

# **Workshop: Proposed Amendments to the Commission on State Mandates' Regulations**

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# Overview

- ▶ These proposed changes represent months of work by Commission staff
- ▶ Project Goals: Clarity, consistency, and ease of use
- ▶ Expansive changes that affect all but two titles
- ▶ Today's discussion will present the changes in numerical order, to the extent possible
- ▶ Rather than hold questions for the end, we will examine each category of proposed changes and then stop for questions
- ▶ You may use the raise hand feature or type your question in the chat
- ▶ Feedback is very important and will direct how the Commission staff will proceed

# 1. Clean-up of Definitions

## Section 1181.2

### New Definitions

#### ▶ Test Claimant

- ▶ (c) "Claimant" means the local agency or school district filing a test claim or incorrect reduction claim. "Test Claimant" means the local agency or school district filing a test claim.

#### ▶ Requester

- ▶ (m) "Requester" means the local agency, school district, or state agency filing a request to amend parameters and guidelines, joint request for reasonable reimbursement methodology and statewide estimate of costs, request for review of claiming instructions, request for removal or inclusion of a program in the State Mandates Apportionment System, request for review of the apportionment or base year entitlement of a program in the State Mandates Apportionment System, request for mandate redetermination, or a legislatively determined mandate.
- ▶ While claimant was defined, test claimant and requester were not although they are used throughout the regulations

# 1. Clean-up of Definitions

## Section 1181.2

### Changed Definitions

#### ► Filing Date

- (e) "Filing date" means the date received at the Commission's office ~~during normal business hours by any of the methods and~~ found to not contain personal identifying information as described in section 1181.3 of these regulations. ~~"Normal business hours" means from 8 a.m. until 5 p.m. of each day from Monday to Friday, inclusive, other than state holidays, as provided by Government Code section 11020(a).~~
- No document with personal identifying information received by the Commission will be deemed filed
- There will no longer be a 5 p.m. cut off for electronic filing

# 1. Clean-up of Definitions

## Section 1181.2

### Changed Definitions

#### ► Interested Party

- (hi) "Interested party" means a local agency, school district, or state agency, with legal rights and interests ~~a beneficial interest~~ in the matter.
- Provides more specificity than the term “beneficial”

# 1. Clean-up of Definitions

## Section 1181.2

### Relocated Definition

#### ► Matter

- (j) “Matter” means test claims, proposed parameters and guidelines, requests to amend parameters and guidelines, incorrect reduction claims, requests to approve a joint reasonable reimbursement methodology and statewide estimate of costs, joint requests for early termination of a joint reasonable reimbursement methodology, requests for inclusion or removal from the State Mandates Apportionment System, requests for review of apportionment or base year entitlement for programs included in the State Mandates Apportionment System, requests for review of the Office of State Controller's claiming instructions, and requests for mandate redetermination which are all subject to article 7 of these regulations.
- Moved from Section 1187.1 with only a minor change to move the last clause from the beginning to the end and altered to add a reference to article 7

# 1. Clean-up of Definitions

## Section 1181.2

### Deleted Definitions

- ▶ **Completed**
  - ▶ Since the factors determining when a filing is complete are already set forth in the sections addressing the types of filings, there is no need to define it generally
- ▶ **Real Party in Interest**
  - ▶ As this term is rarely used, is unclear, and Interested Parties is a better description, it has been eliminated from the regulations
- ▶ **Teleconference**
  - ▶ Since the Commission's teleconferencing follows Bagley-Keene (Government Code section 11120 et seq.), there is no need to define it in the regulations

# 1. Clean-up of Definitions Section 1181.2





## 2. Requirements For Filing Documents

### Section 1181.3

### Certification

- ▶ The general requirement for certification of all filings under subdivision (a) will be deleted
- ▶ Since Government Code section 17553(b)(4) only requires the certification of test claims, that will be the only certification required under the regulations

