request, has a substantial possibility of prevailing at the second hearing.

23 (5) If, at the first hearing, the Commission finds that:

24 (A) The requester has not made an adequate showing, when considered in light of all of the  
25 written comments, rebuttals and supporting documentation in the record and testimony at the  
26 hearing, that the request for mandate redetermination has a substantial possibility of prevailing at  
27 the second hearing, the Commission shall publish a decision denying the request for mandate  
28 redetermination.

29 (B) The requester has made an adequate showing, when considered in light of all of the written  
30 comments, rebuttals, and supporting documentation in the record and testimony at the hearing,  
31 the Commission shall publish a decision finding that an adequate showing has been made and  
32 setting the second hearing on whether the Commission shall adopt a new test claim decision to  
33 supersede the previously adopted test claim decision.

34 (6) Everyone on the mailing list described in section 1181.4 of these regulations shall be  
35 provided written notice that the Commission's decision has been posted on the Commission's  
36 website and, if applicable, that the date, time, and place of the second hearing have also been  
37 posted on the Commission's website.

38 (b) The Second Hearing:

39 (1) If the Commission proceeds to the second hearing, it shall consider whether the state's  
40 liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified  
41 based on the subsequent change in law alleged by the requester, thus requiring adoption of a new  
42 test claim decision to supersede the previously adopted test claim decision. If the Commission  
43 finds that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution

1 has been modified based on the subsequent change in law alleged by the requester, it shall adopt  
2 a new decision that reflects the modified liability of the state.

3 (2) Before the second hearing, Commission staff shall prepare a proposed decision. At least eight  
4 weeks before the hearing or at another time required by the executive director or stipulated to by  
5 the parties, Commission staff shall prepare a draft proposed decision and distribute it to everyone  
6 on the mailing list described in section 1181.4 of these regulations and post it on the  
7 Commission's website. The proposed decision shall consider the request, and any written  
8 comments and rebuttals and supporting documentation filed.

9 (3) Any party or interested party may file written comments concerning the draft proposed  
10 decision with Commission staff. Written comments shall be certified, filed, and served as  
11 ~~described in accordance with~~ Section 1181.3 of these regulations, by the date determined and  
12 publicized by the executive director. A three-week period for comments shall be given, subject to  
13 the executive director's authority to expedite all matters pursuant to Government Code section  
14 17530. If representations of fact are made, they shall be supported by documentary or testimonial  
15 evidence, submitted in accordance with section 1187.5 of these regulations. All written  
16 comments timely filed shall be reviewed by Commission staff and may be incorporated into the  
17 proposed decision.

18 (A) It is the Commission's policy to discourage the introduction of late comments, exhibits, or  
19 other evidence filed after the three-week comment period described in subdivision (b)(3) of this  
20 section. The Commission need not rely on, and staff need not respond to, late comments,  
21 exhibits, or other evidence submitted in response to a draft proposed decision.

22 (4) If, at the second hearing, the Commission finds that the state's liability pursuant to article  
23 XIII B, section 6(a) of the California Constitution:

24 (A) has not been modified based on a subsequent change in law as defined by Government Code  
25 section 17570 (a)(2), the Commission shall publish a decision denying the request.

26 (B) has been modified based on a subsequent change in law, as defined by Government Code  
27 section 17570 (a)(2) the Commission shall adopt a new decision to supersede the prior decision.  
28 The new decision shall be prepared in writing, based on the record, and shall include a statement  
29 of reasons for the decision, findings, and conclusions.

30 (5) Everyone on the mailing list described in section 1181.4 of these regulations shall be  
31 provided written notice that a copy of the decision has been posted on the Commission's  
32 website.

33 (6) After a decision or proposed decision has been served or posted on the Commission's  
34 website, it shall not be changed except to correct clerical errors, in which case a corrected  
35 decision or proposed decision shall be prepared and posted on the Commission's website.  
36 Everyone on the mailing list described in section 1181.4 of these regulations shall be provided  
37 written notice that a copy of the revised decision has been posted on the Commission's website.

38 (7) If a new decision is adopted that finds that the State's liability under article XIII B, section  
39 6(a) of the California Constitution has been modified, the amount and method of reimbursement  
40 shall be determined in accordance with article 3 of these regulations.

