

## COMMISSION ON STATE MANDATES

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July 8, 2015

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

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: **Proposed Decision and Amendment to Parameters and Guidelines**  
*California Public Records Act, 02-TC-10 and 02-TC-51 (14-MR-02)*  
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 Modified by Proposition 42, adopted June 3, 2014  
California Department of Finance, Requester

Dear Ms. Suess:

The proposed decision and amendment to parameters and guidelines for the above-named matter is enclosed.

### Hearing

This matter is set for hearing on **Friday, July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. 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.

### Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission office at least five to seven *working* days prior to the meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**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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**EXECUTIVE SUMMARY**

**I. Summary of the Mandate**

These parameters and guidelines have been amended in accordance to the Commission on State Mandates' (Commission's) finding that the state's liability pursuant to article XIII B, section 6 and Government Code Section 17514 has been modified based on the subsequent change in law.<sup>1</sup>

On January 21, 2015, the Department of Finance (Finance) filed a request to adopt a new test claim decision on the *California Public Records Act (CPRA)* program, asserting the passage of Proposition 42 by voters in the June 2014 General Election is a subsequent change in law that ended the reimbursement period of the program pursuant to Government Code section 17570.

On July 24, 2015, the Commission adopted a new test claim decision finding that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution for the *CPRA* mandate, 02-TC-10 and 02-TC-51, has been modified based on a subsequent change in law, as defined in Government Code section 17570. 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 section 6(a) of article XIII B of the California Constitution, by

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<sup>1</sup> If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission shall adopt new parameters and guidelines or amend existing parameters and guidelines or reasonable reimbursement methodology pursuant to Sections 17557, 17557.1, and 17557.2.

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."

In accordance with section 17570, the Commission approved Finance's request for redetermination, and found that the *CPRA*, 02-TC-10 and 02-TC-51, program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6, effective June 4, 2014.

## **II. Procedural History**

On May 29, 2015, the Commission adopted the decision for the first hearing and directed staff to schedule the second hearing.<sup>2</sup> The draft proposed decision<sup>3</sup> for the second hearing and draft expedited parameters and guidelines<sup>4</sup> were issued on May 29, 2015. The revised draft expedited parameters and guidelines<sup>5</sup> were issued on June 12, 2015 to include the correct set of parameters and guidelines for the program. On June 18, 2015, the State Controller's Office (Controller) submitted comments recommending no changes to the revised draft expedited parameters and guidelines.<sup>6</sup>

## **III. Discussion**

The proposed amendment to the parameters and guidelines ends reimbursement for the program beginning June 4, 2014, and makes other clarifying changes in accordance with the Government Code and the Commission's regulations.<sup>7</sup>

Government Code section 17570(f) 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 or loss of reimbursement for that fiscal year." Finance filed the request 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 was approved.<sup>8</sup> Therefore, staff finds that the approved activities in the prior test claim decision are no longer reimbursable as of June 4, 2014.<sup>9</sup>

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<sup>2</sup> Exhibit A, Decision, First Hearing, adopted May 29, 2015.

<sup>3</sup> Exhibit B, Second Hearing Draft Proposed Decision issued May 29, 2015.

<sup>4</sup> Exhibit C, Draft Expedited Amendment to Parameters and Guidelines issued May 29, 2015.

<sup>5</sup> Exhibit D, Revised Draft Expedited Amendment to Parameters and Guidelines issued June 12, 2015.

<sup>6</sup> Exhibit E, State Controller's Office Comments on the Revised Draft Expedited Amendment to Parameters and Guidelines filed June 18, 2015.

<sup>7</sup> California Code of Regulations, title 2, section 1183.7.

<sup>8</sup> Exhibit F, Text of Proposed Law, section 5.

<sup>9</sup> 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."].

#### **IV. Staff Recommendation**

Staff recommends that the Commission adopt this proposed decision and amendment to the parameters and guidelines, ending the period of reimbursement beginning June 4, 2014 in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514.

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

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
AMENDMENT 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 Modified by:  
Proposition 42, Primary Election, June 3, 2014

Filed on January 21, 2015

By Department of Finance, Requester.

Case No.: 02-TC-10 & 02-TC-51  
(14-MR-02)

*California Public Records Act*

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 parameters and guidelines amendment during a regularly scheduled hearing on July 24, 2015. [Witness list will be included in the adopted decision.]

