

ITEM 4
PROPOSED DECISION
AND
AMENDMENT TO PARAMETERS AND GUIDELINES

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

As Modified by:
Proposition 42, General Election, June 3, 2014

California Public Records Act (CPRA)
02-TC-10 & 02-TC-51 (14-MR-02)

Department of Finance, Requester

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COMMISSION ON STATE MANDATES

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May 29, 2015

Ms. Evelyn Suess
 Department of Finance
 Local Government Unit
 915 L Street
 Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing**
 Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
 Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
 Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
 As Alleged to be Modified by Proposition 42, adopted June 3, 2014
 California Department of Finance, Requester

Dear Ms. Suess:

On May 29, 2015 the Commission on State Mandates (Commission) adopted the decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. The adopted decision is enclosed. The draft proposed decision for the second hearing and the draft expedited amendment to parameters and guidelines are enclosed for your review and comment.

Written Comments on Second Hearing Draft Proposed Decision

Written comments may be filed on the draft proposed decision by **June 19, 2015**. The draft proposed decision is set for hearing on **July 24, 2015**.

Written Comments on Draft Expedited Amendment to Parameters and Guidelines

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the July Commission hearing. The draft expedited amendment to parameters and guidelines is set for hearing on **July 24, 2015** and will only be taken up if the Commission first approves the request for redetermination.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff's draft proposal by **June 19, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.8(f).)

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your

Ms. Evelyn Sues
May 29, 2015
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documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

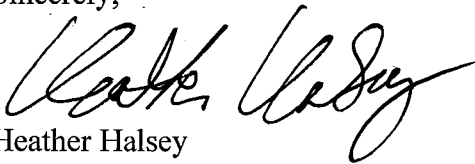
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

The second hearing on the request for a mandate redetermination is set for **Friday, July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the amendment to the parameters and guidelines is also set for hearing on **Friday, July 24, 2015**, but will only be taken up if the Commission first approves the request for redetermination.

The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about July 10, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

ITEM __
MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION
DRAFT PROPOSED DECISION

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014

California Public Records Act (02-TC-10 and 02-TC-51)

14-MR-02

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On May 26, 2011, the Commission on State Mandates (Commission) adopted the *California Public Records Act (CPRA)* test claim decisions, 02-TC-10 and 02-TC-51, program. Specifically, the Commission found that Statutes 1992, Chapters 463, Statutes 2000, Chapter 982, and Statutes 2001, Chapter 355 amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 of the Government Code, resulting in an increased level of service related to the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education.¹

Parameters and guidelines were adopted on April 19, 2013, authorizing reimbursement for the following activities:²

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;
- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;
- Making disclosable public records in electronic formats available in electronic formats;
and

¹ Exhibit B, Test Claim Statement of Decision 02-TC-10 & 02-TC-51, adopted May 26, 2011.

- Removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee.³

On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.”⁴ The proposition amended article XIII B, section 6, of the California Constitution, adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."⁵

Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

Procedural History

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the CPRA test claim, 02-TC-10 and 02-TC-51.⁶ Finance asserts the passage of Proposition 42 constituted a “subsequent change in law” and the “state's obligation to reimburse affected local agencies has ceased.” On February 17, 2015, the State Controller’s Office (Controller) submitted comments, concurring with Finance's request to adopt a new test claim decision.⁷ On April 3, 2015, Commission staff issued the draft proposed decision for the first hearing.⁸ On April 23, 2015, the Controller filed comments concurring with the draft proposed decision.⁹

On May 29, 2015, the Commission found that Finance had made an adequate showing that the request had a substantial possibility of prevailing at the second hearing, and the Commission therefore directed staff to set the matter for hearing on whether to adopt a new test claim

³ Exhibit C, Parameters and Guidelines, adopted April 19, 2013, p. 1.

⁴ Exhibit X, Text of Ballot Measure, Proposition 42, at p. 42.

⁵ Exhibit X, Text of Ballot Measure, Proposition 42, at p. 43.

⁶ Exhibit A, Request for Redetermination, p. 1.

⁷ Exhibit D, Controller’s Comments on Request for Redetermination.

⁸ Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.

⁹ Exhibit F, State Controller’s Comments on Draft Proposed Decision filed April 23, 2015.

decision. On May 29, 2015, Commission staff issued the draft proposed decision and draft expedited parameters and guidelines for the second hearing.

Commission Responsibilities

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission's regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.¹⁰

The regulations further state:

If the commission proceeds to the second hearing, it shall consider whether the state's liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.¹¹

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.

Staff Analysis

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

Moreover, Proposition 42 amended article XIII B, section 6(a) of the California Constitution, by adding paragraph 4, to the list of mandates exempt from reimbursement under the Constitution, to provide "that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."

¹⁰ Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹¹ Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).

Article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7.

Therefore, article XIII B, section 6(a) paragraph 4 of the California Constitution as amended June 3, 2014 specifically exempts California Public Records Act from the subvention requirement.

Government Code section 17570 provides, with respect to mandate redetermination, that:

“Subsequent change in law” is a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to section 17556, or a change in mandates law...¹²

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement comes. Moreover, it expressly declares that activities under, Article I, section 3(b), paragraph 7, which include Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code), are not reimbursable state mandates under article XIII B, section 6. Therefore, pursuant to section 17514, the costs for the California Public Records Act (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not costs mandated by the state within the meaning of article XIII B section 6.

Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on January 29, 2015, establishing eligibility beginning July 1, 2013. However, the effective date of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4 is June 4, 2014, the day after the election at which Proposition 42

¹² Government Code section 17570(a)(2) (Stats. 2010, ch. 719 (SB 856)).

was approved.¹³ Therefore, as a result of this proposed decision, staff finds that the approved activities in the prior test claim decision are no longer reimbursable as of June 4, 2014.¹⁴

Based on the foregoing, staff finds the *CPRA* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning June 4, 2014.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision as its new test claim decision, ending reimbursement for the mandated program beginning June 4, 2014.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new test claim decision following the hearing.

¹³ See Exhibit X, Text of Proposed Law, section 5.

¹⁴ California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION FOR:

Government Code Sections 6253, 6253.1,
6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040);
Statutes 2000, Chapter 982 (AB 2799); and
Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act, 02-TC-10 and
02-TC-51

As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014

Filed on January 21, 2015

By Department of Finance, Requester.

Case No.: 14-MR-02

*California Public Records Act (02-TC-10
& 02-TC-51)*

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500,
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted July 24, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on July 24, 2015. [Witness list will be included in the adopted decision.]

Government Code section 17570 and section 1190 et seq. of the Commission's regulations establish the mandate redetermination process. In addition, the law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission [adopted/modified] the proposed decision as its new test claim decision, granting the request for redetermination and approving the request to end reimbursement for the test claim activities by a vote of [vote count will be included in the adopted decision].

SUMMARY OF THE FINDINGS

The Commission finds the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the 02-TC-10 & 02-TC-51 *California Public Records Act (CPRA)* mandate has been modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added paragraph 4 to article XIII B, section 6(a) of the

California Constitution which, together with article I, section 3(b), paragraph 7, expressly declare that activities under Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in *CPRA* are imposed by Government Code provisions within chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570, the Commission approves the request for redetermination and concludes that the *CPRA* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, effective June 4, 2014.¹⁵

COMMISSION FINDINGS

I. Chronology

- | | |
|-----------|---|
| 5/26/2011 | The Commission adopted the test claim statement of decision. ¹⁶ |
| 4/19/2013 | The Commission adopted the parameters and guidelines. ¹⁷ |
| 6/3/2014 | The voters adopted Proposition 42, which added paragraph 7 of article I, section 3(b), and paragraph 4 of article XIII B, section 6 to the California Constitution. ¹⁸ |
| 1/21/2015 | Department of Finance (Finance) filed a request for redetermination on <i>CPRA</i> , 02-TC-10 and 02-TC-51. ¹⁹ |
| 2/17/2015 | The State Controller's Office (Controller) submitted written comments on the redetermination request. ²⁰ |
| 4/3/2015 | Commission staff issued the draft proposed decision for the first hearing on the request. ²¹ |
| 4/23/2015 | The Controller filed comments on the draft proposed decision. ²² |

¹⁵ California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

¹⁶ Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

¹⁷ Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

¹⁸ Exhibit X, Text of Ballot Measure, Proposition 42, at p. 2.

¹⁹ Exhibit A, Request for Redetermination.

²⁰ Exhibit D, Controller's Comments on Request for Redetermination filed September 26, 2014.

²¹ Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.

²² Exhibit F, Controller's Comments on Draft Proposed Decision filed April 23, 2015.

- 5/29/2015 Commission adopted the decision for the first hearing.²³
- 5/29/2015 Commission staff issued the draft proposed decision and the draft expedited amendment to parameters and guidelines for the second hearing.

Background

The California Public Records Act Program

Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014) amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 to the Government Code, which require a local agency to (1) provide copies of public records with portions exempted from disclosure redacted; (2) notify a person making a public records request whether the requested records are disclosable; (3) assist members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) make disclosable public records in electronic formats available in electronic formats; and (5) remove an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee. The Commission found these statutes to impose reimbursable costs mandated by the state.²⁴

In the parameters and guidelines for *CPRA*, the reimbursable activities are described as follows:

A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV B of these parameters and guidelines. The activities in section IV B represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

²³ Exhibit H, Decision, First Hearing, adopted May 29, 2015.

²⁴ See Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

B. Ongoing Activities

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
 - a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
 - 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
 - 3) Sending or transmitting the notice to the requestor.
- b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
 - 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
 - 3) Sending or transmitting the notice to the requestor.
- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
- 3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
 - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)
 - b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)²⁵

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state's liability for reimbursement. The redetermination process calls for

²⁵ Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution.”²⁶

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.²⁷

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”²⁸

If the Commission finds, at the second hearing, that the state’s liability has been modified based on a subsequent change in law, “it shall adopt a new decision that reflects the modified liability of the state.”²⁹ If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission “shall adopt new parameters and guidelines or amend existing parameters and guidelines...pursuant to Section 17557.”³⁰

II. Positions of the Requester, Test Claimant, and Interested Parties and Persons

A. Department of Finance, Requester

Finance argues that Proposition 42 “specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance” with the California Public Records Act.³¹

B. State Controller

The Controller states that it concurs with Finance's request to adopt a new test claim decision for the CPRA test claim since Proposition 42 “requires local agencies and K-14 school districts to

²⁶ Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

²⁷ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

²⁸ Code of Regulations, Title 2, section 1190. 5(a)(5)(B) (Register 2014, No. 21).