41 Note: Authority cited: Section 17527(g), 17553(a) and 17570(d), Government Code. Reference:  
42 Sections 17530 and 17570, Government Code.



May 10, 2004

# Key Elements of Mandate Reform— Major Recommendations Proposed

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LEGISLATIVE ANALYST'S OFFICE

Presented To:  
Assembly Special Committee on State Mandates  
Hon. John Laird, Chair





## **Key Elements of Mandate Reform— Major Recommendations Proposed**

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### **1. Little Confidence in Mandate Determination Process**

- (a) Revamp the Commission on State Mandates (CSM) membership to address the perception of bias. (LAO and MCS)
- (b) Either (1) replace commission with independent review process or (2) balance state and local membership, provide for a neutral chair, and allow for local alternates. (CSAC and League)
- (c) Assign greater fiscal and policy review responsibility to state agencies. (LAO)
- (d) Cease practice of commission staff representing state interests. (CSAC and League)

### **2. Lack of Payments Undermines Credibility of System**

- (a) Sunset mandates if the state does not pay promptly. (LAO)
- (b) Provide specific date for payment when the state defers reimbursement payments. (MCS)
- (c) Fully fund all mandates, thereby eliminating interest payments (State Controller's Office [SCO]). Assign greater fiscal and policy review responsibility to state agencies. (LAO)
- (d) Repeal the suspension provision—or modify it greatly. (LAO)
- (e) Repeal suspended mandates. (CSAC and League)
- (f) Identify deferred mandate liability in the state's annual audited financial statements and specify repayment date in budget document. (CSAC and League)
- (g) Provide appropriation for mandate one year after SOD is adopted. (EMCN)



## Key Elements of Mandate Reform— Major Recommendations Proposed *(Continued)*

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### 3. Delays Decrease Legislative Oversight

- (a) Require local agencies to submit clearer claims, and do so faster. (LAO)
- (b) Fund CSM so that it may meet its statutory deadlines. (LAO and SCO)
- (c) Impose state interest penalties two years after effective date of mandate to encourage adequate staffing of state agencies with mandate responsibilities. (CSAC, League, and MCS)
- (d) Consider independent management audit of mandate determination process and request Legislature's local government committees to examine mandate claims procedures annually. (CSAC and League)
- (e) Provide a specific time period and deadline for the CSM to determine if a law is a mandate. (MCS)
- (f) Set a one-year deadline for the CSM to act upon a final court determination regarding a mandate or accept winning party's final position, unless all parties agree to extend deadline. (CSAC and League)
- (g) Allow parties to amend parameters and guidelines (Ps&Gs) when mandate is amended, rather than require filing of new claim. (CSAC and League)
- (h) The CSM should ensure that it carries out its process in a timely manner, and should continue to assess its caseload and work with the Department of Finance (DOF) and the Legislature to obtain sufficient staffing. (State Auditor)



## Key Elements of Mandate Reform— Major Recommendations Proposed *(Continued)*

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### 4. The Legislature Needs Better Information

- (a) Create cost estimating unit to assist during legislative development. (LAO)
- (b) Require the test claimant to submit a statewide cost estimate with the original filed test claim. (SCO)
- (c) Require the SCO to perform fiscal analysis of the test claim prior to the development of the Ps&Gs to assess the validity of potential claimable costs. (SCO)
- (d) Require test claim to adequately identify all offsetting savings within the test claim. (SCO)
- (e) Inform the Legislature of mandate determination costs shortly after mandate enactment. (LAO)
- (f) Require Appropriations Committees to review all bills with a fiscal effect on local agencies, not just bills identified as a “mandate.” (CSAC and League)
- (g) Establish process after adoption of the parameters and guidelines to give Legislature information regarding costs and allow Legislature to request revision or reconsideration. (DOF)
- (h) Impose a sunset on all legislation three years after the initial appropriation for mandate reimbursement to allow Legislature to reexamine need for mandate and its costs. (CSAC and League)
- (i) The CSM staff should analyze more carefully the completeness of the claims data used to develop statewide cost estimates. When reporting statewide cost estimates to the Legislature, CSM staff should disclose the incomplete nature of the claims data and the assumptions used to develop statewide cost estimates. (State Auditor)





