

**FINAL DRAFT PARAMETERS AND GUIDELINES,
AS PROPOSED FOR MODIFICATION BY CLAIMANT
AND MODIFIED BY STAFF AND DEPARTMENT OF FINANCE**

Code of Civil Procedure Sections 1299.2,
1299.3, 1299.4, 1299.5, 1299.6, 1299.8 and 1299.9

Statutes 2000, Chapter 906

Binding Arbitration

01-TC-07

Reimbursement Period: January 1, 2001, through April 30, 2003

I. SUMMARY OF THE MANDATE

On March 29, 2007, the Commission on State Mandates (Commission) adopted a Statement of Decision on the *Binding Arbitration* test claim, finding that the prior Statement of Decision adopted on July 28, 2006, was contrary to law, and, in applying the appropriate law to the test claim, the test claim statutes mandate the following activities:

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.6, subd. (a)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:
 - a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
 - b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
 - c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
 - d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
 - e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).
 - f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc., § 1299.8).¹
 - g. Make application and respond to deposition requests (Code Civ. Proc., § 1299.8).²
 - h. Conduct discovery or respond to discovery requests (Code Civ. Proc., § 1299.8).³

¹ Incorporating by reference Code of Civil Procedure section 1282.2, subdivision (a)(2).

² Incorporating by reference Code of Civil Procedure sections 1283 and 1283.05.

The Commission found that these activities constitute a “program” as well as a “new program or higher level of service.” Furthermore, the Commission found that the activities impose “costs mandated by the state” within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Pursuant to Code of Civil Procedure section 1299.2, any city, county, and city and county employing firefighters and/or law enforcement officers, as defined in Code of Civil Procedure section 1299.3, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs, except a city, county, or city and county governed by a charter that was amended prior to January 1, 2001, to incorporate a requirement for resolving employment disputes via binding arbitration (Code Civ. Proc., § 1299.9, subd. (a)).

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on October 24, 2001, establishing eligibility for fiscal year 2000-2001. However, the operative date of the test claim statutes, as enacted by Statutes 2000, chapter 906, is January 1, 2001. Moreover, the test claim statutes were declared unconstitutional by the California Supreme Court on April 21, 2003. *Therefore, the reimbursement period for costs incurred pursuant to Statutes 2000, chapter 906, is limited to January 1, 2001, through April 30, 2003.*

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the

³ Incorporating by reference Code of Civil Procedure section 1283.05.

reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

A. Selection of Local Agency Panel Member and Neutral Chairperson

1. Select an arbitration panel member, which includes attorney, staff and negotiator time to research potential members, and prepare for the selection,
2. Brief the panel member, which includes panel member, attorney, staff, and negotiator time.
3. Vet and select a neutral arbitrator which includes attorney, staff and negotiator time to research potential candidates for neutral chairperson. (Code Civ. Proc. § 1299.4, subd. (b), subd. (c), § 1299.8.)

B. Arbitration Process (includes agency panel member, attorney, staff, and negotiator time)

Once the arbitration is triggered under Code of Civil Procedure section 1299.4, the scope of which is defined in Code of Civil Procedure section 1299.3, subdivision (g), the following activities are reimbursable to participate in the arbitration process and when directed by the panel:

1. Prepare for and meet with the arbitration panel in open or closed session, either jointly or separately. (Code Civ. Proc., § 1299.5, subd. (a)).
2. Submit the last best final offer of settlement to the arbitration panel, five days before the hearing, or as may be mutually agreed to by the parties.
3. Conduct discovery or respond to discovery requests, which includes time to research, prepare to make or respond to requests, gather responsive documents, and meet with witnesses and others to obtain responses or responsive documents or discovery requests and draft and serve responses or discovery requests. (Code Civ. Proc., § 1299.8.)⁴
4. Prepare for, respond to, and participate in inquiries or investigations Code Civ. Proc., § 1299.5, subd. (a)).
- 4.5. Respond to subpoenas and subpoenas duces tecum, which includes time to prepare to respond to subpoenas, gather responsive documents, meet with witnesses and others to obtain responsive documents draft and service responses. (Code Civ. Proc., § 1299.5, subd. (b).)
6. Respond to or make demands for witness lists and/or documents, which includes time to research, prepare to make or respond to demands, gather responsive documents, and meet with witnesses and others to obtain responses or responsive documents or demands and draft and serve demands or responses. (Code Civ. Proc., § 1299.8.)⁵

⁴ Incorporating by reference Code of Civil Procedure section 1283.05.

⁵ Incorporating by reference Code of Civil Procedure section 1282.2, subdivision (a)(2).

7. Prepare for arbitration panel hearing(s) vet, select, and prepare expert and general witnesses.
8. Make application and respond to deposition requests, which includes time to research, prepare to make or respond to requests, gather responsive documents, and meet with witnesses and others to obtain responses or responsive documents or requests and draft and serve responses or requests. (Code Civ. Proc., § 1299.8.)⁶
9. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
10. Consult with the panel, either jointly or separately prior to the award. (Code Civ. Proc., § 1299.5, subd. (a).)
11. Consult with local agency panel member, board of governors, negotiator, attorney, or staff regarding the award. (Code Civ. Proc., § 1299.5, subd. (a).)
12. When directed by the panel:
 - (a) Submit *updated* last best final offer of settlement to the arbitration panel, including time to prepare for and redraft the last best final offer, and time for consultation with governing board. (Code Civ. Proc. § 1299.6, subd. (a).)
 - (b) Prepare for and participate in mediation (Code Civ. Proc. § 1299.5, subd. (a).)
 - (c) Prepare and file closing briefs. (Code of Civ. Proc., § 1299.5, subd. (a).)⁷

C. Non-Reimbursable Activities

The following activities are not reimbursable:

1. train agency management, counsel, staff and members of governing bodies regarding binding arbitration;
2. restructure bargaining units to accommodate binding arbitration;
3. perform discovery activities, as set forth in Code of Civil Procedure sections 1281.1, 1281.2 and 1299.8, when such activities are engaged in outside the binding arbitration process triggered by Code of Civil Procedure section 1299.4;
4. collect and compile comparability data, handle two track negotiations or participation in mediation, when such activities are engaged in outside the binding arbitration process triggered by Code of Civil Procedure section 1299.4;
5. negotiate with the employee organization representatives based on the arbitration panel's award, pursuant to Code of Civil Procedure section 1299.7, subdivision (a); ~~and~~
6. litigate interpretation of the test claim statutes; and
7. fee and mileage of a witness subpoenaed solely upon the determination of the neutral arbitrator.

⁶ Incorporating by reference Code of Civil Procedure sections 1283 and 1283.05.

⁷ Incorporating by reference Code of Civil Procedure sections.

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant, expert witness, and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

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

5. Travel

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

B. Indirect Cost Rates

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

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

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

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

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

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁸ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the

⁸ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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