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., California Code of Regulations, title 2, section 1190 et seq., and related case law.

The Commission [adopted/modified] the proposed decision and amendment to the parameters and guidelines at the hearing by a vote of [vote count will be included in the adopted decision].

**I. Summary of Mandate Findings**

This amendment to the parameters and guidelines is consistent with the Commission's finding that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution for the *California Public Records Act (CPRA)* program ended beginning June 4, 2014, based upon a subsequent change in law.<sup>10</sup> 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 the activities under Chapter 3.5

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<sup>10</sup> Pursuant to Government Code section 17570(i), "[i]f the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission shall adopt new parameters and guidelines or amend existing parameters and guidelines or reasonable reimbursement methodology pursuant to sections 17557, 17557.1, and 17557.2."

(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. The Commission, therefore, concluded that the *CPRA*, 02-TC-10 and 02-TC-51, program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning June 4, 2014.

## **II. Procedural History**

On May 29, 2015, the Commission adopted the decision for the first hearing and directed staff to schedule the second hearing.<sup>11</sup> The draft proposed decision<sup>12</sup> for the second hearing and draft expedited parameters and guidelines<sup>13</sup> were issued on May 29, 2015. The revised draft expedited parameters and guidelines<sup>14</sup> were issued on June 12, 2015 to include the correct set of parameters and guidelines for the program. On June 18, 2015, the State Controller's Office (Controller) submitted comments recommending no changes to the revised draft expedited parameters and guidelines.<sup>15</sup>

## **III. Commission Findings**

The proposed amendment to the parameters and guidelines ends reimbursement for the program beginning June 4, 2014, and makes other clarifying changes in accordance with the Government Code and the Commission's regulations.<sup>16</sup>

Government Code section 17570(f) 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 or loss of reimbursement for that fiscal year." Finance filed the request 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 was approved.<sup>17</sup> Therefore, the Commission finds

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<sup>11</sup> Exhibit A, Decision, First Hearing, adopted May 29, 2015.

<sup>12</sup> Exhibit B, Second Hearing Draft Proposed Decision issued May 29, 2015.

<sup>13</sup> Exhibit C, Draft Expedited Amendment to Parameters and Guidelines issued May 29, 2015.

<sup>14</sup> Exhibit D, Revised Draft Expedited Amendment to Parameters and Guidelines issued June 12, 2015.

<sup>15</sup> Exhibit E, State Controller's Office Comments on the Revised Draft Expedited Amendment to Parameters and Guidelines filed June 18, 2015.

<sup>16</sup> California Code of Regulations, title 2, section 1183.7.

<sup>17</sup> Exhibit F, Text of Proposed Law, section 5.

that the approved activities in the prior test claim decision are no longer reimbursable as of June 4, 2014.<sup>18</sup>

The Commission further finds the amendment to the parameters and guidelines for this program is supported by the findings adopted by the Commission in its new test claim decision.

#### **IV. Conclusion**

Based on the foregoing, the Commission hereby adopts the proposed decision and amendment to the parameters and guidelines.

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<sup>18</sup> 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.”].

Amended: July 24, 2015

Corrected: July 26, 2013

Adopted: April 19, 2013

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## **Item 4**

### **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.”<sup>1</sup> 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.”<sup>2</sup>

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 17570(f) 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 or loss of reimbursement for that fiscal year.” Department of Finance filed a request for mandate redetermination on January 29, 2015, establishing eligibility beginning July 1, 2013. However, the effective date of the subsequent change in law which modified the state’s liability, 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 was approved.<sup>3</sup>

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<sup>1</sup> Exhibit F, Text of Ballot Measure, Proposition 42, at p. 42.

<sup>2</sup> Exhibit F, Text of Ballot Measure, Proposition 42, at p. 43.

<sup>3</sup> Exhibit F, Text of Proposed Law, section 5.

Therefore, the approved activities in these parameters and guidelines are no longer reimbursable as of June 4, 2014.<sup>4</sup>

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.
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

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<sup>4</sup> 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."].

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 chapter<sup>5</sup> 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

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<sup>5</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 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 July 8, 2015, I served the:

**Proposed Decision; and Proposed Decision and Amendment to Parameters and Guidelines**

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.

  
\_\_\_\_\_  
Imran Majid  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 7/6/15

**Claim Number:** 02-TC-10 & 02-TC-51 (14-MR-02)

**Matter:** California Public Records Act

### 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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