RESPONSE TO DEPARTMENT OF FINANCE

Budget Trailer Bill
Chapter 1124, Statutes of 2003
(A.B. 3000)
State Controller's Claiming Instructions

By Claimant, Sacramento Metropolitan Fire Department

Claimant, Sacramento Metropolitan Fire Department, hereby responds to the comments of the Department of Finance, dated October 31, 2003, and received by the Commission on State Mandates on November 6, 2003.

1. Tort Claims

The Department of Finance acknowledges that with the passage of A.B. 3000, the method by which claims against public entities are submitted was revised. However, after reciting the new activities that the claimant believes are reimbursable, the Department of Finance cites *City of Sacramento* v. *State of California* (1990) 50 Cal. 3d 51 for the proposition that since the new activities pertain to all governmental agencies, it is not unique to local government.

This case uses as its premise for denying reimbursement for the requirement that public agencies have unemployment insurance the Supreme Court decision in *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46. This case addressed the issue of whether increases in workers' compensation benefits were a reimbursable state mandated cost. In reviewing the issue, the Supreme Court noted that the increase in benefits was applicable to both public and private employers. On that basis, the court held that it was not a reimbursable mandate as it was applicable to all employers generally, both public as well as private. Thus, no reimbursement is allowable for laws of general application, *i.e.,* those that apply to both the public and private sector.

However, the Government Tort Claims Act, Government Code, 810 *et seq.* applies only to governmental agencies. Unless one is filing a suit against a governmental entity, there is no requirement for compliances with the tort claims act. In fact, the genesis of the tort claims act was to legislatively create an exemption to sovereign immunity: without this act, there could be no claims, and thus no litigation, against governmental entities.

The Department of Finance has, again, confused laws of general application, being those that apply to both the public and private sector, with those that apply only to government.

Thus, the requirement that entities prepare an approved form, and revise the method by which tort claims are accepted constitutes a reimbursable state mandate.

2. Interest on Overpayments

Finance asserts that local agencies do not have to track overpayments, as this is an accounting function that should already be performed. Presumably, this is a requirement which would be found under the Mandate Reimbursement Mandate, for without the requirement that local agencies submit claims, there could be no overpayment, and thus no accounting for same.

There is nothing in the present parameters and guidelines, nor claiming instructions, that allow for detailed accounting records of underpayments and overpayments of the reimbursement claims presented. This over sight is even reflected in the most recent parameters and guidelines, last amended by the Commission on September 25, 2003, which reads as follows:

> A. Scope of Mandate
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> Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state mandated costs – both direct and indirect – are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.
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> B. Reimbursable Activities
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> * * *
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> 2. Reimbursement Claims
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> All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, services and supplies, contracted services, training, and indirect costs.
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> Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in

addition to the reimbursable activities set forth above for successful reimbursement claims.

In recent years, the State Controller has been disallowing costs unless same can be traced back to the parameters and guidelines. The parameters and guidelines are totally silent on the issue of whether claim tracking with regard to underpayments and overpayments from the State are reimbursable. It is clear now that such accounting is required. Thus, at the very least, this particular component must be found to be a reimbursable activity, and thus incorporated into the parameters and guidelines going forth.

Furthermore, interest on overpayments should be considered to be a reimbursable activity as well. The entire purpose of Article XIIIB, Section 6, is to render local agencies whole. Unless there is fraud or substantial malfeasance, the imposition of interest means that the local agency will have to remit funds previously received for performing a state mandated program back to the state. This means, in essence, that the state mandated program is not made whole. Local agencies do not over claim for the purpose of banking the funds and earning interest: rather, given the fact that such reimbursement actually comes years after the program was performed, and interest on such payments does often not accrue on underpayments for years after the program has been established due to a failure to appropriate funds, there should be no interest on any inadvertent overpayment from the State Controller.

3. Penalty On Late Claims Filed

The Department of Finance claims that there is no new program or higher level of service. To the contrary, this new legislation does require a higher level of service.

First of all, the purpose of Article XIIIB, Section 6, as well as Government Code, Section 17500 *et seq.*, is to make local agencies whole for implementing various state programs mandated to be executed by them. The provision for reimbursement specified in statute is retrospective: the costs have already been incurred and the program executed prior to submission of a reimbursement claim for payment.