## 2. Requirements For Filing Documents

### Section 1181.3

#### Formatting for Accessibility

- ▶ (b)(1) Formatting. All new filings and written materials, except for supporting documents that were either not created by the party or were originally created by the party for a purpose other than providing evidence to the Commission, shall conform to all of the following document formatting accessibility requirements. Filers will certify compliance with the subdivision as part of electronic filing (or e-filing) with the Commission via the Commission's e-filing system, available on the Commission's website.
- ▶ Applies to only newly created documents such as a matter or comments

## 2. Requirements For Filing Documents

### Section 1181.3

#### E-filing

- ▶ (b)(2)(B) All e-filed documents, other than forms prescribed by the Commission, shall:
  - (i) be in unlocked PDF file format, to allow Commission staff to electronically date stamp the document and append additional pages for posting on the Commission's website with a proof of service for e-service by the Commission, in lieu of the filer serving the document to all persons on the entire mailing list for the matter; and
  - ~~(ii) include a scanned copy of the signed signature page, rather than a digitally signed document. The scanned copy shall be in black and white (not gray scale or color).~~
  - (iii) be in a legible and searchable format using a "true PDF" (i.e., documents digitally created in PDF, converted to PDF or printed to PDF) or optical character recognition (OCR) function, as necessary.
- ▶ Clean-up of unnecessary language

## 2. Requirements For Filing Documents

### Section 1181.3

#### E-filing

- ▶ (b)(2)(C) E-filed documents larger than 500 megabytes shall be e-filed in multiple volumes and labeled as such (i.e., “Volume I, Volume II” etc.) and shall, in that case, include a table of contents with electronic bookmarks which at minimum link to each document within the exhibits, and for documents created for the purpose of filing with the Commission also link to each heading, subheading, and component (including but not limited to the table of contents, declarations, exhibits, proof of service) of the document. ~~Filing of color documents is strongly discouraged. However, if a color image(s) is necessary for readability or comprehension, the color image(s) shall be e-filed in a separate and final volume of exhibits. Documents not available or obtainable in electronic form may be scanned and OCRed and filed in a separate volume, however it is prohibited to e-file scanned documents that are available or obtainable electronically. E-filed documents that must be scanned, shall be scanned in black and white (not gray scale or color).~~
- ▶ Clean-up of unnecessary language

## 2. Requirements For Filing Documents

### Section 1181.3

#### E-filing

- ▶ (G) "Failure of e-filing" occurs when the filer receives notification, in any manner, of non-receipt of an e-filed document or of any other inability of Commission staff to access the document, including the failure to meet the requirements of subdivisions (b)(2)(B)(i)-(ii) of this section.
- ▶ ~~(HF) By using e-filing, the filer agrees, in the event of failure of e-filing, the filer shall to re-file the document no later than the business day after the business day on which notice of the failure of e-filing is received by the filer. The filer may re-file by any means authorized by these rules, in order to maintain the original filing date. "Failure of e-filing" occurs when the filer receives notification, in any manner, of non-receipt of an e-filed document or of any other inability of Commission staff to access the document, including the failure to meet the requirements of subdivisions (c)(2)(B)(i)-(iii) of this section.~~
- ▶ ~~(G) Documents e-filed with the Commission are served by Commission staff to persons who have provided an e-mail address for the mailing list for the matter in accordance with section 1181.4 of these regulations. E-filed documents do not need to be served by the filer and proof of service does not need to be provided by the filer for persons who have provided an e-mail address for the mailing list in accordance with section 1181.4.~~
- ▶ Clean-up of unnecessary language and reordering the clauses

## 2. Requirements For Filing Documents

### Section 1181.3

#### Review - New Section

► (b)(3) Review.

(A) All new filings and written materials filed with the Commission will be deemed received until reviewed for compliance with the ban against containing personal identifying information pursuant to subdivision (a) of this section. If personal identifying information is found in the filings or written materials, they will be rejected and no filing date will be assigned.

(B) All new filings and written materials filed with the Commission that have been found to comply with subdivision (a) of this section will be reviewed for compliance with subdivisions (b)(2)(A) and (B) of this section. If the filings or written materials do not comply, they will be deemed to be a failure of e-filing pursuant to subdivision (b)(2)(G) and the filer may correct and refile pursuant to subdivision (b)(2)(H) of this section.