²⁹ Code of Regulations, Title 2, section 1190. 5(b)(1) (Register 2014, No. 21).

³⁰ Government Code section 17570(i) (Stats. 2010, chapter 719 (SB 856)).

³¹ Exhibit A, Request for Redetermination, at p. 1.

comply with specific state laws providing for public access to meetings of local government bodies and records of government officials” and “eliminates the requirement that the State reimburse local agencies and K-14 school districts for compliance with these laws.”³²

III. Discussion

Pursuant to article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the increased costs of state-mandated new programs or higher levels of service. For local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a successful test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³³ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.³⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”³⁵

Government Code section 17570 provides that, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.³⁶

A. Proposition 42 Constitutes a Subsequent Change in Law, as Defined.

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. Pursuant to section 17570, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state

³² Exhibit D, Controller’s Comments on Request for Redetermination, filed February 17, 2015.

³³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332; Government Code sections 17551; 17552.

³⁴ *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

³⁵ *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

³⁶ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

pursuant to section 17556; or (3) is another change in mandates law. This request for redetermination is based on a change in mandates law, which includes “amendments to section 6 of article XIII B of the California Constitution.”³⁷ Specifically, the request is based on Proposition 42, which added paragraph 4 to article XIII B section 6 to add the following to the list of exemptions from the subvention requirement:

“Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.”

The plain language exception to reimbursement adopted in Proposition 42 is alleged as a subsequent change in mandates law. Further, article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The test claim statement of decision and parameters and guidelines for *CPRA*, 02-TC-10 and 02-TC-51 found reimbursable activities imposed by Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. Chapter 3.5, Division 7 of Title 1 of the Government Code includes sections 6250 through 6270.

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement stems. Article XIII B, section 6(a) paragraph 4 in turn references another constitutional provision, article I, section 3(b), paragraph 7, which requires local government to comply with the “California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code). . .” and any subsequent amendments thereto or reenactments thereof.

B. Proposition 42 Creates a Valid Exception to the Reimbursement Requirement of Article XIII B, Section 6.

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

³⁷ Government Code section 17570(a)(1).

Moreover, Proposition 42 amended section 6(a) of article XIII B of the California Constitution, by adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for... legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of section 3 of article I."

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7. Therefore, the plain language of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4, enacted by Proposition 42, directly implicates these sections of the Government Code and therefore *cannot* be a reimbursable state mandate.

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional.³⁸ Here, the subsequent enactment is in fact an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 6250-6255.

Based on the foregoing, the Commission finds that the state's liability for the test claim statutes has been modified based on a subsequent change in law, and a new test claim decision is required.

C. The CPRA Program Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution Beginning June 4, 2014.

Government Code section 17570 provides that a redetermination request "shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year."³⁹ This redetermination request was filed on January 21, 2015, establishing potential eligibility beginning July 1, 2013. However, the subsequent change in law identified was adopted on June 3, 2014, and became effective the following day.⁴⁰ Therefore, the CPRA program no longer constitutes a reimbursable state-mandated program beginning June 4, 2014.

IV. Conclusion

Based on the foregoing, the Commission approves the request for redetermination and concludes that the CPRA program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning June 4, 2014.

³⁸ California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).

³⁹ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

⁴⁰ California Constitution, article II, section 10.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

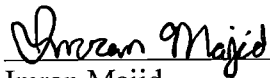
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 29, 2015, I served the:

Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing
Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 May 29, 2015 at Sacramento, California.



Imran Majid
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/27/15

Claim Number: 14-MR-02

Matter: California Public Records Act (02-TC-10 and 02-TC-51)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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May 29, 2015

Ms. Evelyn Suess
 Department of Finance
 Local Government Unit
 915 L Street
 Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing**
 Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
 Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
 Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
 As Alleged to be Modified by Proposition 42, adopted June 3, 2014
 California Department of Finance, Requester

Dear Ms. Suess:

On May 29, 2015 the Commission on State Mandates (Commission) adopted the decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. The adopted decision is enclosed. The draft proposed decision for the second hearing and the draft expedited amendment to parameters and guidelines are enclosed for your review and comment.

Written Comments on Second Hearing Draft Proposed Decision

Written comments may be filed on the draft proposed decision by **June 19, 2015**. The draft proposed decision is set for hearing on **July 24, 2015**.

Written Comments on Draft Expedited Amendment to Parameters and Guidelines

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the July Commission hearing. The draft expedited amendment to parameters and guidelines is set for hearing on **July 24, 2015** and will only be taken up if the Commission first approves the request for redetermination.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff's draft proposal by **June 19, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.8(f).)

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your

Ms. Evelyn Sues
May 29, 2015
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documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

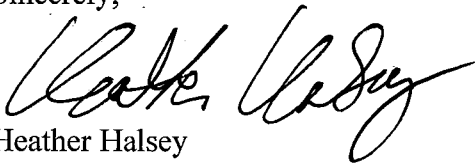
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

The second hearing on the request for a mandate redetermination is set for **Friday, July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the amendment to the parameters and guidelines is also set for hearing on **Friday, July 24, 2015**, but will only be taken up if the Commission first approves the request for redetermination.