The original purpose of the penalty was to have local agencies file timely claims; not to penalize them for late claims. This was in order for the legislature to promptly know the cost of a given program, notwithstanding cost estimates by the Department of Finance. The penalty for such a late claim would not only be the 10% penalty to a maximum of $1,000, but could also result in a delay in payment due to an inadequate appropriation.

With the substantial penalty now imposed, particularly on the larger programs, what this means is that local agencies are no longer made whole for the execution of state mandated programs. Rather, this money comes from the general fund of the program, as program costs have already been incurred and expended. Additionally, this means that the entire purpose of Article XIIIB, Section 6, as well as Government Code, Section 17500, has been thwarted: local agencies are not made whole for executing governmental programs.

This is most evident with the largest programs, such as Handicapped and Disabled Children and Collective Bargaining. A one day delay can result in a penalty of hundreds of thousands of dollars, which have already been expended on program execution.

These penalties are a higher level of service in an existing program: if a local agency is but one day late in filing a claim, it must rebudget existing general fund programs in order to cover the shortfall. Thus, for example, if there is a penalty imposed, the result is that the program has already been executed and the funds expended. The budget and existing funds must be reallocated to make up for the shortfall. This results in substantially higher program costs to the agencies in order to make sure that not only is the mandated program not penalized, but that public safety needs are met as well.

The increase in penalty is not meaningless, as the Department of Finance would have one believe. Rather, the increase in penalty results in substantially higher costs to local government in order to make up the shortfall from its budget elsewhere, while still executing the state mandated program and providing for public safety. Given the fact that some programs have not been paid for years, this issue is all the more critical given the diminution in funds available to local government to discharge its mandate.

4. Increase Minimum Claim Amount

The Department of Finance claims that there is no new program or higher level of service when the State Controller's Office demands repayment of those estimated claims filed and paid which were under the amended limit of $1,000 for reimbursement claims, yet over $200. This misses the entire point of claimant's claim.

First of all, the increase in minimum from $200 to $1,000 means that a substantial number of smaller agencies are penalized. Although they have costs with regard to implementing a program or increased level of service which has already been found by the courts or Commission to constitute a reimbursable state mandate, they are precluded from reimbursement. Thus, all of these costs must be paid from the general fund, notwithstanding the fact that the state's programs have, in fact, been executed.

Based upon the past record of the cost of such claims, and under prior claiming instructions, these agencies in good faith made an estimated claim for reimbursement, which was in fact paid. However, due to the passage of the test claim legislation, these agencies are being penalized twice: not only do they have to execute the state's mandate, but they are also now being required to repay the estimated reimbursement claim. If interest is added, it is adding insult to injury.

These agencies are entitled to reimbursement for the costs of the mandated program. Although $1,000 is not a lot to the state, it is to smaller agencies, particularly small cities and special districts. The test claim legislation did not exempt these agencies from executing the program if the costs fell below $1,000, yet they are precluded from being

reimbursed for same, notwithstanding Article XIIIB, Section 6, and Government Code, Section 17500, *et seq.*

There is a new program or higher level of service because of this provision in the test claim legislation: these small agencies must execute the state mandated program with no possibility of reimbursement, and repay the reimbursement receive on programs it has already executed.

Furthermore, small agencies do not have the requisite personnel to keep track of all possible changes to legislation and claiming instructions. Because the State Controller's Office did not promptly amend its claiming instructions to reflect the changes to the minimum claim amount pursuant to the test claim legislation, the local agencies were not provided notice that not only would they not be paid going forward, but that they would have to repay the State funds previously remitted. This is particularly critical to small agencies given the fact that other reimbursement claims which were over $1,000, have not been paid for a period of years.

In conclusion, notwithstanding the assertions of the Department of Finance, this test claim legislation imposes a reimbursable state mandated program.

I declare under penalty of perjury that the foregoing is true and correct, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.

Executed this 5th day of January, 2004, at Sacramento, California.

George Appel
Deputy Chief
Sacramento Metropolitan Fire Department

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On January 9, 2004 I served a true and correct copy of the Response to Department of Finance, Budget Trailer Bill, Chapter 1124, Statutes of 2003 IA.B. 3000), State Controller's Claiming Instructions by Claimant, Sacramento Metropolitan Fire Department, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the Untied State mail at Sacramento, California, with postage thereon fully prepaid.

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 this 9 day of January, 2004 at Sacramento, California.

Joyce Johnson

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