(C) All new filings filed with the Commission that have been found to comply with subdivisions (b)(2)(A) and (B) of this section, will be reviewed for completeness pursuant to these regulations. Any filing deemed incomplete will be returned to the filer who may correct and refile within 30 calendar days to retain the original filing date.

(D) Commission staff will issue its notice of complete filing to the filer for all new filings that have been found to comply with subdivisions (a) and (b)(2)(A) and (B) and which have been found to be complete.

► This section is new to the regulations but has been the Commission's internal review process



## 2. Requirements For Filing Documents

### Section 1181.3

#### Service

- ▶ (b)(4) Service of E-Filed Documents.
- ▶ ~~Nothing in this regulation excuses a filer from serving hard copies of written material on persons who appear on the mailing list and have not provided an e-mail address for the mailing list, or from providing a proof of service with the e-filing to the Commission for the service of the document on those persons.~~
- ▶ (A) Upon confirmation of actual receipt review pursuant to subdivision (b)(3) of the e-filed document, Commission staff shall serve ~~notify~~ all persons who have provided an e-mail address for ~~on~~ the mailing list for the matter in accordance with section 1181.4 of these regulations ~~that written material may be viewed on the Commission's website.~~
- ▶ This section addressed only e-filed documents but has been expanded to provide service for all filings, including hard copy.

## 2. Requirements For Filing Documents

### Section 1181.3

### Hard Copy Filing and Service

- ▶ (b)(~~53~~) Hard Copy Filing and Service in Cases of Undue Hardship or Significant Prejudice. If e-filing ~~legible and searchable PDF documents~~, as described in subdivision (~~b~~e)(2) of this section, would cause the filer undue hardship or significant prejudice, filing may occur as provided below: ~~by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director.~~
- ▶ (A) Request. The filer must request permission from the executive director to hard copy file and include a description of the undue hardship or significant prejudice e-filing would cause the filer.
- ▶ (B) Filing. If the executive director authorizes hard copy filing, the filer shall file the unbound original document with the Commission by first class mail, overnight delivery, or personal service, ~~the filer shall file the unbound original document with the Commission.~~
- ▶ (~~C~~B) Service. All hard copy filings will be served by Commission staff in accordance with section 1181.4subsection (b)(3)(B) of this section.
- ▶ The biggest change is the removal of the requirement for hard copy filers to also serve hard copies



## 2. Requirements For Filing Documents

### Section 1181.3

#### Time of Filing

- ▶ (64) Time of Filing. New filings or written materials filed with the Commission ~~no later than 5 p.m. on a business day (i.e., Monday through Friday, except state holidays)~~ are deemed filed on that business day. New filings or written materials filed with the Commission ~~after 5 p.m. on a business day, or on a Saturday, Sunday, or state holiday,~~ are deemed filed on the following business day.
- ▶ E-filing will be accepted overnight and processed in the morning

## 2. Requirements For Filing Documents Section 1181.3



# 3. Teleconferences

## Section 1181.13

- ▶ The Commission may hold an open or closed meeting by teleconference if it is ~~difficult or impossible for the Commission to achieve a quorum. A meeting held by teleconference shall comply~~in compliance with the Bagley-Keene Open Meeting Act, including the requirements to provide notice of the teleconference locations and make them open to the public.
- ▶ ~~The Commission may also hold an open or closed meeting by teleconference under alternative provisions of the Act, with some members participating remotely from remote locations (which are not disclosable or open to the public) while a quorum of its members are physically present at the same teleconference location.~~
- ▶ Removes unnecessary language and allows the Commission to comply with Bagley-Keene without revising its regulations



# 3. Teleconferences

## Section 1181.13



# 4. Filing a Second Test Claim on the Same Statute or Executive Order

## Section 1183.1

- ▶ ~~(c) Otherwise, t~~The first claim filed on a statute or executive order by a ~~similarly situated~~ claimant is the test claim and no duplicate test claims will be accepted by the Commission. ~~Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission. Interested parties whose~~Affected agencies that are not ~~similarly situated, meaning legal rights and interests are not protected by the test claim filing that test claim statutes affect them differently,~~ may file a test claim on the same statute or executive order as the first claim, but must demonstrate in their filing how and why their legal rights and interests are not protected by the first test claim~~they are affected differently.~~
- ▶ Addresses issues with the terms “similarly situated” and “affected differently” which are vague and undefined



