

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Section 17553, Subdivision
(b)(1)(C) through (G) and (b)(2)
California Code of Regulations, Title 2, Sections
1183, Subdivision (d)
(Register 2005, No. 36, Effective September 6,
2005)
Statutes 2004, chapter 890 (AB 2856)
Filed on September 27, 2005 by
The City of Newport Beach, Claimant

No. 05-TC-05

Mandate Reimbursement Process II

ADOPTION OF PARAMETERS AND
GUIDELINES PURSUANT TO GOVERNMENT
CODE SECTION 17557 AND TITLE 2,
CALIFORNIA CODE OF REGULATIONS,
SECTION 1183.12

(Adopted on May 26, 2011)

PARAMETERS AND GUIDELINES

On May 26, 2011, the Commission on State Mandates adopted the attached parameters and guidelines.



Drew Bohan, Executive Director

Dated: May 31, 2011

Adopted: May 26, 2011

PARAMETERS AND GUIDELINES

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

Statutes 2004, chapter 890 (AB 2856)

Mandate Reimbursement Process II 05-TC-05

Effective January 1, 2005 through June 30, 2011

I. SUMMARY OF THE MANDATE

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

On January 29, 2010, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statute and regulations impose a partially reimbursable state-mandated program upon local agencies and school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

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

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

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

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

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

II. ELIGIBLE CLAIMANTS

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

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

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The City of Newport Beach filed the test claim on September 27, 2005, establishing eligibility for reimbursement beginning in fiscal year 2004-2005. The test claim statute became effective on January 1, 2005. Therefore, costs incurred for compliance with this mandate are reimbursable on or after January 1, 2005.

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

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560, a local agency or school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564, subdivision (a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant, the following activities are reimbursable:

On-going Activities – Successful Test Claims Only:

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

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

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

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

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

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

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. **Salaries and Benefits**

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

2. **Materials and Supplies**

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

3. **Contracted Services**

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

4. **Fixed Assets and Equipment**

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

5. Travel

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

6. Training

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

B. Indirect Cost Rates

1. Local Agencies

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

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

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

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

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

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

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

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

3. County Offices of Education

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

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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.

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

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.