The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about July 10, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

ITEM __
MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION
DRAFT PROPOSED DECISION

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014

California Public Records Act (02-TC-10 and 02-TC-51)

14-MR-02

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On May 26, 2011, the Commission on State Mandates (Commission) adopted the *California Public Records Act (CPRA)* test claim decisions, 02-TC-10 and 02-TC-51, program. Specifically, the Commission found that Statutes 1992, Chapters 463, Statutes 2000, Chapter 982, and Statutes 2001, Chapter 355 amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 of the Government Code, resulting in an increased level of service related to the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education.¹

Parameters and guidelines were adopted on April 19, 2013, authorizing reimbursement for the following activities:²

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;
- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;
- Making disclosable public records in electronic formats available in electronic formats;
and

¹ Exhibit B, Test Claim Statement of Decision 02-TC-10 & 02-TC-51, adopted May 26, 2011.

- Removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee.³

On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.”⁴ The proposition amended article XIII B, section 6, of the California Constitution, adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."⁵

Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

Procedural History

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the CPRA test claim, 02-TC-10 and 02-TC-51.⁶ Finance asserts the passage of Proposition 42 constituted a “subsequent change in law” and the “state's obligation to reimburse affected local agencies has ceased.” On February 17, 2015, the State Controller’s Office (Controller) submitted comments, concurring with Finance's request to adopt a new test claim decision.⁷ On April 3, 2015, Commission staff issued the draft proposed decision for the first hearing.⁸ On April 23, 2015, the Controller filed comments concurring with the draft proposed decision.⁹

On May 29, 2015, the Commission found that Finance had made an adequate showing that the request had a substantial possibility of prevailing at the second hearing, and the Commission therefore directed staff to set the matter for hearing on whether to adopt a new test claim

³ Exhibit C, Parameters and Guidelines, adopted April 19, 2013, p. 1.

⁴ Exhibit X, Text of Ballot Measure, Proposition 42, at p. 42.

⁵ Exhibit X, Text of Ballot Measure, Proposition 42, at p. 43.

⁶ Exhibit A, Request for Redetermination, p. 1.

⁷ Exhibit D, Controller’s Comments on Request for Redetermination.

⁸ Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.

⁹ Exhibit F, State Controller’s Comments on Draft Proposed Decision filed April 23, 2015.

decision. On May 29, 2015, Commission staff issued the draft proposed decision and draft expedited parameters and guidelines for the second hearing.

Commission Responsibilities

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission's regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.¹⁰

The regulations further state:

If the commission proceeds to the second hearing, it shall consider whether the state's liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.¹¹

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.

Staff Analysis

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

Moreover, Proposition 42 amended article XIII B, section 6(a) of the California Constitution, by adding paragraph 4, to the list of mandates exempt from reimbursement under the Constitution, to provide "that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."

¹⁰ Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹¹ Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).

Article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7.

Therefore, article XIII B, section 6(a) paragraph 4 of the California Constitution as amended June 3, 2014 specifically exempts California Public Records Act from the subvention requirement.

Government Code section 17570 provides, with respect to mandate redetermination, that:

“Subsequent change in law” is a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to section 17556, or a change in mandates law...¹²

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement comes. Moreover, it expressly declares that activities under, Article I, section 3(b), paragraph 7, which include Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code), are not reimbursable state mandates under article XIII B, section 6. Therefore, pursuant to section 17514, the costs for the California Public Records Act (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not costs mandated by the state within the meaning of article XIII B section 6.

Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on January 29, 2015, establishing eligibility beginning July 1, 2013. However, the effective date of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4 is June 4, 2014, the day after the election at which Proposition 42

¹² Government Code section 17570(a)(2) (Stats. 2010, ch. 719 (SB 856)).

was approved.¹³ Therefore, as a result of this proposed decision, staff finds that the approved activities in the prior test claim decision are no longer reimbursable as of June 4, 2014.¹⁴

Based on the foregoing, staff finds the *CPRA* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning June 4, 2014.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision as its new test claim decision, ending reimbursement for the mandated program beginning June 4, 2014.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new test claim decision following the hearing.

¹³ See Exhibit X, Text of Proposed Law, section 5.

¹⁴ California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION FOR:

Government Code Sections 6253, 6253.1,
6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040);
Statutes 2000, Chapter 982 (AB 2799); and
Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act, 02-TC-10 and
02-TC-51

As Alleged to be Modified by:
Proposition 42, Primary Election, June 3, 2014

Filed on January 21, 2015

By Department of Finance, Requester.

Case No.: 14-MR-02

*California Public Records Act (02-TC-10
& 02-TC-51)*

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500,
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted July 24, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on July 24, 2015. [Witness list will be included in the adopted decision.]

Government Code section 17570 and section 1190 et seq. of the Commission's regulations establish the mandate redetermination process. In addition, the law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission [adopted/modified] the proposed decision as its new test claim decision, granting the request for redetermination and approving the request to end reimbursement for the test claim activities by a vote of [vote count will be included in the adopted decision].