## 4. Filing a Second Test Claim on the Same Statute or Executive Order Section 1183.1



## 5. The Granting or Denial of a Motion to Consolidate or Sever Test Claims

### Section 1183.4

- ▶ (b) Within 30 days after receipt of a motion to consolidate or sever, the executive director will grant or deny the motion with a written notice stating the reason therefor and will make any necessary changes to the names or numbering of the affected test claims~~may consolidate or sever any test claim.~~
- ▶ Clarifies how the motion will be resolved
- ▶ Provides for a written notice and reasoning

## 5. The Granting or Denial of a Motion to Consolidate or Sever Test Claims Section 1183.4





# 6. Contents of Parameters and Guidelines

## Section 1183.7

### Simplify Mandate Summary

- ▶ (a) Summary of the Mandate. A summary of the Commission's findings and identification of reimbursable state mandated activities~~mandate identifying the statutes or executive orders that contain the mandate and the increased level of service and activities found to be required under those statutes or executive orders.~~
- ▶ The language here is more direct and simplified

# 6. Contents of Parameters and Guidelines

## Section 1183.7

### Clarify Offsets

- ▶ (g) Any Offsetting Revenues and Reimbursements that reduce the cost of any reimbursable activity, including the identification of:
  - ▶ (1) Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate~~Dedicated state and federal funds appropriated for this program.~~
  - ▶ (2) Any reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes~~Non-local agency funds dedicated for this program.~~
  - ▶ ~~(3) Local agency's general purpose funds for this program.~~
  - ▶ ~~(4) Service charge, fee, or assessment authority to offset part of the costs of this program.~~
- ▶ ~~(h) Any Offsetting Savings. Identification of any offsetting savings provided by the test claim statute or executive order, or other statute or executive order, which decreases the cost of any reimbursable activity and permits or requires the discontinuance or reduction in the level of service of the program.~~
- ▶ Reflects language used in the Commission's current boilerplate

## 6. Contents of Parameters and Guidelines Section 1183.7



## 7. Requirements for Declarations in Lieu of Testimony

### Section 1187.5

- ▶ (d) Each party shall have the right to present witnesses, introduce exhibits, and propose to the chairperson questions for opposing witnesses. Evidence may be submitted to support or rebut any issue. If declarations are to be used in lieu of testimony, the party proposing to use the declaration shall comply with Government Code Section 11514 as follows:
- ▶ (1) At least ten days before the hearing, the party proposing to use a declaration in lieu of testimony shall file in accordance with section 1181.3 of these regulations, a copy of any declaration which the party proposes to introduce in evidence, together with a notice as provided in subdivision (d)(2).
- ▶ (2) The notice referred to in subdivision (d)(1) shall be substantially in the following form:
- ▶ The accompanying declaration of (here insert name of declarant) will be introduced as evidence at the hearing in the matter of (here insert matter and case number). (Here insert name of declarant) will not be called to testify orally and you will not be entitled to propose to the chairperson questions for the opposing witness unless you file in accordance with section 1181.3 of these regulations a request to cross-examine the declarant (here insert a date seven days after the date of filing and serving the declaration).

# 7. Requirements for Declarations in Lieu of Testimony

## Section 1187.5

- ▶ (3) Unless the opposing party, within seven days after service, files in accordance with section 1181.3 of these regulations a request to cross-examine the declarant, the opposing party's right to cross-examine the declarant is waived and the declaration, if introduced in evidence, shall be given the same effect as if the declarant had testified orally.
- ▶ (4) If, however, notice in accordance with subdivision (d)(1) is not provided by the party proposing to use a declaration in lieu of testimony and an opportunity to cross-examine a declarant is not afforded to the opposing party, the declaration may be introduced in evidence but shall be given only the same effect as other hearsay evidence. In such cases, the declaration shall be electronically filed (or e-filed) with the Commission via the Commission's e-filing system, available on the Commission's website.
- ▶ The requirement is not new but only spells out the requirements of Government Code section 11514