## Key Elements of Mandate Reform— Major Recommendations Proposed *(Continued)*

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### 5. Claiming System Invites Problems

- (a) Revamp and simplify mandate reimbursement procedures. (LAO and SCO)
- (b) Direct local agencies to submit all claims the year *after* costs are incurred. (LAO)
- (c) Eliminate estimated claims to streamline the process. (SCO)
- (d) Ensure that Ps&Gs are clear and consistent. (MCS)
- (e) Consider establishing an independent review of effectiveness of Ps&Gs after period of, say, three years. (CSAC, League, and SCO)
- (f) Make any change on a prospective basis. (Ed Coalition)
- (g) Base most mandate reimbursements on unit costs. (EMCN, Ed Coalition, and MCS)
- (h) Reform current mandate apportionment option, allowing specific mandates to be an apportionment rather than annual filing of detailed cost claims. (SCO)
- (i) External claim preparers should pay to have their systems and methodologies professionally certified by the SCO for compliance with the specific mandate's interpretation, implementation, and supporting documentation using Generally Accepted Accounting Principals. (MCS)
- (j) The SCO should perform a field review of initial reimbursement claims for selected new mandates before development of the Ps&Gs and statewide cost estimates to identify any inappropriate claiming and to suggest needed changes to the Ps&Gs. (State Auditor)
- (k) Require CSM to adopt the terms, conditions, and rate of reimbursement upon adoption to link mandate finding with accurate measure of its costs. (EMCN)



## **Key Elements of Mandate Reform— Major Recommendations Proposed** *(Continued)*

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### **6. Mandate Determinations Are Stuck in the Past**

- (a) Establish process for reconsidering mandates when legal thinking or law changes. (LAO)
- (b) Replace current 30-day open-ended reconsideration period with ongoing authority to reconsider mandates for only two reasons: (1) failure to consider material information and (2) change in law. (DOF)

### **7. Definition of Mandated Costs Needs Tightening**

- (a) Change definition of mandates to limit reimbursement to increased local costs to implement requirement in most cost-effective manner possible. Exclude reimbursement for costs for (1) optional programs, (2) redirected staff time, or (3) activities subsequently mandated by the federal government. (DOF)
- (b) Change standard of proof for cost issues to require local documentation. (DOF)
- (c) Require CSM to consider, and claiming instructions to require information regarding, any funding provided by state to implement mandates. (DOF)
- (d) Oppose efforts to revise statutes to (1) “under-fund local agencies for bona fide local agency mandates” (CSAC and League) or (2) exclude costs for redirected state time or costs from local agencies previously performing the activity. (Ed Coalition)



## **Key Elements of Mandate Reform— Major Recommendations Proposed** *(Continued)*

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### **8. Audit Process Needs Improvement**

- (a) The SCO should audit the external claim preparer's process and approach, rather than individual claims filed, to promote standardized processes and documentation requirements that would eliminate the need for claimants to support claimed costs during audit. (MCS)
- (b) The SCO should verify how external claim preparers ensure that their clients have implemented the mandated activities as intended by the Legislature. (MCS)
- (c) The SCO should ensure the documentation of reimbursable activities is properly recorded in a clear auditable format. (MCS)

## INITIAL STATEMENT OF REASONS

### SPECIFIC PURPOSE OF THE PROPOSED ACTION

The Commission is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, § 1700.6). The purpose of this rulemaking is to implement AB 2856 (Stats. 2004, ch. 890), which made the following statutory changes that require the Commission to initiate this rulemaking:

- The definition of test claim was modified. (Gov. Code, § 17521)
- The state mandates claims fund was abolished and implementation statutes were repealed. (Gov. Code, §§ 17517 and 17610)
- The content of a test claim filing was specified in statute, adding new requirements and specificity. (Gov. Code, § 17553)
- The statute of limitations for filing test claims was reduced to 12 months. (Gov. Code, § 17551)
- The applicable reimbursement period for filing a test claim amendment was clarified. (Gov. Code, § 17557, subd. (e))
- The Commission was authorized to adopt a *reasonable reimbursement methodology* in parameters and guidelines. (Gov. Code, §§ 17518.5 and 17557, subds. (b), (f))
- The reimbursement period was specified for parameters and guidelines amendments. (Gov. Code, § 17557)
- The Controller's claiming instructions are derived from the test claim decision and adopted parameters and guidelines. (Gov. Code, § 17558)
- Claims for direct and indirect costs must be filed in the manner prescribed in the parameters and guidelines and claiming instructions. (Gov. Code, § 17564, subd. (b))