SUMMARY OF THE FINDINGS

The Commission finds the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the 02-TC-10 & 02-TC-51 *California Public Records Act (CPRA)* mandate has been modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added paragraph 4 to article XIII B, section 6(a) of the

California Constitution which, together with article I, section 3(b), paragraph 7, expressly declare that activities under Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in *CPRA* are imposed by Government Code provisions within chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570, the Commission approves the request for redetermination and concludes that the *CPRA* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, effective June 4, 2014.¹⁵

COMMISSION FINDINGS

I. Chronology

- | | |
|-----------|---|
| 5/26/2011 | The Commission adopted the test claim statement of decision. ¹⁶ |
| 4/19/2013 | The Commission adopted the parameters and guidelines. ¹⁷ |
| 6/3/2014 | The voters adopted Proposition 42, which added paragraph 7 of article I, section 3(b), and paragraph 4 of article XIII B, section 6 to the California Constitution. ¹⁸ |
| 1/21/2015 | Department of Finance (Finance) filed a request for redetermination on <i>CPRA</i> , 02-TC-10 and 02-TC-51. ¹⁹ |
| 2/17/2015 | The State Controller's Office (Controller) submitted written comments on the redetermination request. ²⁰ |
| 4/3/2015 | Commission staff issued the draft proposed decision for the first hearing on the request. ²¹ |
| 4/23/2015 | The Controller filed comments on the draft proposed decision. ²² |

¹⁵ California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

¹⁶ Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

¹⁷ Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

¹⁸ Exhibit X, Text of Ballot Measure, Proposition 42, at p. 2.

¹⁹ Exhibit A, Request for Redetermination.

²⁰ Exhibit D, Controller's Comments on Request for Redetermination filed September 26, 2014.

²¹ Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.

²² Exhibit F, Controller's Comments on Draft Proposed Decision filed April 23, 2015.

- 5/29/2015 Commission adopted the decision for the first hearing.²³
- 5/29/2015 Commission staff issued the draft proposed decision and the draft expedited amendment to parameters and guidelines for the second hearing.

Background

The California Public Records Act Program

Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014) amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 to the Government Code, which require a local agency to (1) provide copies of public records with portions exempted from disclosure redacted; (2) notify a person making a public records request whether the requested records are disclosable; (3) assist members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) make disclosable public records in electronic formats available in electronic formats; and (5) remove an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee. The Commission found these statutes to impose reimbursable costs mandated by the state.²⁴

In the parameters and guidelines for *CPRA*, the reimbursable activities are described as follows:

A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV B of these parameters and guidelines. The activities in section IV B represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

²³ Exhibit H, Decision, First Hearing, adopted May 29, 2015.

²⁴ See Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

B. Ongoing Activities

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
 - a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
 - 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
 - 3) Sending or transmitting the notice to the requestor.
- b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
 - 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
 - 3) Sending or transmitting the notice to the requestor.
- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
- 3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
 - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)
 - b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)²⁵

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state's liability for reimbursement. The redetermination process calls for

²⁵ Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution.”²⁶

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.²⁷

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”²⁸

If the Commission finds, at the second hearing, that the state’s liability has been modified based on a subsequent change in law, “it shall adopt a new decision that reflects the modified liability of the state.”²⁹ If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission “shall adopt new parameters and guidelines or amend existing parameters and guidelines...pursuant to Section 17557.”³⁰

II. Positions of the Requester, Test Claimant, and Interested Parties and Persons

A. Department of Finance, Requester

Finance argues that Proposition 42 “specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance” with the California Public Records Act.³¹

B. State Controller

The Controller states that it concurs with Finance's request to adopt a new test claim decision for the CPRA test claim since Proposition 42 “requires local agencies and K-14 school districts to

²⁶ Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

²⁷ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

²⁸ Code of Regulations, Title 2, section 1190. 5(a)(5)(B) (Register 2014, No. 21).

²⁹ Code of Regulations, Title 2, section 1190. 5(b)(1) (Register 2014, No. 21).

³⁰ Government Code section 17570(i) (Stats. 2010, chapter 719 (SB 856)).

³¹ Exhibit A, Request for Redetermination, at p. 1.

comply with specific state laws providing for public access to meetings of local government bodies and records of government officials” and “eliminates the requirement that the State reimburse local agencies and K-14 school districts for compliance with these laws.”³²

III. Discussion

Pursuant to article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the increased costs of state-mandated new programs or higher levels of service. For local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a successful test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³³ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.³⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”³⁵

Government Code section 17570 provides that, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.³⁶

A. Proposition 42 Constitutes a Subsequent Change in Law, as Defined.

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. Pursuant to section 17570, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state

³² Exhibit D, Controller’s Comments on Request for Redetermination, filed February 17, 2015.

³³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332; Government Code sections 17551; 17552.

³⁴ *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

³⁵ *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

³⁶ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

pursuant to section 17556; or (3) is another change in mandates law. This request for redetermination is based on a change in mandates law, which includes “amendments to section 6 of article XIII B of the California Constitution.”³⁷ Specifically, the request is based on Proposition 42, which added paragraph 4 to article XIII B section 6 to add the following to the list of exemptions from the subvention requirement:

“Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.”