## 7. Requirements for Declarations in Lieu of Testimony Section 1187.5





## 8. New Requirements For the Timing of Filing Written Testimony, Declarations, or Other Evidence

### Section 1187.6

- ▶ (f) The Commission or the executive director may require that prepared written testimony, declarations, or other evidence be filed in advance of any hearing to facilitate the orderly consideration of issues at the hearing. A PDF copy of any prepared written testimony, declaration, or other documentary evidence shall be electronically filed (or e-filed) with the Commission via the Commission's e-filing system, available on the Commission's website, at least 24 hours prior to the hearing to be part of the record and considered by the Commission.
- ▶ Allows filings up to 24 hours before the hearing and brings this section into alignment with 1181.10 on public comments

## 8. New Requirements For the Timing of Filing Written Testimony, Declarations, or Other Evidence

### Section 1187.6

- ▶ 1181.10(b)(1)(C) For written comments received less than five days in advance of the meeting, ~~the commenter shall provide 12 copies to Commission staff at the in-person meeting. In the case of participation via teleconference,~~ a PDF copy shall be ~~filed via~~ electronically filed (or e-filed) with the Commission via the Commission's e-filing system, available on the Commission's website, ~~the Commission's dropbox~~ at least 24 hours prior to the meeting. Commission staff shall provide copies of the comments to the Commission and shall place a copy on a table for public review when the item is called or, in the case of participation via teleconference, shall provide an electronic copy to the Commission and post a copy on the Commission's website, and may share the document with the Commission and the public using the “share screen” function.



## 8. New Requirements For the Timing of Filing Written Testimony, Declarations, or Other Evidence Section 1187.6



## 9. Other Minor Edits or Corrections

- ▶ “~~shall certify, file, and serve~~”
  - ▶ References to certification and service of new filings was deleted from over 60 sections within the regulations
- ▶ 1181.9 “(a) Time and distribution. Notices and agendas of meetings shall be provided~~given~~ to all members, to all parties and interested parties to proceedings on the agenda, and to all persons who request them in writing. The notice and agenda shall be provided~~issued~~ and be posted on the Commission’s website no less than 10 days prior to the scheduled meeting.”
  - ▶ “Provided” mirrors the language in Bagley-Keene and posting is part of our current practice

## 9. Other Minor Edits or Corrections

- ▶ ~~“It is the Commission’s policy to discourage the introduction of late comments, exhibits, or other evidence filed after the three-week comment period described in subdivision (c) of this section. The Commission need not rely on, and staff need not respond to, late comments, exhibits, or other evidence filed in response to a draft proposed decision after the comment period expires.”~~
  - ▶ Because of changes in the timing of filing evidence to 24 hours before the hearing, this language is no longer needed and was deleted from five sections within the regulations - but I missed two!
- ▶ “shall be electronically filed (or e-filed) with the Commission via the Commission’s e-filing system, available on the Commission’s website”
  - ▶ For consistency, this language replaced references to the Commission Dropbox in five sections within the regulations



## 9. Other Minor Edits or Corrections



# Next Steps

- ▶ The proposed regulations will be updated to reflect changes discussed or proposed at this workshop in addition to any other consistency edits that we might have missed.
- ▶ The updated version of the regulations will be included with the Order to Initiate Rulemaking on the Agenda for the May 23, 2025 hearing which you can expect to see by May 9.
- ▶ At the Hearing, the Commission will vote on whether to adopt the Order.
- ▶ If adopted, May 27, 2025: Notice of Rulemaking, Initial Statement of Reasons, and Proposed Text will be filed with the Office of Administrative Law for publication.
- ▶ June 6, 2025: Notice of Proposed Regulatory Action will be issued and published and the comment period opens.
- ▶ July 7, 2025: Last day to request public hearing.
- ▶ July 21, 2025: End of public comment period.
- ▶ Then, back before the Commission at the July 25, 2025 hearing for either a public hearing or to adopt the rulemaking package.



# Final Questions