### MINOR, NON-SUBSTANTIVE, CLARIFYING AND TECHNICAL AMENDMENTS

The Commission edited text of the existing regulations for clarity and consistency purposes. Specifically, the Commission proposes minor, non-substantive, or clarifying technical amendments in sections 1181, 1183.02, 1183.03, 1183.05, 1183.06, 1183.07, 1183.08, 1183.11, 1183.21, 1187.2, and 1187.3.

## **ARTICLE 1. GENERAL**

### **SECTION 1181.1. DEFINITIONS**

#### *Specific Purpose of the Regulation*

The section defines key terms used in the regulations.

#### *Necessity*

The proposed changes amend the definitions of “amendment,” “Commission staff,” “statewide cost estimate,” and “written material,” and delete the former definition of a “test claim.” Amending the definitions of these terms are necessary to clarify the meaning and to implement the statutory provisions. The Commission proposes to delete the definition of “test claim” because it is now codified in Government Code section 17521.

### **SECTION 1181.2. FILING AND SERVICE OF WRITTEN MATERIALS**

#### *Specific Purpose of the Regulation*

The section clarifies how written comments should be submitted to the Commission and serviced upon parties and interested parties who have requested inclusion on the mailing list for a specific claim.

#### *Necessity*

The proposed changes are necessary to clarify and facilitate the use of electronic mail and the Commission’s website in lieu of service by first-class mail.

### **SECTION 1181.3. SUBMISSIONS OF WRITTEN MATERIALS IN OTHER MEDIA**

#### *Specific Purpose of the Regulation*

The section specifies that parties and interested parties may electronically submit documents to the Commission to facilitate the timely hearing of test claims, parameters and guidelines, and statewide cost estimates.

#### *Necessity*

The proposed changes are necessary to clarify the manner in which documents submitted through electronic mail, in lieu of service by first-class mail, shall be formatted.

## **ARTICLE 3. TEST CLAIMS**

### **SECTION 1183. TEST CLAIM FILING**

#### *Specific Purpose of the Regulation*

This section proposes substantive and technical conforming changes that update the statute of limitations requirement; repeal duplicative content requirements for test claims; and repeal obsolete procedures for filing duplicate test claims. This section would also authorize the executive director to dismiss test claims or portions of a test claim that the Commission lacks jurisdiction to hear for any reason, subject to appeal to the Commission.

#### *Necessity*

AB 2856 revised how local agencies and school districts file test claims with the Commission. They have only one year to file test claims on new statutes; they must include additional

information when filing test claims; and they may no longer file duplicate test claims. Therefore, the changes proposed to this section would conform the section to the new statutory changes. This section would also clarify the process when a test claim is improperly filed and the Commission has no jurisdiction to hear the claim.

#### SECTION 1183.01. TIMELINES

##### *Specific Purpose of the Regulation*

Government Code section 17551 requires the Commission to complete test claims within 12 months. This section proposes to toll this timeline for sixty days if a party or interested party notifies the commission that they will be submitting a reasonable reimbursement methodology. Section 1183.01 currently sets a timeline for claimants when they file duplicate test claims. This proposal strikes the language regarding duplicate test claims. Finally, this section allows the executive director to dismiss test claims or portions thereof when the Commission has no jurisdiction over the claim.

##### *Necessity*

AB 2856 authorizes state agencies, claimants, and interested parties to propose a reasonable reimbursement methodology to reimburse local agencies and school districts for mandated programs. It is necessary to toll the existing statutory timeline for completing test claims for 60 days to give parties time to submit this new methodology. It is necessary to strike the existing language regarding duplicate test claims because AB 2856 repealed the authority for claimants to file duplicate claims. This section would also allow the executive director to dismiss test claims when they are improperly filed and the Commission has no jurisdiction over the claim.

#### SECTION 1183.04. INFORMAL CONFERENCE

##### *Specific Purpose of the Regulation*

The executive director is currently authorized to conduct informal conferences prior to formal hearings on matters to respond to questions, set dates for receiving written comments, or to resolve or clarify issues of law. This section proposes to allow the conference to be conducted to consider a reasonable reimbursement methodology.