The plain language exception to reimbursement adopted in Proposition 42 is alleged as a subsequent change in mandates law. Further, article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The test claim statement of decision and parameters and guidelines for *CPRA*, 02-TC-10 and 02-TC-51 found reimbursable activities imposed by Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. Chapter 3.5, Division 7 of Title 1 of the Government Code includes sections 6250 through 6270.

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement stems. Article XIII B, section 6(a) paragraph 4 in turn references another constitutional provision, article I, section 3(b), paragraph 7, which requires local government to comply with the “California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code). . .” and any subsequent amendments thereto or reenactments thereof.

B. Proposition 42 Creates a Valid Exception to the Reimbursement Requirement of Article XIII B, Section 6.

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

³⁷ Government Code section 17570(a)(1).

Moreover, Proposition 42 amended section 6(a) of article XIII B of the California Constitution, by adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for... legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of section 3 of article I."

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7. Therefore, the plain language of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4, enacted by Proposition 42, directly implicates these sections of the Government Code and therefore *cannot* be a reimbursable state mandate.

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional.³⁸ Here, the subsequent enactment is in fact an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 6250-6255.

Based on the foregoing, the Commission finds that the state's liability for the test claim statutes has been modified based on a subsequent change in law, and a new test claim decision is required.

C. The CPRA Program Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution Beginning June 4, 2014.

Government Code section 17570 provides that a redetermination request "shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year."³⁹ This redetermination request was filed on January 21, 2015, establishing potential eligibility beginning July 1, 2013. However, the subsequent change in law identified was adopted on June 3, 2014, and became effective the following day.⁴⁰ Therefore, the CPRA program no longer constitutes a reimbursable state-mandated program beginning June 4, 2014.

IV. Conclusion

Based on the foregoing, the Commission approves the request for redetermination and concludes that the CPRA program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning June 4, 2014.

³⁸ California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).

³⁹ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

⁴⁰ California Constitution, article II, section 10.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

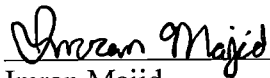
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 29, 2015, I served the:

Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing
Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 May 29, 2015 at Sacramento, California.



Imran Majid
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/27/15

Claim Number: 14-MR-02

Matter: California Public Records Act (02-TC-10 and 02-TC-51)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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COMMISSION ON STATE MANDATES

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May 29, 2015

Ms. Evelyn Suess
 Department of Finance
 Local Government Unit
 915 L Street
 Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing**
 Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
 Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
 Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
 As Alleged to be Modified by Proposition 42, adopted June 3, 2014
 California Department of Finance, Requester

Dear Ms. Suess:

On May 29, 2015 the Commission on State Mandates (Commission) adopted the decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. The adopted decision is enclosed. The draft proposed decision for the second hearing and the draft expedited amendment to parameters and guidelines are enclosed for your review and comment.

Written Comments on Second Hearing Draft Proposed Decision

Written comments may be filed on the draft proposed decision by **June 19, 2015**. The draft proposed decision is set for hearing on **July 24, 2015**.

Written Comments on Draft Expedited Amendment to Parameters and Guidelines

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the July Commission hearing. The draft expedited amendment to parameters and guidelines is set for hearing on **July 24, 2015** and will only be taken up if the Commission first approves the request for redetermination.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff's draft proposal by **June 19, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.8(f).)

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your

Ms. Evelyn Sues
May 29, 2015
Page 2

documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

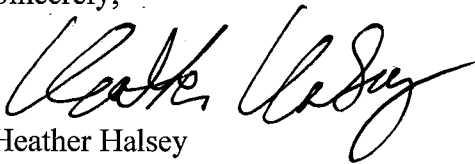
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

The second hearing on the request for a mandate redetermination is set for **Friday, July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the amendment to the parameters and guidelines is also set for hearing on **Friday, July 24, 2015**, but will only be taken up if the Commission first approves the request for redetermination.

The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about July 10, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

Amended: July 24, 2015

Adopted: April 19, 2013

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Item _____

Draft Expedited Amendment to
PARAMETERS AND GUIDELINES

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

As Modified by:

Proposition 42, General Election, June 3, 2014

California Public Records Act (CPRA)

02-TC-10 & 02-TC-51 (14-MR-02)

Reimbursement for this Program Ends Beginning June 4, 2014

I. SUMMARY OF THE MANDATE

The *California Public Records Act* (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. On May 26, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies and K-14 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 which impose an incremental increase in the level of service required under prior law:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).
2. Within 10 days from receipt of a request for a copy of records, notify the person making the request of the determination regarding whether the records are disclosable and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

4. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)
5. When a member of the public requests to inspect a public record or obtain a copy of a public record:
 - a. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
 - b. Describe the information technology and physical location in which the records exist; and
 - c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when:

- The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;
 - The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or
 - The public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).
6. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
 - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)
 - b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally

required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.”¹ The proposition amended section 6(a) of article XIII B of the California Constitution, adding paragraph 4, to provide “that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.”²

Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the CPRA test claim.

On July 24, 2015, the Commission approved Finance’s request for redetermination, and found that Proposition 42 constitutes a subsequent change in law that eliminates the state’s liability for reimbursement under the previously adopted test claim decision, 02-TC-10 and 02-TC-51, beginning June 4, 2014.

