

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Sections 914, 933, 933.05, and 938.4 as added or amended by Statutes 1996, Chapter 1170, Statutes 1997, Chapter 443, and Statutes 1998, Chapter 230;

Filed on June 30, 1999;

By the County of San Bernardino, Claimant

No. 98-TC-27

*Grand Jury Proceedings*

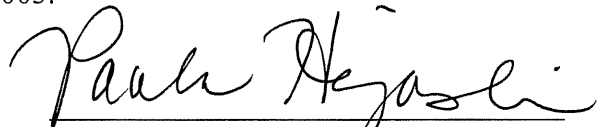
ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 1183.12

*(Adopted on July 31, 2003)*

**PARAMETERS AND GUIDELINES**

On July 31, 2003, the Commission on State Mandates adopted the attached Parameters and Guidelines.

This Decision shall become effective on August 1, 2003.

  
PAULA HIGASHI, Executive Director

## PARAMETERS AND GUIDELINES

Penal Code Sections 914, 933, 933.05, and 938.4

Statutes 1996, Chapter 1170  
Statutes 1997, Chapter 443  
Statutes 1998, Chapter 230

### *Grand Jury Proceedings*

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

Statutes 1996, chapter 1170; Statutes 1997, chapter 443; and Statutes 1998, chapter 230 added or amended Penal Code sections 914, 933, 933.05, and 938.4 relating to grand jury operations.

These statutes:

- z Expand the required response of local entities to a grand jury finding.
- z Require the local superior court to ensure the grand jury receives specified training.
- z Delete language that excluded required responses to grand jury findings on fiscal matters.
- z Require a grand jury meeting to be held with the local entity that is the subject of the investigation unless the court considers it detrimental.
- z Require a county to support grand jury operations and provide a suitable room for its use.
- z Require the county clerk to forward copies of the grand jury report and public agency responses to the State Archivist.

On June 27, 2002, the Commission on State Mandates (Commission) adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 175 14 for the following activities:

- z Providing comments to the grand jury report including fiscal matters in the report.
- z Providing training and consultation to the grand jury.
- z Meeting with the subject of an investigation.
- Providing a meeting room and support for the grand jury.
- z Forwarding copies of the grand jury report and responses to the State Archivist.

## **II. ELIGIBLE CLAIMANTS**

Any county, city, city and county, special district, joint powers agency, and school districts, including community college districts,<sup>1</sup> that have incurred increased costs as a direct result of this mandate are eligible to claim reimbursement of those costs.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on June 30, 1999. Therefore, costs incurred for compliance with Statutes 1996, chapter 1170 are eligible for reimbursement on or after July 1, 1997.

Statutes 1997, chapter 443 was operative January 1, 1998, and Statutes 1998, chapter 230 was operative January 1, 1999. Therefore, costs incurred for compliance with Statutes 1997, chapter 443 are reimbursable on or after January 1, 1998, and costs incurred for compliance with Statutes 1998, chapter 230 are reimbursable on or after January 1, 1999.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 1756 1, subdivision (d)( 1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given 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 20 15.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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<sup>1</sup> Penal Code section 933.5 has been interpreted to limit the grand jury's investigation into K- 12 school districts (other than into public offenses and misconduct) to the district's financial affairs that affect the assessing and taxing powers of the district. (*Board of Trustees of Calaveras Unified School District v. Leach* (1968) 258 Cal.App.2d 281.)

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

For each eligible claimant, the following activities are reimbursable:

A. One-Time County Activities

1. Developing policies and procedures for the activities listed in section IV. of these parameters and guidelines. (*Reimbursement period begins July 1, 1997.*)
2. Developing a training program for grand jurors that consider or take action on civil matters. As required by the court, reimbursement is limited to training for report writing, interviews, and grand jury's scope of responsibility and statutory authority. Costs to the county for the court to meet with the district attorney, county counsel, and at least one former grand juror to consult regarding grand jury training are reimbursable. (Pen. Code, § 914, subd. (b)). (*Reimbursement period begins January 1, 1998.*)

B. On-Going County Activities

1. Training each grand jury that considers or takes action on civil matters, as outlined in section IV. A. above (Pen. Code, § 914, subd. (b)). (*Reimbursement period begins January 1, 1998.*)
2. Grand jury meeting(s) with the subjects(s) of the grand jury's investigation(s) regarding the investigation.<sup>2</sup> Grand jury participation in the meeting(s) is reimbursable (Pen. Code, § 933.05, subd. (e)). (*Reimbursement period begins January 1, 1998.*)
3. Providing a suitable meeting room and providing support to the grand jury as the superior court determines is necessary (Pen. Code, § 938.4). See sections V. A3 and A4 for claiming the pro rata share of the meeting room cost if it is used for other purposes. (*Reimbursement period begins January 1, 1998.*)
4. The county clerk submitting a copy of the grand jury report and responses from the person or entity that is the subject of the grand jury report to the State Archivist. This includes the cost of duplication, mailing, or other form of transmittal (Pen. Code, § 933, subd. (b)). (*Reimbursement period begins January 1, 1999.*)

C. On-Going Local Agency or School District Activities<sup>3</sup> (*Reimbursement period begins July 1, 1997.*)

1. Preparing a response to each grand jury finding including those involving fiscal matters. The responding person or entity shall include one of the following into the response for each finding:
  - a. The respondent agrees with the finding.

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<sup>2</sup> During an investigation, the grand jury shall meet with the subject of that investigation. (Pen. Code, § 933.05, subd. (e).)

<sup>3</sup> Any county, city, city and county, special district, joint powers agency, or school or community college district that is responding to a grand jury report.

- b. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
2. Preparing a response to each grand jury recommendation in which the responding person or entity shall report one of the following actions for each recommendation:
- a. The recommendation has been implemented, with a summary regarding the implemented action.
  - b. The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
  - c. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report regarding the grand jury finding.
  - d. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(Pen. Code, § 933.05, subd. (a) and (b).)

3. A local agency or school district meeting with the grand jury as the subject of an investigation is reimbursable (Pen. Code, §933.05, subd. (e)). (*Reimbursement period begins January 1, 1998.*)

v. **CLAIM PREPARATION AND SUBMISSION**

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report dates when services were performed and itemize all costs for those services. If the contract services are also used for purposes other than the reimbursable activities, only the pro rata portion of the service used to implement the reimbursable activities can be claimed.

### 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 name and job classification of each employee attending training necessary to implement the reimbursable activities, as specified in Section IV of this document. 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

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.

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.

### Local Agencies

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 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.

#### K- 12 School Districts

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

#### Community College Districts

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

## VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter' is subject to the initiation

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

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. 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 SAVINGS AND REIMBURSEMENTS**

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

Pursuant to Government Code section 1756 1, subdivision (d)(l), 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 1757 1. 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 (a), and California Code of Regulations, title 2, section 1183.2.



**DECLARATION OF SERVICE BY MAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 958 14.

August 1, 2003, I served the:

**Adopted Parameters and Guidelines**

***Grand Jury Proceedings, 98-K-27***

County of San Bernardino, Claimant

Penal Code Sections 914, 933, 933.05, and 938.4

Statutes 1996, Chapter 1170; Statutes 1997, Chapter 443; and

Statutes 1998, Chapter 230

by placing a true copy thereof in an envelope addressed to:

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 W. Hospitality Lane  
San Bernardino, CA 924150018

Mr. Mike Havey, Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 1, 2003, at Sacramento, California.

  
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VICTORIA SORIANO