##### *Necessity*

AB 2856 authorizes state agencies, parties and interested parties to propose a reasonable reimbursement methodology to reimburse claimants for mandated programs. This section would clarify that informal conferences can be conducted to discuss or resolve issues regarding reasonable reimbursement methodologies.

#### SECTION 1183.1. CONTENT OF PARAMETERS AND GUIDELINES

##### *Specific Purpose of the Regulation*

Government Code section 17557 requires the Commission, once it determines that a new statute or executive order is a mandated program, to adopt parameters and guidelines that provide the claimants with the actual activities that are reimbursable. Currently, the claimant is required to submit proposed parameters and guidelines. This section proposes to clarify and revise the content of proposed parameters and guidelines, to define the “most reasonable methods of complying with the mandate,” to identify offsetting revenues and reimbursements, to provide notice of the Office of the State Controller’s duty to issue claiming instructions, and to specify

the remedies before the Commission and the legal and factual basis for the parameters and guidelines. Also, duplicative language that is in Government Code section 17557 would be deleted.

*Necessity*

This section would revise the regulations to conform to statutory changes made by AB 2856 to specify the content of test claim filings and to require the Commission to consider a reasonable reimbursement methodology when adopting parameters and guidelines.

SECTION 1183.12. ALTERNATE PROCESS FOR PROPOSED PARAMETERS AND GUIDELINES

*Specific Purpose of the Regulation*

This proposal would add a new section that authorizes claimants to utilize an alternate process for submitting parameters and guidelines. Under the alternate process, Commission staff would draft proposed parameters and guidelines to assist the claimant. In lieu of filing the proposed parameters and guidelines, claimants would file modifications and/or comments on staff's proposed parameters and guidelines, and may clarify reimbursable activities, include additional activities, describe the most reasonable methods of complying with the mandate, indicate whether the Commission should consider a reasonable reimbursement methodology, identify offsetting revenues and offsetting savings, and provide an explanation of why clarification or additional activities are necessary.

*Necessity*

Currently, staff makes numerous modifications to claimants' proposed parameters and guidelines to conform them to the format approved by the Commission. This alternate process would expedite adoption of parameters and guidelines and includes the reasonable reimbursement methodology enacted in AB 2856.

SECTION 1183.13. REASONABLE REIMBURSEMENT METHODOLOGY

*Specific Purpose of the Regulation*

This section establishes the procedures for submitting a reasonable reimbursement methodology. It defines what agencies may submit a proposed methodology, requires the methodology to include any documentation or assumptions used to develop the methodology, provides all parties with the opportunity to comment on the proposed methodology and to rebut any comments.

*Necessity*

This section conforms to AB 2856 that authorizes the use of reasonable reimbursement methodologies to reimburse local agencies and school districts for mandated programs.

SECTION 1183.14. ADOPTION OF PARAMETERS AND GUIDELINES

*Specific Purpose of the Regulation*

This section provides that when Commission staff makes a recommendation on proposed parameters and guidelines, it may include a reasonable reimbursement methodology.

*Necessity*

This section conforms to AB 2856.

**SECTION 1183.2. AMENDMENTS TO PARAMETERS AND GUIDELINES**

*Specific Purpose of the Regulation*

This section proposes repeal of duplicative references to filing dates and reimbursement periods, and clarifies the content of a proposed parameters and guidelines amendment.

*Necessity*

Language that is currently in regulation was added to statute. Therefore, the language is no longer necessary in regulation.

**SECTION 1183.3. STATEWIDE COST ESTIMATE**

*Specific Purpose of the Regulation*

Government Code section 17553 requires the Commission to adopt a statewide cost estimate of each approved mandate. This section proposes to add that staff may develop a statewide cost estimate based on the application of a reasonable reimbursement methodology.

*Necessity*

This section conforms to AB 2856 that authorizes the adoption of a reasonable reimbursement methodology to reimburse local agencies and school districts for mandated programs.

**ARTICLE 4. MANDATES RECOGNIZED BY THE LEGISLATURE**

**SECTIONS 1184, 1184.1, and 1184.2.**

*Specific Purpose of the Regulation*

These sections implement payment of claims from the State Mandates Claims Fund.