II. ELIGIBLE CLAIMANTS

Any city, county, and city and county, or any "school district" as defined in Government Code section 17519 which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(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 County of Los Angeles filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred pursuant to the test claim statutes are reimbursable on or after July 1, 2001.

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

¹ Exhibit X, Text of Ballot Measure, Proposition 42, at p. 42.

² Exhibit X, Text of Ballot Measure, Proposition 42, at p. 43.

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(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), 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. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(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. (Gov. Code § 17560(b)).
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(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 to 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.

Claimants may use time studies to support salary, benefit, and associated indirect costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller's Office.

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 that incurs increased costs, the following activities are reimbursable:

A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

B. Ongoing Activities

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
 - a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the

disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
 - 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
 - 3) Sending or transmitting the notice to the requestor.
- b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
 - 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
 - 3) Sending or transmitting the notice to the requestor.
- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
- 3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to

records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
 - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed

(and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

- b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

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 the services that were performed during the period covered by the reimbursement claim 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 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

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset 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, 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

The cost of training each employee to perform the mandated activities is eligible for reimbursement as a one time cost. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, and per diem.

B. Indirect Cost Rates

Indirect costs are costs that have been 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. 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 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.

For local agency claimants:

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (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 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)).

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 of 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 of allowable indirect costs bears to the base selected.

For school district claimants:

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

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 (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter³ 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.

³ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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 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.

Revenue from the fee authority authorized in Government Code sections 6253 and 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, shall be identified and deducted from the following costs claimed:

1. The direct costs of providing a copy of a disclosable electronic record in the electronic format requested; and
2. If the request requires data compilation, extraction, or programming to produce the record, or if the record is one that is otherwise produced only at regularly scheduled intervals, the cost of producing the record including the cost to construct it, and the cost of programming and computer services necessary to produce the copy of the electronic record.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 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(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(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

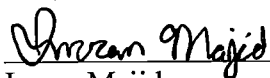
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 29, 2015, I served the:

Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing
Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 May 29, 2015 at Sacramento, California.



Imran Majid
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/27/15

Claim Number: 14-MR-02

Matter: California Public Records Act (02-TC-10 and 02-TC-51)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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June 12, 2015

Ms. Evelyn Suess
 Department of Finance
 Local Government Unit
 915 L Street
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Ms. Jill Kanemasu
 State Controller's Office
 Division of Accounting and Reporting
 3301 C Street, Suite 700
 Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **REVISED Draft Expedited Parameters and Guidelines Amendment**
 Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
 Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
 Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
 As Alleged to be Modified by Proposition 42, adopted June 3, 2014
 California Department of Finance, Requester

Dear Ms. Suess and Ms. Kanemasu:

On May 29, 2015, Commission on State Mandates (Commission) staff issued a draft expedited amendment to parameters and guidelines for the above-named matter. However, it was brought to our attention that the wrong set of parameters and guidelines was expedited. Therefore, a *revised* draft expedited parameters and guidelines amendment is enclosed for review and comment.

Written Comments

Written comments may now be filed on the revised draft expedited amendment to parameters and guidelines by **July 3, 2015**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

Hearing

The second hearing on the request for a mandate redetermination is set for **July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, this amendment to the parameters and guidelines is also set for hearing on **July 24, 2015**, but will only be taken up if the Commission first approves the request for redetermination.

Sincerely,

Heather Halsey
 Executive Director

Amended: July 24, 2015

Corrected: July 26, 2013

Adopted: April 19, 2013

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Item _____

**REVISED Draft Expedited Amendment to
PARAMETERS AND GUIDELINES**

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

As Modified by:

Proposition 42, General Election, June 3, 2014

California Public Records Act (CPRA)

02-TC-10 and 02-TC-51 (14-MR-02)

Reimbursement for this Program Ends Beginning June 4, 2014

I. SUMMARY OF THE MANDATE

The California Public Records Act (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. On May 26, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies and K-14 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 which impose an incremental increase in the level of service required under prior law:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).
2. Within 10 days from receipt of a request for a copy of records, notify the person making the request of the determination regarding whether the records are disclosable and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).

4. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)
5. When a member of the public requests to inspect a public record or obtain a copy of a public record:
 - a. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
 - b. Describe the information technology and physical location in which the records exist; and
 - c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when:

- The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;
 - The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or
 - The public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).
6. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
 - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)
 - b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used

exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.”¹ The proposition amended section 6(a) of article XIII B of the California Constitution, adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."²

Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the CPRA test claim.

On July 24, 2015, the Commission approved Finance’s request for redetermination, and found that Proposition 42 constitutes a subsequent change in law that eliminates the state’s liability for reimbursement under the previously adopted test claim decision, 02-TC-10 and 02-TC-51, beginning June 4, 2014.

II. ELIGIBLE CLAIMANTS

Any city; county; city and county; special district subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes; or any "school district" as defined in Government Code section 17519 which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(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 County of Los Angeles filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred pursuant to the test claim statutes are reimbursable on or after July 1, 2001.

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

1. Actual costs for one fiscal year shall be included in each claim.

¹ Exhibit X, Text of Ballot Measure, Proposition 42, at p. 42.

² Exhibit X, Text of Ballot Measure, Proposition 42, at p. 43.

2. Pursuant to Government Code section 17561(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), 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. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(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. (Gov. Code § 17560(b)).
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(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 to 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.

Claimants may use time studies to support salary, benefit, and associated indirect costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller's Office.

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 that incurs increased costs, the following activities are reimbursable:

A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

B. Ongoing Activities

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
 - a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
 - 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
 - 3) Sending or transmitting the notice to the requestor.
- b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
 - 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
 - 3) Sending or transmitting the notice to the requestor.
- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
- 3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to

the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
 - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

- b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

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 the services that were performed during the period covered by the reimbursement claim 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 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

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset 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, 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

The cost of training each employee to perform the mandated activities is eligible for reimbursement as a one time cost. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, and per diem.

B. Indirect Cost Rates

Indirect costs are costs that have been 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. 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 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.

For local agency claimants:

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (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 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)).

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 of 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 of allowable indirect costs bears to the base selected.

For school district claimants:

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

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 (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter³ 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 revenue 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 or assessments,; federal funds; and other state funds; any of which fund the cost of the mandated activities, shall be identified and deducted from this claim.

Revenue from the fee authority authorized in Government Code sections 6253 and 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, shall be identified and deducted from the following costs claimed:

1. The direct costs of providing a copy of a disclosable electronic record in the electronic format requested; and
2. If the request requires data compilation, extraction, or programming to produce the record, or if the record is one that is otherwise produced only at regularly scheduled intervals, the cost of

³ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

producing the record including the cost to construct it, and the cost of programming and computer services necessary to produce the copy of the electronic record.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 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(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(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:


I am a resident of the County of Solano 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 95814.

On June 12, 2015, I served the:

REVISED Draft Expedited Parameters and Guidelines Amendment
Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 June 12, 2015 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/4/15

Claim Number: 14-MR-02

Matter: California Public Records Act (02-TC-10 and 02-TC-51)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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RECEIVED
June 18, 2015
Commission on
State Mandates

BETTY T. YEE
California State Controller
Division of Accounting and Reporting

June 18, 2015

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: REVISED Draft Expedited Parameters and Guidelines Amendment
Mandate Redetermination Request, 14-MR-02
California Public Records Act (02-TC-10 and 02-TC-51)
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355
As Alleged to be Modified by Proposition 42, adopted June 3, 2014
California Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office reviewed the revised draft expedited parameters and guidelines amendment for the California Public Records Act program and recommends no changes.

Should you have any questions regarding the above, please contact Steve Purser at (916) 324-5729 or email spurser@sco.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "JAL", with a long horizontal flourish extending to the right.

JAY LAL, Manager
Local Reimbursements Section
Division of Accounting and Reporting

DECLARATION OF SERVICE BY EMAIL

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 95814.

On June 18, 2015, I served the:

SCO Comments

Mandate Redetermination Request, 14-MR-02

California Public Records Act (02-TC-10 and 02-TC-51)

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

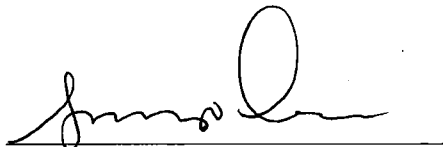
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355

As Alleged to be Modified by Proposition 42, adopted June 3, 2014

California Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 June 18, 2015 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/16/15

Claim Number: 14-MR-02

Matter: California Public Records Act (02-TC-10 and 02-TC-51)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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41 *withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this article. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund*

42 *from proceeds received from the sale of bonds for the purpose of carrying out this article.*

998.552. *All money deposited in the fund that is derived from premium and accrued interest on bonds sold, in excess of any amount of premium used to pay costs of issuing the bonds, shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.*

998.553. *Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, all or a portion of the cost of bond issuance may be paid out of the bond proceeds, including any premium derived from the sale of the bonds. These costs shall be shared proportionally by each program funded through this bond act.*

998.554. *The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, including other authorized forms of interim financing that include, but are not limited to, commercial paper, in accordance with Section 16312 of the Government Code, for purposes of carrying out this article. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this article. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this article.*

998.555. *The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this article includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this article or any previously issued refunding bonds.*

998.556. *Notwithstanding any other provision of this article, or of the State General Obligation Bond Law, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment of earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or*

desirable under federal tax law or to obtain any other advantage under federal law on behalf of the funds of this state.

998.557. *The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this article are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.*

PROPOSITION 42

This amendment proposed by Senate Constitutional Amendment 3 of the 2013–2014 Regular Session (Resolution Chapter 123, Statutes of 2013) expressly amends the California Constitution by amending sections thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO SECTION 3 OF ARTICLE I AND SECTION 6 OF ARTICLE XIII B

First—That Section 3 of Article I thereof is amended to read:

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) *In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.*

Second—That Section 6 of Article XIII B thereof is amended to read:

SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

(1) Legislative mandates requested by the local agency affected.

(2) Legislation defining a new crime or changing an existing definition of a crime.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(4) *Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.*

(b) (1) Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004–05 fiscal year that have not been paid prior to the 2005–06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.