*Necessity*

AB 2856 abolishes the State Mandates Claims Fund and repeals the implementation statutes (Gov. Code, §§ 17517 and 17610). Thus, repeal of Article 4, including sections 1184, 1184.1, and 1184.2, is necessary as these regulations are now obsolete.

**ARTICLE 7. HEARINGS**

**SECTION 1187. SCHEDULING AND NOTICING THE HEARING ON A TEST CLAIM**

*Specific Purpose of the Regulation*

The section specifies when the Commission sets dates for public hearings. The proposed changes repeal obsolete text and add clarifying language.

*Necessity*

The proposed changes clarify that a test claim is set for hearing when the draft staff analysis is issued, and adds language from section 1187.1 regarding what to include in a notice of hearing and who should receive such notices.



#### SECTION 1187.1. NOTICE OF HEARING

##### *Specific Purpose of the Regulation*

The section specifies the process for issuing a notice of public hearing. The Commission proposes repeal of this section.

##### *Necessity*

The proposed repeal of this section is necessary because the notice requirements were moved to section 1187, thus making the text duplicative.

#### SECTION 1187.4. PREHEARING CONFERENCE

##### *Specific Purpose of the Regulation*

The section specifies the purposes of a pre-hearing conference, who shall be invited to participate, and who shall be sent a notice of pre-hearing.

##### *Necessity*

The proposed amendment adds other methods for providing public notices, such as electronic mail or other electronic media.

#### SECTION 1188.1. DECISION; ACTION ON PROPOSED DECISION

##### *Specific Purpose of the Regulation*

The section specifies the process for preparing and adopting a proposed Statement of Decision.

##### *Necessity*

The proposed amendment is necessary to clarify that the Commission may adopt a proposed decision on the same day as the hearing on the claim.

#### SECTION 1188.3. WITHDRAWAL OF CLAIMS AND REQUESTS

##### *Specific Purpose of the Regulation*

The section specifies that a claim, or any portion of a claim, may be withdrawn by written application any time before a decision is adopted, or by oral application at the time of hearing.

##### *Necessity*

The proposed amendment is necessary to clarify that if the withdrawal is of a test claim, or portion thereof, the procedures described in section 1183.08 must be followed before dismissal.

#### SECTION 1188.4. RECONSIDERATION OF A PRIOR FINAL DECISION

##### *Specific Purpose of the Regulation*

The section specifies and clarifies the process for requesting that the Commission reconsider or amend a test claim decision and change a prior final decision to correct an error of law.

##### *Necessity*

The proposed amendment is necessary to clarify that the section applies to reconsiderations requested pursuant to Government Code section 17559, subdivision (a), and not to remands or reconsiderations directed by the courts or by statute.

## **ARTICLE 8.5. FORMS**

### **SECTION 1189.6. DEVELOPMENT AND APPROVAL OF COMMISSION FORMS**

#### *Specific Purpose of the Regulation*

The section clarifies the process for developing and approving forms necessary to simplify and improve the efficiency of the test claim process.

#### *Necessity*

The proposed changes are necessary to clarify the duty of the executive director to develop and issue forms after holding a workshop with interested parties and state agencies, subject to appeal to the Commission.

### **MATERIAL RELIED UPON TO DEVELOP REGULATIONS**

No technical documents, empirical studies, reports or documents have been relied upon to develop these proposed regulations.

### **ALTERNATIVES TO THE PROPOSED REGULATORY ACTIONS**

The Commission has not identified any reasonable alternatives to the proposed regulatory actions. The Commission has no jurisdiction over small businesses. Therefore, there is no adverse impact on small businesses.

### **ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The Commission has made an initial determination that there is no adverse economic impact on any business because the Commission does not have jurisdiction over businesses.

## **FINAL STATEMENT OF REASONS**

### **NO COMMENTS WERE RECEIVED DURING THE INITIAL NOTICE PERIOD OF APRIL 15, 2005, THROUGH MAY 30, 2005**

The proposed text was made available to the public from April 15, 2005, through May 30, 2005. The Commission did not receive any comments on the proposed text.

### **ALTERNATIVES DETERMINATION**

The Commission has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

### **LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.